

**CALIFORNIA DEPARTMENT OF  
DEVELOPMENTAL SERVICES**

**NOTICE OF PUBLIC COMMENT PERIOD FOR  
PROPOSED AMENDMENTS TO THE  
Early Intervention Services Regulation**

The Department of Developmental Services (Department) proposes to amend the Early Intervention Services regulations as described below after considering all comments, objections, and recommendations regarding the proposed action.

**WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

Any interested person or his or her representative may present comments relevant to the proposed action to the Department by personal delivery, postal mail service, or email submittal as described in detail below. The public comment period for this regulatory action will begin on December 17, 2021. For any written comment to be considered, it must be received by the Department **no later than January 31, 2022**, the close of the 45-Day comment period.

Comments sent to persons and/or addresses other than that specified, or received after the date and time specified above, may be included in the record of this proposed regulatory action, but may not be summarized or responded to regardless of the manner of transmission.

For consideration, any written comments shall be submitted as follows:

United States Postal Service or personal delivery to:

Department of Developmental Services  
Legislation, Regulations and Public Affairs  
RE: **Early Intervention Amendments**  
1215 O Street, M.S. 9-10  
Sacramento, CA 95814

[Electronic Submittal](https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/): <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>

***“Please note: Public comments should not include any personal or medical information, as your written and oral comments, and attachments become part of the public record and can be released to the public upon request under the California Public Records Act (Gov. Code, § 6250 et seq.).”***

## **PUBLIC HEARING**

A public hearing is not currently scheduled; however, any interested person may request the Department to conduct a public hearing. A public hearing will be held if any interested person, or their duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice **no later than January 14, 2022**, fifteen (15) days prior to the close of the 45-day comment period, which is January 31, 2022. If a request for public hearing is received by January 14, 2022, the time, date, and location of the public hearing will be provided by separate notice and conducted in accordance with the Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with Section 11340).

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (PURSUANT TO GOVERNMENT CODE SECTION 11346.5(a)(3))**

**Sections Affected:** Proposed amendments to California Code of Regulations (CCR), Title 17, Sections 52000, 52082, 52109, and 52162. The proposed amendments summarized below are required by federal law to align with federal statute and regulation.

### **Background on the Proposed Rulemaking**

The Department of Developmental Services (Department) is the lead agency for the Early Start program. This program provides early intervention services to infants and toddlers who have a developmental delay or have a condition that has a high probability of leading to a developmental delay or disability. Through the Department, the State receives federal funding that supports the early intervention services provided to eligible infants and toddlers and their families. As a condition of receiving this federal funding, the Department must ensure that all State policies align with the requirements of Part C of the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Sec. 1431 et seq.).

### **Policy Statement Overview/ Anticipated Objectives and Benefits of the Proposed Regulatory Action:**

Current state regulations in Title 17, CCR, Sections 52000, 52082, 52109 and 52162 need to be amended to comply with federal Part C requirements. These regulations will ensure that the rights of consumers are observed and that consumers are provided with appropriate services.

Currently, Section 52000, provides definitions for early intervention services and the evaluation and assessment of the infants and toddlers whom are referred for determination of eligibility for these services. The Department proposes to amend Section 52000 by adding definitions of new terms used in the regulation: “assistive technology service” and “early intervention records”. The Department also proposes amending the definition of “health services” to more accurately align with Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.).

Currently, Section 52082, states that evaluation to determine eligibility shall be based on informed clinical opinion. The Department proposes to amend this section to specify that informed clinical opinion can be used as an independent basis to establish a child's eligibility.

Currently, Section 52109, provides the basis for regional centers to purchase early intervention services for eligible infants and toddlers. The proposed amendments to this Section would add clarity to existing regulations by referencing non-substitution of funds.

Existing Title 17 regulations do not state under what basis regional centers are required to obtain consent prior to using the public benefits or insurance of a child or parent to pay for early intervention services. The proposed amendments to Section 52162 specify under what circumstances parental consent is required prior to using public benefits or insurance to pay for early intervention services.

*Effect of the Proposed Regulatory Action:*

The proposed amendments are needed to align the State's regulations with the requirements of Part C of IDEA. These amendments are needed in order to operate the Part C IDEA program in accordance with federal requirements. This is also necessary to maintain the approximately \$54 million the State receives annually to fund early intervention services for eligible infants, toddlers, and their families who are in the Early Start program. Failure to amend Title 17 regulations in conformity with Part C federal rules would negatively affect the Department receiving the full Part C grant for the Early Intervention Services.

*Existing Laws/Regulations*

The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code Section 4500 et seq., was enacted to reduce institutionalization of people with developmental disabilities and prevent their dislocation from their home communities.

Government Code Section 11152 provides that the Department may adopt and enforce rules and regulations necessary to carry out their respective duties.

*An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5(a)(3)(D))*

During the process of developing the proposed regulatory action, the Department conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations, as these are the only regulations dealing with this subject matter for infants and toddlers with developmental disabilities.

*Substantial Difference from Existing Comparable Federal Regulations or Statute*  
None.

### Anticipated Benefits

The proposed amendment will indirectly impact the health and welfare of the infants and toddlers in the Early Start program as the proposed amendments ensure the continuity of the federal grant which sustains the Early Start program and the services it provides.

### **AUTHORITY AND REFERENCE**

The Department is proposing to amend CCR, Title 17, Sections 52000, 52082, 52109, and 52162 the authority provided in Welfare and Institutions Code Section 4405, and Government Code Sections 95009, 95028, and 11152 Code.

The proposed regulations implement, interpret, and make specific Welfare and Institutions Code, Sections 4631, 4648(a), and 4691, Government Code, Sections 95014 and 95028; Title 5, California Code of Regulations, Sections 3001 and 3030, Title 20, United States Code, Sections 1432, 1435(a)(10) and (c), 1436, 1440, and 1480; and Title 34, Code of Federal Regulations, Sections 303.9, 303.12, 303.13, 303.16, 303.20, 303.23, 303.24, 303.25, 303.26, 303.27, 303.29, 303.31, 303.300(b) and (c), 303.302, 303.321, 303.322, 303.323(b) and (c) 303.340, 303.342, 303.343, 303.344, 303.345, 303.401, 303.401(a)(1)-(3), 303.404(a), 303.404(b) and 303.405, 303.420, 303.422, 303.430, 303.432, 303.510, and 303.520.

### **MANDATED BY FEDERAL LAW OR REGULATIONS (Gov. Code, §§ 11346.2(c), and 11346.9)**

The proposed amendments are required by federal law to align with federal statute and regulations.

### **LOCAL MANDATE (Gov. Code, § 11346.5(a)(5))**

Under Government Code Section 11346.5(a)(5), the Department has made an initial determination that the proposed regulatory action would not impose a mandate on any local agency or school district that requires reimbursable by the State under Government Code, Title 2, Division 4, Part 7 (commencing with Section 17500).

### **FISCAL IMPACTS (Gov. Code, § 11346.5(a)(6))**

The determination of the Department concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

*Cost or savings to any state agency:* Cost of less than \$10 million per year.

*Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630:* None.

*Other non-discretionary cost or savings imposed on local agencies:* None.

*Cost or savings in federal funding to the State:* None.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (GOV. CODE, §§ 11346.3(a), 11346.5(a)(7), 11346.5(a)(8))**

The Department has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS (Gov. Code, § 11346.5(a)(9)):**

In developing this regulatory proposal, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA) (Gov. Code, § 11346.5(a)(10))**

Based on the economic impact assessment, the Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed amendments do not represent any policy shift in administering the Early Start program for the State. Therefore, the Department forecasts no economic impact and concludes that it is: (1) unlikely that the proposal will eliminate any jobs for the Early Start program service providers, (2) unlikely that the proposal will create an unknown number of jobs for service providers, (3) unlikely that the proposal will create an unknown number of new businesses providing services in the Early Start program, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

***Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment***

The proposed amendments will indirectly impact the health and welfare of the infants and toddlers in the Early Start program as the proposed amendments ensure the continuity of the federal grant which sustains these services.

The Department has also made an initial determination that there are no anticipated benefits to worker safety or the state's environment.

**HOUSING COSTS (Gov. Code, § 11346.5(a)(12)):**

In accordance with Government Code Section 11346.5(a)(12), the Department has made the initial determination that the proposed regulatory action will not have an effect on housing costs.

**ALTERNATIVES STATEMENT (Gov. Code, § 11346.5(a)(13)):**

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

**EFFECT ON SMALL BUSINESS (Cal. Code Regs., tit. 1, § 4(a) and (b))**

The Department has determined that there is unlikely to be an impact on small business as a result of filing these regulations because the proposed amendments to the regulations do not create a burden on businesses.

**CONTACT PERSONS ((Gov. Code, § 11346.5(a)(14))**

Inquiries concerning the substance of the proposed regulatory action may be directed to the Department's representative, Sharon DeRego, Manager, Monitoring & Family Services Branch, at (916) 654-3681 or her backup, Omari Smith, Community Programs Specialist II, Early Start and Health Services Section, at (916) 670-9802.

**AVAILABILITY OF DOCUMENTS (Gov. Code, § 11346.5(a)(16))**

The Department has compiled a record for this rulemaking action which includes all the information upon which the proposal is based, including an Initial Statement of Reasons (ISOR) for the proposed regulatory action and the proposed regulation text (the "express terms") of the regulation. This material is available for inspection upon request to the Department's representative listed below.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on the Department's Web site listed below. Physical hard copies of the documents may be obtained upon request to the Department's representative to whom non-substantive inquiries concerning the proposed administrative action may be also be directed is Sunday Balalis, Regulations Analyst at [Sunday.Balalis@dds.ca.gov](mailto:Sunday.Balalis@dds.ca.gov) or (916) 653-0732.

**HEARING PROCEDURES AND AVAILABILITY OF MODIFIED TEXT**

If a request for public hearing is received by January 14, 2022, it will be conducted in accordance with the Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with Section 11340). After the Department holds a public hearing and considers all timely and relevant comments, it may adopt the proposed regulations substantially as described in this notice.

If the Department makes modifications which are sufficiently related to the originally proposed text, with the exception of grammatical changes, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any

modified regulation to the attention of the contact persons indicated above. The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, Final Statement of Reasons (FSOR) shall be available and copies may be requested from the department contact persons in this notice or may be accessed on the Department's Internet web site listed below.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

This notice, the ISOR, the proposed regulation text and all subsequent regulatory documents, including the FSOR, when completed, are available on the [Department's web site](https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/) for this rulemaking at <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>.