

**State of California  
Department of Developmental Services**

**Final Statement of Reasons for Rulemaking,  
Including Summary of Comments and Agency Response**

**Early Start Program**

**GENERAL**

On December 17, 2021, the Department of Developmental Services (Department) released the Initial Statement of Reasons for Rulemaking (ISOR), which is incorporated by reference herein. The ISOR contains a description of the rationale for proposed amendments to the Early Start regulations.

The 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.).

Current state regulations in Title 17, California Code of Regulations (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.

Section 5200 defines “assistive technology service”. This definition ensures the appropriate services be provided to an infant or toddler acquiring an assistive technology device. The definition of “consent” ensures that obtaining the consent of a parent is completed with the parent’s full understanding, in writing, and that they can revoke their consent at any time.

Section 52082 ensures that a determination of eligibility of a child for early intervention services can be made solely on clinical opinion increasing the options under which a child can be determined eligible for early intervention services but in no way, itself be used to negate results of the evaluation instruments used to establish eligibility. This section also describes gathering information from other sources and a review of education or other early intervention records as ways to inform the evaluation to determine eligibility.

Section 52109 clarifies the federal requirement on non-substitution of funds ensuring that the regional center is the payor of last resort and that there should not be a delay in service provision during the period of pursuing payment for services from a public or private source.

Section 52162 ensures that a parent does not need to enroll in public or private insurance programs as a condition of receiving early intervention programs and that consent is required by parents for use of public benefits or insurance, ensuring that they can make an informed decision when using their public benefits and do not have to provide consent for its use if there would be negative consequences. If the parent does not provide consent for use of public benefits or insurance, services listed on the IFSP must still be provided. Parental consent must be obtained before any personally identifiable information is shared with State public agencies responsible for the administration of public benefits or insurance. Parents have the right to withdraw their consent to disclosure of personally identifiable information. A parent's private insurance can be used for evaluation, assessment and early intervention services as specified in the IFSP. Parental consent is not required for the use of private insurance but must comply with Government Code Section 95004(c). Services specified on the IFSP cannot be delayed and must begin as soon as possible if private insurance is going to be used.

## **MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS**

The Department has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with §17500), Division 4, Title 2 of the Government Code.

## **CONSIDERATION OF ALTERNATIVES**

For the reasons set forth in the ISOR and in this FSOR, DDS determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

## **SUMMARY OF COMMENTS AND AGENCY RESPONSE**

Written comments were received during the 45-day comment period from December 17, 2021 through January 31, 2022, in response to the notice of proposed rulemaking published on December 17, 2021.

Listed below are the organizations and individuals that provided comments during the 45-day comment period:

<b>Commenter/Affiliation (date of letter)</b>
Cooley, Lisa, December 17, 2021
Rich, Judy, American Speech-Language-Hearing Association (ASHA), January 27, 2022
Westling, Amy, Association of Regional Center Agencies (ARCA), January 31, 2022
Lewis, Brian, California Speech Language Hearing Association (CSHA), January 31, 2022

Below is a summary of each objection or recommendation made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change.

The comments have been grouped by topic wherever possible. Comments not involving objections or recommendations specifically towards the rulemaking or to the procedures followed by DDS in this rulemaking are not summarized below.

#### 45-DAY COMMENTS

##### COMMENTS IN SUPPORT

1. Comment: ASHA supports maintaining the \$54 million that California receives annually to fund early intervention services for eligible infants, toddlers, and their families who are in the Early Start program. ASHA supports defining “assistive technology service” to ensure appropriate services are provided to all infants and toddlers acquiring an assistive technology device and includes the purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices as well as selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing as specified in the requirements of Part C of IDEA.

Agency Response: The Department appreciates support for the proposed rulemaking.

2. Comment: CSHA is providing specific comments in support of the proposed changes to Title 17, CCR, Sections 52000 and 52082 related to the topics of assistive technology service, consent, and procedures for determining eligibility:

52000 (b)(6) Assistive Technology Service – Expanding the definition of assistive technology services in Section 52000 is vital to ensure that appropriate services be provided to an infant or toddler being evaluated for, acquiring, or receiving training/technical assistance regarding an assistive technology device. This expansion assures that the family understands the equipment and services that will be used to help meet the student's immediate needs.

Section 52000 (b)(13) Parental Consent – Defining parental consent is crucial so that the parent understands and agrees to what services will be provided, who the service providers are, and reassures the parent that their consent is voluntary and revocable at any time if service needs changes.

Section 52082 – Procedures for Evaluation to Determine Eligibility - CSHA supports the expansion of the procedures used for eligibility determination to include the use of 1) educational or other early intervention records, and 2) gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators as necessary to understand the full scope of the infant's or toddler's unique strengths and needs.

Agency Response: The Department appreciates support for the proposed rulemaking.

### GENERAL COMMENTS ABOUT REGULATIONS

3. Comment: Lisa Cooley states: Increase funding for early intervention and preschool programs for children who have disabilities.

Agency Response: The Department acknowledges this statement and appreciates the support for early intervention services.

### COMMENTS ABOUT DEFINITIONS

4. Comment: ARCA commends the Department for proposing the amendment to align Section 52000, Title 17, CCR definition of Early Intervention services, for assistive technology services with Part C of IDEA (20 U.S.C. Sec. 1431). ARCA is in full support of the proposal as it would bring clarity to parents/caregivers, regional centers, and service providers of the intent of the service. ARCA is concerned about the proposed additional language to Section 52000 regarding "health services" which states "Such services also include consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing early intervention services." ARCA's concern is that the general term "consultation with a physician" may require Early Start programs to fund medical appointments with medical specialists that are outside of the insurance network (i.e., second

opinions). In addition, unlike the current language which is very specific regarding “health services”, the proposed additional language is vague enough that it could lead to funding requests for health care outside of the scope of early intervention services and not related to the eligible condition for Early Start.

ARCA recommends changing the proposed language to state “Such services also include consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing early intervention services but are not purely surgical or medical in nature.”

Agency Response: We appreciate ARCAs overall support of the proposed amendments to our Early Start regulations. We also acknowledge their concern regarding the amendment to Section 52000 (b)(23) regarding the definition of health services. After considering ARCAs proposed revision to the definition, we have concluded that their revision currently exists within the language of the definition. Existing language within the definition states that health services does not include: “(A) Services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus), purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose), or related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.” Furthermore, our amendment to the definition of health services clearly aligns with federal regulations (34 CFR 303.16). For these reasons, we are rejecting ARCAs recommendation.

## **NON-SUBSTANTIAL MODIFICATIONS**

The Department has made the following non-substantive changes for accuracy, consistency, and clarity. Changes to the original text of a regulation are non-substantive if they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code Regs., tit. 1, § 40.) The non-substantial modifications, described below, clarify and do not materially alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the amendments adopted by the Department and approved by the Office of Administrative Law (OAL).

After submission of the final rulemaking documents with OAL on March 30, 2022, the following non-substantial modifications were made:

### **Final Regulation Order**

- **§ 52109(b)** replaced “of” with “from” before obtaining consent of the parent for those services, to improve grammar.
- **§ 52162(d)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(d)(1)** added “public” before insurance in both places where the term is used for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(d)(2)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(d)(2)(B)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(d)(2)(C)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(d)(3)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(e)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(e)(1)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§ 52162(e)(3)** added “public” before insurance for clarity and consistency with Title 34 Code of Federal Regulations, Section 303.520(a).”
- **§§ 52000, 52082, 52109, and 52162** added “Section 95001” of the Government Code as an additional authority citation.
- **§ 52162** added “and Sections 95003 and 95004, Government Code” as additional reference citations.

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

The Notice of Proposed Action stated that these proposed amendments are required by federal statute and regulations. This statement is misleading and needs clarification. First, the program is voluntary, and the state only has to comply with program requirements to the extent it continues to use federal grants to fund program costs. These regulations are being adopted in order to comply with the requirements necessary to receive the grant program funding as described in 20 U. S. Code Sections 1433 and 1437. Government Code Sections 95003 and 95004 provide that it is the intent of the legislature that the Department ensures high-risk and disabled infants, and their families receive early intervention services. Government Code Section 95001 states that it is the intent of the legislature that funding provided under Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) be used to improve and enhance early intervention services as defined in the California Early Intervention Services Act by developing innovative ways of providing family focused, coordinated services,

which are built upon existing systems. Furthermore, the Department is required to update these regulations to align with federal requirements and comply with Part C of IDEA in order to receive grant funding.

#### **NONDUPLICATION STATEMENT**

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as “authority” or “reference” for the proposed regulations and the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1(a)(3).