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26 Federal Plaza  
New York NY 10278

SEP 03 1993

Sue Kelly  
Deputy Commissioner  
Division of Health and Long Term Care  
New York State Department of Social Services  
40 North Pearl Street  
Albany, New York 12243

Dear MS-. Kelly:

The purpose of this letter is to furnish further clarification regarding the Early Intervention Service being developed by New York state. It reflects recent discussions with Julie **Elson** of **your** staff.

Part **H** of the Individuals with Disabilities Education Act (IDEA) provides for Early Intervention Programs that include all of **the** available services needed by the handicapped infant or toddler and the development of an Individualized Family Service Plan (IFSP). Although the Federal Department of Education is the lead **agency for** Part H, many of the services included in IFSPs can be **covered by** Medicaid. However, all Title XIX statutory and regulatory requirements must be met.

There are several important issues to keep in mind in discussions of Title XIX payment for IFSP services. Medicaid payment is only available for services that are medical or remedial in nature. The services must be medically necessary and either (1) included as covered services in the State's Medicaid State Plan, or (2) available through the Early and Periodic Screening, Diagnosis and Treatment Service. The services must be furnished **by a qualified** Medicaid provider..

There is no Medicaid benefit category called "Early Intervention" listed in **§1905(a)** of the Social Security Act. Using the criteria **described above**, we must look to the component services provided to determine if they are covered under Medicaid.

We have reviewed the State Health Department's DRAFT Early Intervention regulations of May 1993. It appears that many of the services described will fit into various Medicaid benefit categories. For example, we have previously advised **you that** transportation and case management services must be placed within their own separate benefit categories, and that other Early **Intervention Services** should be placed within the rehabilitation service option described as 42 CFR 130(d).

Based upon our review of the DRAFT regulations and discussions within HCFA and with your staff, we have now reconsidered that position in regard to the rehabilitation option.

For example, the assessment required by the DRAFT Early Intervention regulations more appropriately fits under the Federal Regulations at 42 CFR 440.130 (a) and (b), which describe Diagnostic and Screening Services. Other Early Intervention Services are more appropriately categorized as Preventive Services as described at 42 CFR 440.130 (c) and § 4385 of the State Medicaid Manual.

Based upon the above, Early Intervention Services should be placed in the State Plan under the four types of services described in Federal Regulations at 42 CFR 440.130; i.e. Diagnostic, Screening, Preventive and Rehabilitation Services.

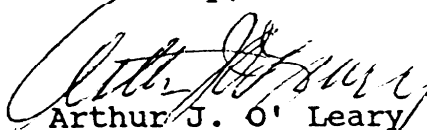
The content of the coverage section of the DRAFT amendment we have been discussing remains generally acceptable. We are still reviewing your latest DRAFT of August 31, 1993.

However, the headings in Attachment 3.1 A and 3.1 B of the State Plan should read:

- 13.a Diagnostic Services (see 13.d Rehabilitation Services-  
Early Intervention)-
- 13.b Screening Services (see 13.d Rehabilitation Services-  
Early Intervention).
- 13.c Preventive Services (see 13.d Rehabilitation Services-  
Early Intervention).
- 13.d Rehabilitation Services - Early Intervention). Detail of coverage section of the amendment will be placed here.

We trust this information is useful. Please contact Jane Salchli of my staff at (212) 264 2775 if you have additional questions.

Sincerely,



Arthur J. O'Leary  
Associate Regional Administrator  
Division of Medicaid

cc : Julie Elson