

December 8, 2011

***Submitted electronically***

Ms. Jennifer Sheehy  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Room 5103  
Potomac Center Plaza  
Washington, DC 20202-2600

**RE: ED-2011-OSERS-0012; RIN 1820-AB64: Assistance to States for the Education of Children With Disabilities**

On behalf of our 82,000 member physical therapists, physical therapist assistants, and students of physical therapy, the American Physical Therapy Association (APTA) appreciates the opportunity to submit comments to the Department of Education in response to the notice of proposed rulemaking and request for comments published in the *Federal Register* on September 28, 2011, for the proposed regulations, *Assistance to States for the Education of Children With Disabilities*, under Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Physical therapists and physical therapist assistants work in schools with students with disabilities who require physical therapy as part of their educational programs to benefit from special education and to achieve future independent living and self-sufficiency. Accordingly, APTA has a strong interest in any revisions related to the development of the IDEA Part B regulations.

**Parental and Child Protections**

APTA is fully supportive of amending current Section 300.154(d) (2) (iv) to ensure that the public agency provides the child's parents with written notification before accessing the child's or parent's public benefits or insurance. The public agency would no longer be required to obtain parental consent each time it seeks to access public benefits or insurance in order to provide a service to a child. This action will facilitate reimbursement from Medicaid and other public benefit sources and prevent delays in

both service delivery and financial remuneration to the public agency. This action would also relieve physical therapists and other school personnel from the undue burden of seeking consent from parents on multiple occasions, delaying the provision of necessary related services and exhausting resources.

The case example of Tommy provided in the proposed regulations highlights the need for parents to be informed through written notice rather than provide consent each time services are revised or costs change. A similar example involves an adolescent boy who is completing eighth grade and will soon be attending high school. He has been receiving physical therapy twice a month to address limitations in his walking and mobility in school as the result of hemiparesis secondary to having a stroke in utero. In preparation for attending high school next fall, the physical therapist plans to increase service delivery to once a week for the last two months of the school year. Under the current regulations, the public agency would be required to obtain new parental consent to access the child's Medicaid. When the parent does not respond to requests for this consent, the school personnel spend additional time attempting to contact the parent. Soon the weeks pass and the school year comes to an end without the student receiving the services necessary to ensure his ability to safely access the high school building in preparation for the next school year.

We fully support this revision and agree that it will advance protections critical to parents, reduce unnecessary and costly burdens on a public agency's ability to access public insurance and other benefits of such importance in the current fiscal environment, as well as allow necessary access to and continuity of required educational and health related services for the child available under Part B.

APTA further commends the Department of Education's focus on information disclosure to the parent(s), which allows them to make informed decisions regarding the family's privacy rights and the public mechanism in which services can be provided to their child. We agree with the proposal to specifically require public agencies to provide this information to the parent/guardian. APTA further supports regulatory alignment efforts with the suggested replacement of the consent requirement with a written notification requirement. We believe that express notification is a more effective method to further protect the privacy rights of both children with disabilities and their parents.

### **The Timing of the Written Notification**

APTA recommends that written notification should **not** be required to be at a specific time, such as at the initial IEP meeting. However, we encourage IEP teams to inform parents of these rights at the time of the initial IEP meeting for greater efficiency. There may be instances when this task would impose additional burdens on the IEP team due to time constraints, inadequate interpreters, difficulty in parents understanding the written notification provisions or needing further clarification, etc. Therefore, we urge the Department to maintain flexibility in the final rule as to when parents may receive the written notification to avoid impingement on the priorities of the IEP meeting and implementation of services.

## **Conclusion**

Physical therapy services promote the health and development of children at risk for or with developmental delays and disabilities. We commend the Department of Education on thoughtfully and carefully drafting this proposed rule to align regulations and to assist in advancing continuity of care within the school system, while reducing administrative burdens on public agencies, which can negatively impact access to and quality of care. Thank you for your consideration of our comments and please do not hesitate to contact Deborah Crandall at 703-706-3177 or [deborahcrandall@apta.org](mailto:deborahcrandall@apta.org) with any questions or for further clarification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Scott Ward". The signature is stylized and cursive.

R. Scott Ward, PT, PhD  
President