

Module 14

**System of Payments and
Use of Public and Private Insurance in Part C**



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Funding for NICHCY officially ended on September 30, 2014. All training materials in this Part C training curriculum are now available at the website of the Center for Parent Information and Resources, at:

<http://www.parentcenterhub.org/repository/legacy-partc/>

Background and Discussion

This module is part of a training curriculum on the Part C regulations of the Individuals with Disabilities Education Act, as amended in 2004. The curriculum provides a detailed discussion of the Part C regulations as published in the *Federal Register* on September 28, 2011.¹

The curriculum is entitled *Building the Legacy for Our Youngest Children with Disabilities*. This module is entitled *System of Payments and Use of Public and Private Insurance in Part C* and is the 14th and final module in the curriculum. The module falls under Theme G, Use of Funds, and is the only module in that theme.

Please be aware that the information in this module is *not* a substitute for the requirements reflected in the IDEA statute and Part C regulations.

Early Intervention and IDEA

Thanks to a powerful and important federal law called the Individuals with Disabilities Education Act, or IDEA, 336,895 eligible infants and toddlers birth through age 2 received early intervention services in 2011 under Part C of IDEA.²

Early intervention services are concerned with all the basic and brand-new developmental skills that babies typically develop during the first three years of life, such as:

- physical (reaching, rolling, crawling, and walking);
- cognitive (thinking, learning, solving problems);

How the Trainer's Guide is Organized

This trainer's guide is organized by slide. A thumbnail picture of each slide is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what's on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.

- communication (talking, listening, understanding);
- social/emotional (playing, feeling secure and happy); or
- adaptive behavior (eating, dressing).³



Early intervention services are designed to meet the needs of eligible infants and toddlers who have a *developmental delay* or *disability*. Services may also address the needs and priorities of each child's family, to help family members understand the special needs of the child and how to enhance his or her development.⁴

This Module in the Context of Early Intervention

Funding the early intervention services that eligible infants and toddlers with disabilities (and their families) receive is a challenging affair for the federal government, State systems, and

local systems. The federal appropriations for Part C for the year 2013 are in the order of \$419.7 million! Those \$419.7 million will provide support to 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Secretary of the Interior, and four outlying areas to serve approximately 336,000 infants and toddlers with disabilities and their families.⁵

With that amount of money flowing from the federal government to the States and territories, it's very important for State lead agencies to be fiscally responsible, have detailed written guidelines and policies regarding use of funds under Part C, disclose those policies to families, and work closely with other agencies and entities to provide and fund the range of services needed by babies, toddlers, and families involved in Part C.



Trainer's Note

Throughout this training module, all references in the discussion section for a slide are provided at the *end* of that slide's discussion.

Of course, early intervention nationwide also costs considerably more than \$419.7 million. The federal funds for Part C (the \$419.7 million) are estimated at roughly 12% of the total cost of operating the EI system.⁶ Where do the other monies come from, to pay for the early intervention services each State and territory makes available?

Data on Funding Part C Systems

Many answers and much data come from the IDEA Infant-Toddler Coordinators Association (ITCA), which conducted a finance survey of its members in the spring of 2012. Coordinators were asked to report on the federal, State, and local funds used by States to support their total Part C system. Forty-nine States and jurisdictions completed the survey. Findings include the following:



- Taken together, States and jurisdictions identified 13 different federal funds sources they used to support their Part C system. Medicaid and Part C were the major federal sources used.
- States also identified a total of 14 different State funding sources and 11 different local sources. Medicaid State match, State Part C funds, and State General Funds were the most frequently used State funding sources. Private insurance was the most frequently used funding source at the local level.⁷

The ITCA also asked respondents what forms of family cost participation were in effect in their State. Respondents revealed this picture:

- 16 States (33%) use private insurance only;
- 2 States (4%) use family fees only;
- 14 States (28%) use both private insurance and family fees; and
- 29% of respondents do not have family cost participation.⁸

In Sum | Through combining funds from many different sources, States are able to provide the Part C early intervention system for our youngest children—infants and toddlers with disabilities or developmental delays—and their families.

This Module in the Part C Training Curriculum

The training curriculum on Part C of IDEA is organized into separate themes, which multiple training modules under each theme. The themes are:

Theme A | Welcome to IDEA

Theme B | Public Awareness Program and the Child Find System

Theme C | Evaluating Infants and Toddlers for Disabilities (Post-Referral Activities)

Theme D | Individualized Family Service Plan (IFSP)

Theme E | Transition from Part C to Part B of IDEA

Theme F | Procedural Safeguards

Theme G | Use of Funds

Module 14 is the only training module under Theme G, Use of Funds.

For Whom Is This Module Designed?

This module is primarily intended for trainers to use with audiences who are responsible for implementing or overseeing the implementation of the State's policies regarding its system of payments for Part C. This includes but is not limited to:

- lead agency staff; SEA personnel; staff in LEAs with early childhood programs; and administrators at the SEA, LEA, and lead agency levels;
- members of State Interagency Coordinating Councils (ICCs), which guide and advise the State's lead agency;
- stakeholders in the early childhood community and in State and local agencies working with young children;

- staff of Parent Training and Information (PTI) centers and of Community Parent Resource Centers (CPRCs), who play an essential role in keeping families informed and in connecting them with State and local systems of help; and
- parents and family members of a baby or toddler receiving early intervention services under Part C; and
- preservice early childhood candidates who are learning about the Part C system.

Files You'll Need for This Module

All of these files are available on the website of the Center for Parent Information and Resources, at: <http://www.parentcenterhub.org/repository/partc-module14/>



- **Slideshow.** NICHCY is pleased to provide a four-color slideshow (produced in PowerPoint®) around which trainers can frame their presentations and training on the use of funds in Part C.
Important note: You do NOT need the PowerPoint® software to use the slide show. It's set to display, regardless, because the PowerPoint Viewer® is included. (You may be asked to agree to Viewer's licensing terms when you first open the slideshow.) The presentation is also saved as a "show"—which means it will launch when you open it.
- **Trainer's Guide Discussion.** The trainer's guide describes how the slides operate and explains the content of each slide, including relevant requirements of the statute passed by Congress in December 2004 and the final regulations for Part C published in September 2011. The trainer's guide is available in PDF and Word® formats.
- **Speaker Notes.** Provided as a Word file, the Speaker Notes show thumbnail pictures of all slides in the presentation, with lines next to each for you to annotate your presentation, if you wish. You can also share the Speaker Notes with participants.
- **Handout 13 for Participants.** There's only one handout associated with Module 14, and that's Handout 13 (Subpart F— Use of Funds and Payor of Last Resort). It's provided in PDF and Word formats. The PDF is designed to share with participants. The Word version is made available for those participants who need or request accessible materials.
- **Activity Sheets 11, 12, and 13 (optional).** We've included three separate activity sheets to help you engage participants in the content.

For trainers, we recommend using the PDF version of trainer's guide, because it's easier on the eyes. For participants in training sessions, we recommend the PDF version of the handout, because it, too, is easier on the eyes.

Word files are provided for accessibility purposes and to make it easy to copy and paste content into other software.

Adapting These Materials

Depending on the roles and information needs of your audience, you'll probably want to adapt the training materials in this module. We've provided a lot of detail on the in's and out's of IDEA's Part C fiscal regulations. Not all audiences will need (or, frankly, *want*) so much detail.

The details are provided for you, as the trainer, to use (or not use) as you see fit. Free free to do so. The slides are designed to let you treat the content in a summary fashion, in moderate depth, and in great depth. Consult the chart below for suggestions as to how to do this.

For all trainings, supply participants with Handout 13.

Level of Detail	Description	Estimated Time
Summary	<p>Very limited time for activities, audience participation, or many questions and answers. Emphasize broad-brush understanding:</p> <ul style="list-style-type: none">• Part C is the payor of last resort for EI services• Part C is about coordinating use of existing resources to offer EI services• Interagency coordination is essential!• Written notice to parents and parental consent are serious issues to address if any cost of EI services will be paid for, or incurred by, the family• A family's public benefits and insurance may be used to pay for EI services• The Part C program cannot require a parent to enroll in public insurance• Consent is almost always required when using a family's private insurance to pay for EI services• Parental consent may be necessary before billing information can be shared	Less than an hour

Essential Slides: 8, 10-15, 18, 19, 21, 26, 27, 30

continued on next page 

continued...

Level of Detail	Description	Estimated Time
Moderate	<p>Same content as above, which is core.</p> <p>Take time for audience participation. Add in 1 activity (design your own or use one of those provided in this training module).</p> <hr/> <p>Activity Sheets Available:</p> <p>11 What’s available in your State?</p> <p>12 Putting it all together: Case study 1</p> <p>13 Putting it all together: Case study 2</p> <hr/> <p>Suggested Slides (which includes those listed above as <i>essential</i>):</p> <p>2-3 (for fun), 8, 10-15, 18-21, 22-23, 26-27, 28, 30-31</p>	1-2 hours
Deep	<p>Core content described above under “Summary.”</p> <p>Add in details, at your discretion. Pick and choose from among the details we’ve provided, to enrich the training, give it a real-world context, and tailor it more closely to the needs and concerns of your audience</p> <hr/> <p>Suggested Slides: Use all slides, emphasizing the <i>essential</i> ones noted above.</p> <hr/> <p>Do all activities (there are 2 provided and you may wish to design your own).</p>	2-4 hours



Looking for IDEA 2004?

Visit the Center for Parent Information and Resources' website, where you can download copies of:

- **IDEA's statute** (the law passed by Congress in 2004)
- **Part C regulations** (published by the U.S. Department of Education on September 28, 2011)
- **Part B regulations** (published by the U.S. Department of Education on August 14, 2006)

Find all at: <http://www.parentcenterhub.org/repository/idea-copies/>

Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the Part C regulations, you will find references to specific sections, such as §303.21. (The symbol § means "Section.") These references can be used to locate the precise sections in the Part C regulations that address the issue being discussed. In most instances, we've also provided the verbatim text of the Part C regulations so that you don't have to go looking for them.

The Part C regulations are codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. It's not unusual to see references to specific sections of IDEA's regulations include this—such as 34 CFR §303.21, which is where you'd find Part C's definition of "infant or toddler with a disability." We have omitted the 34 CFR in this training curriculum for ease of reading.

Citing the Regulations in This Training Curriculum

You'll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 76 Fed. Reg. at 60250

This means that whatever is being quoted may be found in the *Federal Register* published on September 28, 2011—Volume 76, Number 188, to be precise. The number at the end of the citation (in our example, 60250) refers to the page number on which the quotation appears in that volume. Where can you find Volume 76 of the *Federal Register*? At this address:

<http://www.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-22783.pdf>



References & Footnotes

- ¹ U.S. Department of Education. (2011, September 28). Early intervention program for infants and toddlers with disabilities: Rules and regulations. *Federal Register*, 76(188), 60140- 60309. Washington, DC: Office of Special Education and Rehabilitative Services, Department of Education. Online at: <http://www.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-22783.pdf>
- ² Technical Assistance Coordination Center. (2012). *Historical state-level IDEA data files: Part C child count 2011*. Retrieved November 11, 2013, from: <http://uploads.tadnet.org/centers/97/assets/2414/download>
- ³ Center for Parent Information and Resources. (2014, March). *Overview of early intervention*. Washington, DC: NICHCY. Online at: <http://www.parentcenterhub.org/repository/ei-overview/>
- ⁴ §303.13(b)(3) of the Part C regulations.
- ⁵ Early Childhood Technical Assistance Center. (2013). *Annual appropriations and number of children served under Part C of IDEA: Federal fiscal years 1987-2012*. Chapel Hill, NC: Author. Retrieved November 11, 2013, from <http://ectacenter.org/partc/partcdata.asp>
- ⁶ IDEA Infant-Toddler Coordinators Association. (2012). *2012 ITCA finance survey*. Indianapolis, IN: Author. Available online at: <http://www.ideainfanttoddler.org/pdf/2012-Finance-Survey-Report.pdf>
- ⁷ IDEA Infant-Toddler Coordinators Association. (2012). *2012 ITCA finance survey*. Indianapolis, IN: Author. Available online at: <http://www.ideainfanttoddler.org/pdf/2012-Finance-Survey-Report.pdf>
- ⁸ IDEA Infant-Toddler Coordinators Association. (2012). *2012 ITCA finance survey*. Indianapolis, IN: Author. Available online at: <http://www.ideainfanttoddler.org/pdf/2012-Finance-Survey-Report.pdf>

System of Payments in Part C



Use of Public & Private Insurance

How to Operate the Slide:

Slide loads fully. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 1 is the title slide for this module. You don't really need to say much about the slide—it's meant to orient the audience to the training session you're about to present.


However, you may wish to take this opportunity to engage participants in a brief discussion of your own choosing or an opening activity, as best fits the needs and prior knowledge of your particular participants and, of course, your particular training style.

Talking with participants right from the start is a great way to break the ice, put them at their ease, and at the same time activate their world and personal knowledge of the subject at hand.

Questions you can ask include:

- Approximately how much does the State spend in a year on making early intervention services available to infants and toddlers with disabilities and their families?
- How are the State's Part C services and functions funded?

- Are parents and families charged for the early intervention services they receive? If so, how? Does the State have a schedule of sliding fees?
- What services and functions in Part C cannot be charged to the parents?
- Can the lead agency access parents' private insurance? What about if parents are enrolled in a public insurance or benefits program?
- What brings you here today? How is the use of funds in Part C relevant to you, personally and/or professionally? What are you hoping to learn today?



the price is right

What was...

The price of 1 gallon of gas in 1962?

31 cents!

A vintage black and silver gas pump with a circular sign on top that says "GAS". The pump has a meter with numbers and a nozzle. A sign on the front of the pump says "REGULAR GAS STATION".

Opening View and Click 1

Slide loads with this view, posing the question "What was the price of 1 gallon of gas in 1962?"

Click 1:
The answer appears: 31 cents!



the price is right

What was...

The price of 1 gallon of milk in 1962?

49 cents!

A white plastic milk jug with a handle. The label on the jug says "TUSCAN MILK VITAMIN D" and features a picture of a city skyline.

CLICKS 2-3

Click 2:
Picture changes, and a new question is asked: "What was the price of 1 gallon of milk in 1962?"

Click 3:
The answer appears: 49 cents!

CLICK AGAIN to advance to next slide.

See discussion on next page 

Slide 2: Background and Discussion

3 Clicks



Let's start with some fun, modeled on *The Price is Right!* game show.⁹ Have participants call out their guesses for how much a gallon of gas (first item) or a gallon of milk (second item) cost in 1962. Jot the various guesses on a flipchart or other visual.

And now? How much does those items cost now?

The contrast between the price of things “then” and “now” tends to be rather shocking. If a gallon of milk can cost so much more now, then imagine what's happened to the cost of providing early intervention services of any kind to eligible infants and toddlers and their families. While EI services were not required by law back in 1962, it's easy to recognize that the costs of most things steadily increases over time.

Examples to consider | Lead agency staff, credentialed EI providers, the wide array of services possible, keeping copious documentation...the list of “costs” is very, very long.

What might the audience add to that list of the costs associated with providing Part C services to infants and toddlers who have disabilities or delays? To their families (as appropriate)?

References & Footnotes

⁹ More information about the game show is available online, at: http://www.cbs.com/shows/the_price_is_right/

Slide 3

The Price is Right!

Opening View and Click 1

Slide loads with this view, posing the question "What was tuition at Harvard in 1962?"

Click 1:
The answer appears:
\$1,520!

The "And now?" also appears.



What was...



Tuition at Harvard
in 1962?

\$1,520!

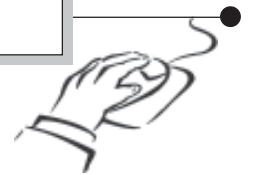


And now?

CLICK AGAIN to advance to next slide.

Slide 3: Background and Discussion

I Click



One more item on The Price is Right! context-setter for this module on use of funds in Part C: The cost of tuition at Harvard in 1962.

\$1,520. That's how much it cost to pay Harvard's tuition in 1962. Don't we wish it still did.

And now? Tuition for the 2011-2012 academic year was \$36,305.¹⁰

A decided increase! And it's worth noting that this "product" (a Harvard education) has much more in common with early intervention services than a gallon of gas or milk does. Both Harvard and

early intervention services involve paying for considerable professional expertise, and both gear their services to support and fuel learning of important skills that can help the "pupil" (infant, toddler, or college undergraduate) now and in the future.

Okay, then. Introduction over. Time for the agenda for today's learning.

References & Footnotes

¹⁰ Harvard College. (2011). *Financial information. Harvard College handbook for students.* Cambridge, MA: Author. Available online at: <http://isites.harvard.edu/icb/icb.do?keyword=k79903&tabgroupid=icb.tabgroup125619>

In this module, you'll learn about the use of Part C funds, including:

- When** Part C funds may be used (& when they may *not*)
- Who** pays for Part C services
- What** information must be included in a State's written policies
- When** a family's public benefits or insurance may be used
- When** a family's private insurance may be used

Slide loads completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 4 is an advance organizer for the audience, to alert them to the areas covered in this training module. Go through the list of "to be learned" items and ask participants to identify which items interest them the most, or are most relevant to them, personally or professionally. What do they already know about these items?

Then move on to the next slide, which presents the module's first content regarding use of funds in Part C.

\$ 419.7
million?



Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 5 says simply: \$419.7 million.

That's the amount of the federal appropriations for Part C of IDEA for 2013.¹¹

And that's a great number to start from, because it makes plain why there are numerous fiscal requirements and provisions in the Part C regulations. With that amount of money flowing from the federal government to the States and territories, it's very important for State lead agencies to:

- be fiscally responsible;
- have detailed written guidelines and policies regarding use of funds under Part C; and
- work closely with other agencies and entities to provide the range of services needed by babies, toddlers, and families involved in Part C.

Of course, those funds are divided (not equally) between the States and territories and used to support early intervention programming. So when the math is all said and done...it's still a lot of

money! And that requires systems and policies for receiving and using it. This module will focus on what is permitted fiscally under Part C, and what is not.



Note to Trainers!

The ECTA Center notes that FY 2013 was initially funded at \$442.7 million. The 5.208% reduction is the effect of the sequester and an across-the-board cut in the final appropriation.¹²

The Price is Right!

In keeping with *The Price Is Right!* opening, also consider how the amount of federal appropriations for Part C has increased over the years. Share, if you like, with the audience.

In 1996 | \$315.75 million

In 2002 | \$417 million¹³

In 2013 | \$419.7 million (reduced from \$442.7 million, as noted above)

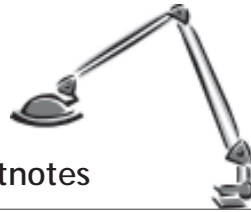
In 2013, the \$419.7 million in federal appropriations has provided support to 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the secretary of the interior, and four outlying areas to serve approximately 352,000 infants and toddlers with disabilities and their families.¹⁴

Federal Funds, the Use of Other Resources, and a Stated Purpose of Part C

It's interesting to note that early intervention, nationwide, also costs considerably more than \$419.7 million. Where do the other monies come from, to pay for the early intervention services each State and territory makes available?

The answer isn't a simple one, and it will vary from State to State, depending on how the lead agency sets up its system, what fiscal policies it establishes, and what other resources are available in the State to support making early intervention services available to infants and toddlers with disabilities and their families.

It's also important to understand that one of the very purposes of the Part C program is to “[f]acilitate the *coordination* of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage)” [emphasis added, §303.1(b)]. As we'll see in this training module, operating an early intervention system in a State requires a “statewide, comprehensive, coordinated, multidisciplinary interagency system”¹⁵—and that includes an interagency sharing of expenses.



References & Footnotes

¹¹ Early Childhood Technical Assistance Center. (2013). *Annual appropriations and number of children served under Part C of IDEA: Federal fiscal years 1987-2012*. Chapel Hill, NC: Author. Retrieved November 11, 2013, from <http://ectacenter.org/partc/partcdata.asp>

¹² Early Childhood Technical Assistance Center. (2013). *Annual appropriations and number of children served under Part C of IDEA: Federal fiscal years 1987-2012*. Chapel Hill, NC: Author. Retrieved November 11, 2013, from <http://ectacenter.org/partc/partcdata.asp>

¹³ Apling, R.N. (2004). *Individuals with Disabilities Education Act (IDEA): Current funding trends*. CRS Report to Congress [Federal Publications, Paper 36]. Washington, DC: Congressional Research Service, Library of Congress. Available online at: http://digitalcommons.ilr.cornell.edu/key_workplace/36

¹⁴ Early Childhood Technical Assistance Center. (2013). *Annual appropriations and number of children served under Part C of IDEA: Federal fiscal years 1987-2012*. Chapel Hill, NC: Author. Retrieved November 11, 2013, from <http://ectacenter.org/partc/partcdata.asp>

¹⁵ §303.100—Subpart B—Statewide Eligibility for a Grant and Requirements for a Statewide System: General authority.

Opening View

Slide loads with this view, posing the question “What must a State’s written policies include related to Part C fiscal requirements?”

Q: What must a State’s written policies include related to Part C fiscal requirements?



CLICK 1

Click 1:
The “money” picture lifts away to reveal the beginning of the text.

Q: What must a State’s written policies include related to Part C fiscal requirements?

Each State must have written policies that describe:

- how Part C funds will be used in the State, and
- how other sources of funding will be involved in paying for and/or providing Part C services



continued on the next page ►

Q: What must a State’s written policies include related to Part C fiscal requirements?

CLICK 2

Each State must have written policies that describe:

- how Part C funds will be used in the State, and
- how other sources of funding will be involved in paying for and/or providing Part C services

If State establishes a **system of payments** for EI services, including use of—

- public insurance or benefits
- private insurance
- family costs or fees

That system must be described in its policies, too

Click 2:
The “duck” picture lifts away to show the last new text on the slide.

CLICK AGAIN to advance to next slide.

Slide 6: Background and Discussion

2 Clicks

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort



The bulk of fiscal requirements for funding EI services for eligible infants and toddlers and their families is found in Subpart F of the Part C regulations. Subpart F begins at §303.500, as shown on **Handout 13** (and in the box on the next page).

The slide summarizes the key points of Subpart F’s opening words, without the “legalese” and multiple cross-references to other parts of the regulations.

Main Points on the Slide

Three notable aspects of funding Part C services are identified on the slide and will serve as foundational knowledge throughout this module. These aspects are:

#1 Written policies | Each State must have written policies that govern how Part C funds will be used in the State and how other sources of funding will be involved in paying for and/or providing Part C services. These policies and procedures must be in compliance with IDEA’s requirements for “use of funds” and as the “payor of last resort.”

#2 Coordinating funding resources | The Part C lead agency is required to coordinate with multiple other agencies and entities involved in early childhood issues, funding, and service provision. Its written policies must describe *how* it will identify possible funding resources for EI services and functions and *with whom* it will coordinate to ensure that the EI services are provided and funded.

#3 System of payments | If the State chooses to, it may establish a “system of payments” for funding Part C services. If so, the State must describe that system in writing, including its policies for accessing public insurance or benefits of a family or child in

Part C, its policies for accessing a family's private insurance, and its policies regarding family cost participation (what fees the family will be required to pay for certain services in early intervention).

More information about each of these is provided below and in upcoming slides.

#1 | About Written Policies

It's not necessary at this point to delve into what IDEA requires in terms of "use of funds" or "payor of last resort" because these topics will be covered in upcoming slides. What's important to note for the audience now is that, when a State applies for federal funds to operate a statewide EI system, it must describe its written policies and procedures for, among other things:

- how it will use Part C funds;
- how it will identify and coordinate with other sources of funding and service provision for early intervention (e.g., Medicaid, the State's Child Health Insurance Program); and
- how it will collect and apply revenues from those other sources of funding.

Other slides adding details about the "written policies" that a State must have: Slides 11, 13-15.

#2 | Coordinating Funding Sources

Part of the State's written policies describes how early intervention services in the State will be funded—and by whom. As mentioned in the discussion under Slide 5, one of early intervention's purposes is to *facilitate the coordination of payment* for early intervention services "from Federal, State, local, and private sources (including public and private insurance coverage)" [§303.1(b)]. Other resources of funds and services may be available through such sources as:



- Medicaid | Programs funded under Title XIX of the Social Security Act (grants to States for medical assistance programs, including home and community-based services)

§303.500 Use of funds, payor of last resort, and system of payments.

(a) *Statewide system.* Each statewide system must include written policies and procedures that meet the requirements of the—

(1) Use of funds provisions in §303.501; and

(2) Payor of last resort provisions in §§303.510 through 303.521 (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the State).

(b) *System of Payments.* A State may establish, consistent with §§303.13(a)(3) and 303.203(b), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as co-payments, premiums, or deductibles) required to be paid under Federal, State, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of §§303.520 and 303.521.

- Children with Special Health Care Needs | Programs funded under Title V of the Social Security Act
- Temporary Assistance to Needy Families (TANF) | Programs funded under Titles IV-A and XVI of the Social Security Act
- Child Care Development Block Grant (CCDG)
- Local Municipality or County Funds
- Private Insurance
- State Children's Health Insurance Program (SCHIP) | Programs funded under Title XXI of the Social Security Act
- Other¹⁶

Clearly, a great deal of coordination between agencies and funding streams is needed to involve such a myriad of potential partners to pay for or provide early intervention services to eligible infants and toddlers and their families. That's why **inter-agency agreements** play such an important role in defining the responsibilities of each resource utilized (discussed in more depth on Slide 10).

#3 | About the System of Payments

As the slide text indicates, States also have the option of establishing a system of payments for funding Part C services whereby parents may be:

- required to pay for certain services (typically on a sliding scale that depends on their incomes and resources), and/or
- asked to allow the lead agency to access their private or public insurance to help pay for aspects of the EI services provided to the child and/or family.

A State's written system of payments must also specify how the State will handle any **cost-participation fees**—as the regulation notes, "such as co-payments, premiums, or deductibles"¹⁷—that may

be required by insurance or benefit programs of various types (e.g., Federal, State, local, private). These latter fees may occur if the State uses the family's public or private insurance (with their permission) to pay for early intervention services.

What parents may not be charged for | Make sure you also indicate that there are specific aspects of early intervention that parents may not be charged for—aspects that must be provided at public expense. As discussed on Slide 12, these are:

- Conducting child find
- Evaluation & assessment of child & family
- Providing service coordination
- Activities related to development, review, & evaluation of IFSPs & interim IFSPs
- Implementation of the procedural safeguards
- All Part C services if a family is determined "unable to pay"¹⁸



References & Footnotes

¹⁶ Andrews, S.D.M. (2003, October). *Part C system of payments: Family cost participation*. Indianapolis, IN: IDEA Infant and Toddler Coordinators Association. Online at: http://www.ideainfanttoddler.org/pdf/ITCAFCPSurveySum_A.pdf

¹⁷ §303.500(b)— Use of funds, payor of last resort, and system of payments: System of payments.

¹⁸ §303.521(b)—System of payments and fees: Functions not subject to fees. See also §303.521(a)(4)(i) and (ii).

Q: For what activities or expenses may the lead agency use Part C funds?

For activities or expenses that are **reasonable** & **necessary**

for implementing the State's EI program



Opening View

Slide loads with this view.

Q: For what activities or expenses may the lead agency use Part C funds?

For activities or expenses that are **reasonable** & **necessary**

for implementing the State's EI program

- Providing direct EI services not funded through other public or private sources
- Expanding & improving services "that are otherwise available"
- Providing FAPE to children with disabilities from their 3rd birthday to the beginning of the next school year

CLICK I

← Click 1:
Picture of toddler lifts away, revealing the three bullet points beneath.

CLICK AGAIN to advance to next slide.

See discussion on next page ►



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Slide 7 lays out four basics of Part C’s permissive use of funds. The slide’s content summarizes the provisions at §303.501(a) through (d), which are found on **Handout 13**, and in the box at the right.

Discussing the Slide

The content of the slide is fairly self-explanatory as to how States may use Part C funds. You may wish to point out any or all of the following:

Reasonable and necessary | States may use Part C funds for activities or expenses that are “reasonable and necessary” for implementing its early intervention system. This is a broad statement that is then followed by five permissible uses of Part C funds (four of which are shown on the slide).

Note that the word “including” is used before the examples are given. As elsewhere in the regulations, the word “including” (or “include”) means that the items named are not all of the possible items that are covered.¹⁹ Therefore, the four permissive uses of funds shown on the slide (and the fifth, as highlighted on the next slide) are *not* the only permissive uses of funds. There may be others, provided that the funds are used for something reasonable and necessary to implementing the Part C system.

To what is the phrase “§§303.120 through 303.122 and §§303.220 through 303.226” referring? | The provisions cited above begin with the phrase “Consistent with...” and then reference other provisions in the Part C regulations. This happens quite often in the regulations, doesn’t it? Here, §§303.120 through 303.122 refer to:

§303.501 Permissive use of funds by the lead agency.

Consistent with §§303.120 through 303.122 and §§303.220 through 303.226, a lead agency may use funds under this part for activities or expenses that are reasonable and necessary for implementing the State’s early intervention program for infants and toddlers with disabilities including funds—

(a) For direct early intervention services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §§303.510 through 303.521);

(b) To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;

(c)(1) To provide FAPE as that term is defined in §303.15, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year;

(2) The provision of FAPE under paragraph (c)(1) of this section does not apply to children who continue to receive early intervention services under this part in accordance with paragraph (d) of this section and §303.211;

(d) With the written consent of the parents, to continue to provide early intervention services under this part, in lieu of FAPE provided in accordance with Part B of the Act, to children with disabilities from their third birthday (pursuant to §303.211) until those children enter, or are eligible under State law to enter, kindergarten; and... [§303.501(a) through (d)]

- the lead agency’s role in supervision, monitoring, funding, interagency coordination, and other responsibilities;
- the State’s policy for contracting or arranging for services; and
- the State’s reimbursement procedures.

The reference to §§303.220 through 303.226 concerns the fiscal assurances each State must include in its application for funds.²⁰

Providing direct EI services |
Yes, Part C funds may be used to pay for providing EI services directly to eligible children and families. But it’s important to note that this is permissible *only* when there is no other public or private source of funding for the services. The Part C system must be the payor of *last* resort (discussed on Slide 8). As the Department notes:

The purpose of §303.501(a) is to ensure that Federal funds are used to supplement or increase the level of resources available in a State for the provision of early intervention services and are not used to replace existing resources.²¹

Expanding and improving services otherwise available |
This permissive use of Part C funds dovetails perfectly with one of the five stated purposes of the Part C program—namely, to

provide financial assistance to States to:

Enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families...²²

Additional Permissive Use of Part C Funds

There’s one more basic item in the list of permissive use of Part C funds at §303.501. It’s not mentioned on the slide, but you may wish to include it in your discussion, if serving “at-risk infants and toddlers” is a subject of concern in your State.



The regulations at §303.501(e) are shown in the box below and relate to the permissive use of Part C funds with respect to at-risk infants and toddlers.

Why do the Part C regulations permit such a use of Part C funds in a State that does not provide services to at-risk infants and toddlers?

As the provision itself makes clear, “to strengthen the statewide system.” States may want to begin, expand, or improve collaborative efforts in the State related to at-risk infants and toddlers, which can only help address the needs of this vulnerable population.

The regulation also gives the example of “establishing linkages with appropriate public and private community-based

Other Permissible Use of Part C Funds: Regulations at §303.501(e)

(e) In any State that does not provide services under §303.204 for at-risk infants and toddlers, as defined in §303.5, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of—

- (1) Identifying and evaluating at-risk infants and toddlers;
- (2) Making referrals for the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and
- (3) Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part. [§303.501(e)]

organizations, services, and personnel” and lists three purposes to be achieved by doing so (e.g., identifying and evaluating at-risk infants and toddlers). Each of these purposes speaks to the State’s affirmative obligation to identify and evaluate all children with disabilities in the State.²³

References & Footnotes

¹⁹ See the definition of “Include; including” at §303.18.

²⁰ 76 Fed. Reg. at 60219.

²¹ 76 Fed. Reg. at 60219.

²² §303.1(c)—Purpose of the early intervention program for infants and toddlers with disabilities.

²³ §303.302—Comprehensive child find system.

Space for Notes

Q: When may Part C funds be used?



Opening View

Slide loads with this view, just the question and the piggy bank.

Q: When may Part C funds be used?

Part C funds may be used *only* as the payor of last resort for EI services



CLICK 1

Click 1: Picture lifts away, revealing another picture below and the sole phrase "Part C funds may be used only as the payor of last resort for EI services."

continued on the next page ►

Q: When may Part C funds be used?

Part C funds may be used *only* as the **payor of last resort** for EI services

This means that

Part C funds may be used *only* for EI services that an infant or toddler with a disability *needs*

but is not currently entitled to receive or have paid for by another public or private source*

* Subject to the State's system of payments, where appropriate

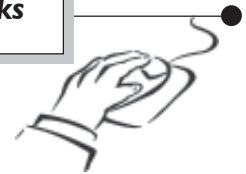
CLICK 2

Click 2: Picture of the boy atop the pile of money lifts away. The rest of the text on the slide is revealed.

CLICK AGAIN to advance to next slide.

Slide 8: Background and Discussion

2 Clicks



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Slide 8 cuts to the quick of an extremely important limitation on the use of Part C funds: They are to be used *only* as the payor of last resort for EI services. The “payor of last resort” is exactly what it sounds like: the entity that pays after any other primary programs have been billed.²⁴ Applied to Part C, this means:

- Part C funds may *not* be used to pay for EI services that an infant or toddler needs but IS currently entitled to receive or have paid for by another public or private source.
- Only when an infant or toddler is *not* currently so entitled may Part C funds be used to pay for an EI service that child needs.

Part C's Provision, Verbatim

The general provisions for “payor of last resort” begin at §303.510 (refer participants to **Handout 13**). The provision that this slide summarizes is found at §303.510(a), which we’ve presented, verbatim, in the box on the next page.

Dissecting the Provision

A number of points can be made about this “nonsubstitution of funds” provision, as your training time and audience needs permit.

The slide text is in the provision | As participants can readily see on **Handout 13**, the text on the slide mirrors the 2nd sentence in the provision (beginning at “Therefore, funds under this part...”).

Note the exception! | The 1st sentence is a valuable lead-in, especially the words “may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source...”. However, the 1st sentence also starts with an exception—except as provided in paragraph (b).

What, do tell, does paragraph (b) provide?

In a nutshell: That Part C funds may be used, if necessary, to prevent a delay in the timely provision of EI services to a child or the child’s family, pending reimbursement from the agency or entity that has the ultimate responsibility for payment.

This exception is the focus of the next slide, so you might briefly summarize it here and reserve more indepth discussion until Slide 9.

Ending words of the provision—what do they refer to? | The provision ends in the parenthetical phrase “subject to §§303.520 and 303.521.” This is one of the many cross-references in the Part C regulations, which remind you that other requirements of the law may be relevant or may affect how a particular provision is interpreted or implemented (especially given the authority that States have to define how their own EI system will operate). In this case, the cross-references are to:

- §303.520—Policies related to use of public benefits or insurance or private insurance to pay for Part C services.
- §303.521—System of payments and fees.

By their subtitles, it’s easy to suppose that the provisions might be relevant to the “nonsubstitution of funds.” But not to worry—or even to discuss right now. Both sets of provisions will be discussed in upcoming slides (Slides 13, 14, and 15). Simply indicate as much to the audience.

§303.510 Payor of last resort.

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this part may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to §§303.520 and 303.521).



Trainer’s Note

Depending on the needs of your participants, you may want to mention one other provision under §303.510. It’s most likely relevant to only individuals deeply involved in designing or overseeing the State’s early intervention system. But here goes! Brace yourself.

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available in the State or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child’s IFSP adopted pursuant to Part C of the Act. [§303.510(c)]

And what does all that mean?!

Basically, the non-reduction of benefits provision means that a State may *not* interpret Part C’s payor of last resort requirements to mean that the State may reduce medical or other assistance available through other programs the State operates. As the Department observes:

[N]othing in Part C of the Act may be construed to permit a State (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of Part C of the Act. Thus, funding from other sources would continue to be available to support services that are included in the IFSP.²⁵

Similarly, the State may not alter its eligibility criteria for those programs. These other programs are explicitly named:

- Title V of the Social Security Act (relating to maternal and child health); or

- Title XIX of the Social Security Act (relating to Medicaid), which includes...
- Section 1903 (relating to medical assistance for services provided to an infant or toddler with a disability when that child's IFSP lists those services).

Need more info? | If you'd like more information about any of these systems of help, either to fully inform yourself or to share with the audience, visit the links presented in the box below.

Now, tell the truth—aren't you glad we're done with this slide?

Title V of the SSA

- For a fascinating overview of Title V, as well as a look at how the program has changed over its 75-year history, go to AMCHP, the Association of Maternal and Child Health Programs:
<http://www.amchp.org/AboutTitleV/Documents/Celebrating-the-Legacy.pdf>
- To read the law itself: http://www.ssa.gov/OP_Home/ssact/title05/0500.htm

Title XIX of the SSA

- *Medicaid primer 101: A guide for state legislators*
The Council of State Governments, 2009
http://www.csg.org/knowledgecenter/docs/Medicaid_Primer_final_screen.pdf
- The law itself: http://www.ssa.gov/OP_Home/ssact/title19/1900.htm

Section 1903 | It's part of Title XIX of the SSA

You really don't want to know (trust us), so let us just say that Section 1903 is subtitled Payment to States. Section 1903 presents a mind-blowingly complex system for determining the amount of payment due to States under the title per quarter. Most of us will never need that much detail.

For the sake of completeness, however, we'll just mention that Section 1903 bears more than a striking resemblance to the words used in the Part C regulations. Wouldn't you say?

Nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act.²⁶

References & Footnotes

²⁴ WikiAnswers. (n.d.). *What is a payor of last resort?* Available on the website of Answers.com at: http://wiki.answers.com/Q/What_is_a_Payer_of_Last_resort

²⁵ 76 Fed. Reg. at 60220.

²⁶ Social Security Administration. (n.d.). *Compilation of the Social Security laws: Payments to States*. Retrieved November 18, 2013 from the Social Security website: http://www.ssa.gov/OP_Home/ssact/title19/1903.htm

Slide 9

When may Part C funds be used? (Slide 2 of 2)



If there's a **dispute** as to which agency is ultimately responsible for payment

Part C funds *may* be used to prevent a delay in the provision of EI services



Expectation | That Part C funds will be **reimbursed** once the responsible agency is identified

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

As promised on the last slide, here's a quick look at one particular permissible use of Part C funds. Part C funds may be used to prevent a delay in providing an eligible infant or toddler (or the child's family) with a needed EI service because there's a dispute over which agency or entity is ultimately responsible for paying for the service.

No Delays

It is not acceptable for the State lead agency to *wait* to provide needed EI services to an eligible child (and family) because of an interagency or intra-agency dispute over who will pay for the service. The Part C regulations are very clear about this. Each State's procedures for resolving such disputes must include a "mechanism to ensure that no services that a child is entitled to receive under this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities."²⁷

Use of Part C Funds, Pending Reimbursement

So, instead of waiting for the dispute to be resolved, the lead agency may use Part C funds to pay for the needed EI service(s). As the slide text indicates, this use of Part C funds carries with it the expectation that those funds will be reimbursed by the responsible agency, once that agency is identified.

Part C's Provision, Verbatim

The governing provision for this permissive use of Part C appears at §303.510(b) and is presented in the box at the right.

Discussing the Slide

As you can see from the Part C regulation, there are more details involved here than using Part C funds to ensure that a child or family receives needed EI services without delay, regardless of any dispute that's going on over who will pay for those services.

To pay providers | Part C funds may be used to pay a provider of services or functions that Part C authorizes, including health services. However, using Part C funds to pay for medical services is expressly *excluded*.

Child Find | It is also permissible to use Part C funds to prevent delays in the *functions* of the child find system. Note the cross-reference to the regulations where those functions are described. The cross-references refer to:

§§303.115 through 303.117 | Comprehensive child find system, public awareness program, and central directory, respectively.

§§303.301 through 303.320 | Pre-referral procedures (public awareness program and child find system), referral procedures, and post-referral procedures (including screening procedures)

§303.321 | Evaluation and assessment of the child and family

Use of Part C Funds, Pending Reimbursement: §303.510(b)

(b) *Interim payments—reimbursement.* If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under this part may be used to pay the provider of services (for services and functions authorized under this part, including health services, as defined in §303.16 (but not medical services), functions of the child find system described in §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in §303.321), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

The expectation! | If Part C funds are used to carry out any of these services or functions to prevent a delay in them occurring while responsibility for payment is determined, the expectation is always that, once the responsible entity is identified, that entity will reimburse the Part C program for the funds expended.

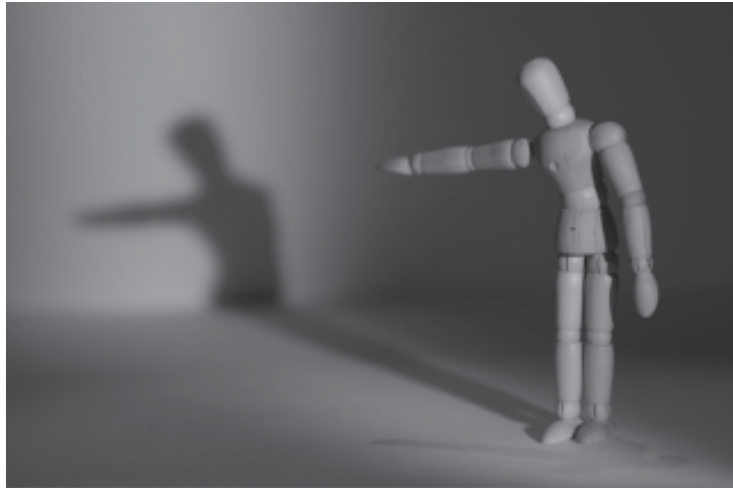
References & Footnotes

²⁷ §303.511(d)(1)— Methods to ensure the provision of, and financial responsibility for, Part C services: Delivery of services in a timely manner.

Opening View

Slide loads with just the question (“How does the State determine who has financial responsibility for providing EI services?”) and a picture.

Q: How does the State determine who has financial responsibility for providing EI services?



CLICK 1

Click 1:
The picture lifts away, revealing all the text shown here.

Q: How does the State determine who has financial responsibility for providing EI services?

Interagency Coordination!

Between Part C’s lead agency...



§ **each State public agency**

By State law or regulation

Through interagency or intra-agency agreements

Via other appropriate methods

CLICK AGAIN to advance to next slide.

See discussion on next page



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort
- Activity Sheet 11 | What’s Available in Your State? (optional)

Slide 10 highlights a core aspect of how the Part C system operates—through interagency coordination.

Since Part C is the payor of last resort, it’s critical for the lead agency to work closely with all other public entities in the State that are involved with, and responsible for, providing services and supports to infants and toddlers (and their families) in the State. Together, the various systems weave a tapestry of how the needs of children and families will be addressed in the State.

Therefore, each State must have methods for ensuring coordination between the lead agency and each State public agency responsible for providing or paying for Part C services. This interagency coordination is necessary to ensure that EI services are provided under Part C and that financial responsibility for the services is established, including the provision of EI services during the pendency of any dispute between State agencies. The interagency (and intra-agency) agreements that result will specify **who** will be responsible for providing or paying for *what*.

Part C’s Provisions, Verbatim

The relevant provisions of the Part C regulations can be found at §303.511(a) and (b). These appear on page 3 of **Handout 13** for participants to consult, and

in the box on this page for your convenience.

Summary Points

Depending on the training time you have available, here are a few points you may wish to highlight.

Who’s involved? | Between which agencies or entities must there be written agreements or other methods of ensuring interagency coordination? Answer: There must be coordination between the *lead agency* and *each State public agency responsible for providing or paying for Part C services*.

§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.

(a) *General.* Each State must ensure that it has in place methods for State interagency coordination. Under these methods, the Chief Executive Officer of a State or designee of the Officer must ensure that the interagency agreement or other method for interagency coordination is in effect between each State public agency and the designated lead agency in order to ensure—

(1) The provision of, and establishing financial responsibility for, early intervention services provided under this part; and

(2) Such services are consistent with the requirement in section 635 of the Act and the State’s application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.

(b) The methods in paragraph (a) of this section must meet all requirements in this section and be set forth in one of the following:

(1) State law or regulation;

(2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or

(3) Other appropriate written methods determined by the Governor of the State, or the Governor’s designee, and approved by the Secretary through the review and approval of the State’s application. [§303.511(a) and (b)]



Note to Trainers!

Activity Sheet 11 can be used at this point, if you wish. It's described at the end of these summary points.

Responsibilities specified | Interagency coordination enables the State to specify and put in writing the specifics of who will provide EI services and who will be financially responsible for their provision.

Three methods | States have three basic ways in which they can set forth how interagency coordination will occur within the State:

- by State law or regulation,
- through signed interagency or intra-agency agreements, or
- by other written methods designed by the Governor (or the Governor's designee) and approved by the U.S. Department of Education through the State's grant application.

Note the use of "or"—which indicates that States do not have to use all three methods; they need use only one. (More information about what must be included in the State's method is given further below.)

No delays because of disputes | It is important that the method adopted ensures effective cooperation and coordination among EIS providers and—as Slide 9 highlighted—that no services that a child is entitled to receive under Part C are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

Consistency with State's system of payments | The method a State uses to ensure interagency coordination must also be consistent with policies included in its system of payments. This includes any provisions the State has adopted regarding the use of insurance to pay for Part C services, and payor of last resort policies.

Recall that "system of payments" was introduced on Slide 6. The topic is almost upon you again, beginning with the next slide (and continuing through Slide 15).

Examples

Interested in seeing what States are doing with respect to interagency coordination? The Early Childhood Technical Assistance Center provides the field with a handy list of interagency coordination resources, at:

<http://ectacenter.org/topics/intercoord/intercoord.asp>

Activity Time!

Looking for an activity to break up the action and engage participants personally with this content? If you like, have participants complete Activity Sheet 11 individually or in pairs.

Purpose:

(1) To provide participants with a list of agencies and funding sources potentially involved in their State's interagency coordination efforts to pay for and provide early intervention services.

(2) To have participants identify which sources are available in their State and which they might want to learn more about.

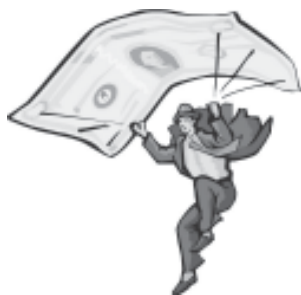
Time Activity Takes: 10 minutes.

Group Size: Have participants work in pairs or individually (5 minutes). Call the full group back together to exchange answers aloud and learn more (as necessary) about the agencies/funding streams (5 minutes).

Materials:

Activity Sheet 11, What's Available in Your State?

continued on the next page 



Activity *continued*

Background Information to Share:

Interagency and intra-agency cooperation is a required part of how your (our) State addresses the needs of infants and toddlers with disabilities (and their families) receiving early intervention services under Part C. These agencies often receive multiple Federal grants and other fiscal support to provide the services needed by these children and their families. No one agency can do it alone!

Instructions:

1. Provide participants with the background information above. It also appears on the activity sheet.
2. Explain that the activity sheet lists the types of grants or funding streams that may be available in any given State. If so, they may be a resource for early intervention programs striving to meet the needs of participating children and families.
3. Do the first item together (CAPTA, Child Abuse Prevention and Treatment). Have participants look down the list on the left. Ask: Is a CAPTA program available in your (our) State? Have participants raise their hand if they think

so. Now have participants raise their hand if they're familiar with what types of help do CAPTA programs provide?

(What does CAPTA involve? CAPTA funds are intended to help States improve their child protective service systems, including developing policies and procedures to address the needs of drug-exposed infants and to refer children younger than three to Part C when they are involved in a substantiated case of child abuse or neglect.)

Participants who aren't familiar with CAPTA may wish to find out more. If so, they should put a checkmark in the "Investigate?" box on the far right of the activity sheet, to remind themselves later to...um... investigate!

4. Give the audience 5 minutes to complete as much as they can of the activity sheet in the same manner as the full group completed item 1.
5. Call the audience back together and talk about both the funding streams/grants/agencies listed on the activity sheet and the participants' knowledge of, and familiarity with, these potential resources in funding EI services.

Answers:

Will vary by participant.

Additional Info, At Your Discretion

More can always be said about any of the Part C provisions, so we are pleased to provide the additional details below—primarily for *your* knowledge base. Share these details (or a selection) with participants, as time and relevance dictate.

The Governor? | Is anyone in the audience surprised that States may use written methods of coordination designed by the Governor of the State (or by his or her designee)? If so, indicate that this is not new to Part C. In fact, each State’s Governor plays a significant role in the early intervention system in that State, for it is the Governor who:

- designates which agency in the State will serve as the “lead agency” in that State and receive the funds to administer the State’s responsibilities under Part C;²⁸
- appoints the members of the State Interagency Coordinating Council;²⁹
- approves the use of Part C funds by the Council;³⁰ and
- receives an annual report from the Council on the status of EI programs in the State.³¹

The Governor (or the designee) may also be responsible for making the final determination in how interagency disputes are resolved, depending on State policy.³²

What must the State’s method for interagency coordination include? | Regardless of the method a State uses to ensure coordination between agencies,

that method must include procedures for the timely resolution of interagency and intra-agency disputes about payments for a given service, as well as disputes about other matters related to the State’s EI service program. Those procedures must also include a mechanism:

- for resolving disputes *within* agencies, and
- for the Governor, Governor’s designee, or the lead agency to make a final determination for *inter-agency* disputes.³³

Final determinations are binding upon the agencies involved.

Resolving intra-agency disputes | Each State’s method for resolving agency disputes must permit each agency to resolve its own internal disputes. The State’s method must also describe the process that the lead agency will follow if a given agency is not able to resolve its own internal disputes in a timely manner.³⁴

What about disputes that happen because an agency was incorrectly assigned financial responsibility for an EI service or function? If the Governor, Governor’s designee, or lead agency determines that an agency was inappropriately assigned financial responsibility, the Part C regulations require that:

- financial responsibility must be reassigned to the appropriate agency, and
- the lead agency must arrange for reimbursement of any expenditures incurred by the agency originally (and mistakenly) assigned fiscal responsibility.³⁵

Note to Trainers!



Yes, we know these are a lot of details! Mention the ones that fit your audience’s information needs and your available training time.

If you choose to skip the details, you can always refer participants to **Handout 13** and make them aware, summary fashion, that each State must have a method by which disputes are resolved between and within agencies as to financial responsibility. If participants want to know more about what’s required when resolving such disputes, they can read the pertinent Part C regulations at their leisure (see page 3 of **Handout 13**).

References & Footnotes

²⁸ §303.22—Lead agency.

²⁹ §303.600(b)—Establishment of Council.

³⁰ §303.603(a) —Use of funds by the Council.

³¹ §303.604(c)—Functions of the Council—required duties: Annual report to the Governor and to the Secretary.

³² §303.511(c)(1) —Methods to ensure the provision of, and financial responsibility for, Part C services: Procedures for resolving disputes.

³³ §303.511(c)—Methods to ensure the provision of, and financial responsibility for, Part C services: Procedures for resolving disputes.

³⁴ §303.511(c)(2).

³⁵ §303.511(c)(3).

Space for Notes

Q: When must a State develop a system of payments and have policies on file with OSEP?

If a State fund services or functions under Part C by accessing...

- Public benefits or insurance
- Private insurance
- Parent fees



The State must have **written policies** for its system of payments

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts: none

Slide 11 launches a deeper look into the written policies a State must have if it adopts a “system of payments” for funding Part C. Slides 12-15 continue the story, piece by piece.

Here, now, Slide 11 asks (and answers) the question at its top: When must a State develop a system of payments and have policies on file with OSEP?

Another way of asking this question might be: *What triggers the need for a State to have written policies that describe its system of payments?*

Answer | If public benefits or insurance, private insurance, or parent fees will be accessed to fund EI services or functions

Now let’s roll up our sleeves and find out what those written policies for the system of payments must include and why. Bring on Slides 12-15, to lay out basic requirements.

Two Notes to Trainers!



States may charge fees for certain EI services for parents deterred “able to pay” based on their income and expenses.

Slides 12-15 do not delve into the particulars of using benefits, insurance (public or private), or parent fees. Those hot topics will come later, in Slides 18-28.

Q: What Part C functions may *not* be subject to fees?

- Conducting child find
- Evaluation & assessment of child & family
- Service coordination services



- Activities related to: development, review, & evaluation of IFSPs & interim IFSPs
- Use of procedural safeguards
- All Part C services for a child & family if parents are determined “unable to pay”

Must be carried out at public expense

Parents may *not* be charged

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Before looking at what a State may or must include in its system of payments (if it adopts one), it's important to look at what it may *not* include. There are specific Part C functions for which the State may not charge families, request use of their public or private insurance, or require their payment according to a sliding scale of fees. These functions must be provided to families *free of charge*. Slide 12 identifies what those functions are.

Part C Regulations, Verbatim

The straightforward list of functions on the slide comes from the more fulsome provisions

at §303.521(b), which are presented in the box on the next page. Participants can find these provisions on **Handout 13** (refer them to page 3, column 1).

Discussing the Slide

The slide is straightforward so you can summarize it quickly, especially the point that there are specific functions that are not subject to fees and must be conducted at public expense.

But you'll notice, of course, that there are quite a few cross-references to other provisions in §303.521(b). You may need to offer a bit more detail about those cross-references, depending on

the audience's familiarity with Part C. For example, do they know what type of functions are involved in child find, evaluation and assessment, or service coordination services? A few details will illuminate the scope of what functions parents may not be charged for.

Here are several brief elaborations you might offer, as appropriate to your audience.

Child find requirements | Among other things, child find requirements include the State's obligation to:

- set up a public awareness program in the State;

- disseminate information about the Part C program to a network of primary referral sources (who will share that info with families);
- establish a system by which primary referral sources may refer children to the Part C program;
- coordinate with all other major efforts in the State to locate and identify children in need of EI services; and
- ensure that all infants and toddlers with disabilities in the State who are eligible for EI services are identified, located, and evaluated.³⁶

All of these functions must be conducted at public expense. Parents may not be charged in any way for these activities.

Evaluation and assessment |

The cost of evaluating an infant or toddler with a suspected disability or developmental delay and the cost of assessing that toddler and his or her family may not be charged to the family. Despite the fact that there is a lot involved in the evaluation and assessment cycle, these functions must be provided at public expense.

What is the phrase “and the functions related to evaluation and assessment in §303.13(b)” referring to? Here, the cross-reference is to “types of early intervention services.” If you look at the list of “types of early intervention services” at §303.13(b), you’ll see that many EI services refer to identifying, evaluating, or assessing children to determine if a delay or disability exists and, if so, to what degree.

§303.52 I (b)—System of payments and fees: Functions not subject to fees.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in §§303.301 through 303.303.

(2) Evaluation and assessment... and the functions related to evaluation and assessment in §303.13(b).

(3) Service coordination services...

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.

Examples include: evaluating the needs of a child for an assistive technology device; identifying children with hearing impairments; evaluating and assessing children to identify movement dysfunction; or identifying children with communication or language disorders or delays.

Service coordination services | Service coordination services (which are defined at §303.34) involve providing each family in Part C with one service coordinator who will be responsible for a wide array of functions, including:

- coordinating all Part C services for the child and family across agency lines;
- coordinating evaluations and assessments;

- participating in the development, review, and evaluation of the child’s IFSP;
- coordinating the funding sources for Part C;
- monitoring the delivery of services; and
- much more!

It’s plain to see that a lot of effort, time, and expense go into providing service coordination for families—and all must be provided at public expense. Parents may *not* be charged for these services.

Bullets 4 and 5 | The slide breaks out into two bullets what the Part C regulation initially refers to as “administrative and coordinative activities.” While many activities will fall under this

category, the bullets refer specifically to (a) IFSP activities (development, review, and evaluation); and (b) use of procedural safeguards.

In a nutshell, activities related to administrating and coordinating the Part C service system must be conducted at public expense. Parents may not be charged, for example:

- for any aspect of developing, reviewing, or evaluation their child’s IFSP (or interim IFSP), nor
- for use of the Part C’s procedural safeguards (e.g., the cost of investigating a State complaint they may file, or the cost of conducting an impartial due process hearing that the parent requests).

One Additional Point: States with FAPE Mandates

While we’re on the subject of what services may not be subject to family fees, we’d be remiss if we didn’t mention this one additional prohibition. It’s not included on the slide, and you may not need to mention it, especially if your State does *not* have a FAPE mandate.

Several States have what is known as a “FAPE mandate.” This can mean either that State law requires the provision of a free appropriate public education (FAPE) for children with a disability under the age of 3 or that the State uses Federal funds under Part B of IDEA to serve children under the age of 3.

Basic question | Can States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three, charge fees for services?

Answer | *No.* States that require, through State law, the

provision of FAPE for children with a disability under the age of three, or that use Federal funds under Part B to serve children under age three, may not charge the parents for any services (e.g., physical or occupational therapy) that are part of FAPE for that infant or toddler and the child’s family. In addition, those FAPE services must meet the requirements of both Parts B and C of the Act.

Where in the regulations? | If any participant would like to know where this prohibition on charging for services in States with a FAPE mandate, the relevant provision can be found on **Handout 13** at §303.521(c). It applies only to those services made available to the child as part of FAPE. As the Department notes, there may be early intervention services available to the child as well and, for those EI services, the “State may adopt a system of payments.”³⁷



References & Footnotes

³⁶ From three sets of provisions:

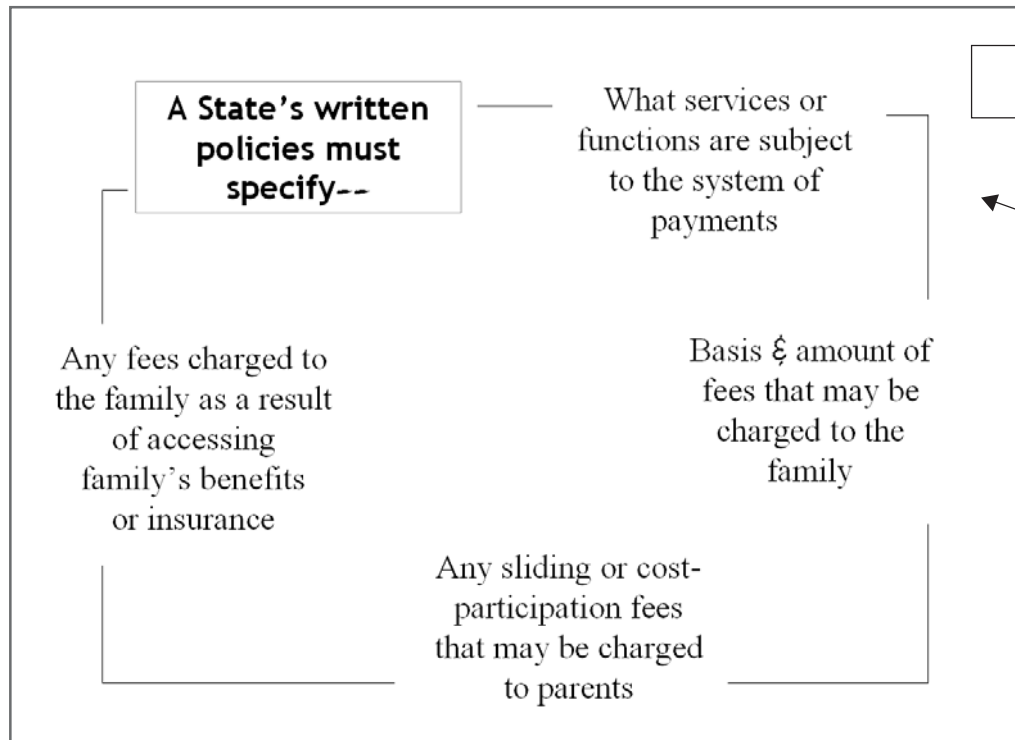
- §§303.301—Public awareness program—information for parents.
- §303.302—Comprehensive child find system.
- §303.303—Referral procedures.

³⁷ 76 Fed. Reg. at 60229.



Opening View

Slide loads with this view. Emphasis is on reviewing program options for the toddler.



Clicks 1-4

Clicks 1-4: Each click will lift off one picture, moving clockwise around the screen until all text is revealed, as shown here.

CLICK AGAIN to advance to next slide.

See discussion on next page



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Now that we know what may *not* be subjected to fees in a State’s system of payments, Slide 13 digs into what must be included in its written policies for any system of payments it adopts. Find relevant Part C regulations in the box on this page and beginning on page 6 of the ever-handy **Handout 13**.

The four bullets on the slide can be found in the beginning of §303.521(a), although they don’t track the order in which they’re actually mentioned in the regulations.

Discussing the Slide and Looking Ahead

As you look at this slide and then move through Slides 14 and 15, you’ll see that each picks up where the previous one left off, starting from the citation above and continuing through §303.521. In essence, when you move through these slides, you’ll be moving through the key Part C requirements for policies that a State must have if it adopts a system of payments.

Point this out to the audience. It’s a helpful advance organizer for the content they’ll be receiving and for understanding what §303.521 requires. Participants

can easily follow along on **Handout 13** (starting at page 6) and highlight or note the key phrases captured on the slides.

About Family Fees

Three of the four bullets on the slide mention costs to families. The fact is that a majority of States now include “family fees” of some sort in their policies for funding EI services. Given the economic downturns and budget deficits of recent years, “nearly all states report more pressure to access the personal resources of families enrolled in early intervention.”³⁸

§303.521 System of payments and fees.

(a) *General.* If a State elects to adopt a system of payments in §303.500(b), the State’s system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family’s public insurance or benefits or private insurance), and include—

(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;

(2) The basis and amount of payments or fees...

In the document *To Fee or Not to Fee: That is the Question!*, the ECTA Center reports that States have developed their family cost participation (FCP) policies in a variety of ways that often blend together a combination of approaches such as these:

- Requiring *co-payments* | A co-payment is a standard fee that is required from the consumer for each service utilized.
- Charging family fees on a *sliding scale* | The sliding scale of family fees is based on a family's ability to pay, which must take into account income and expenses (including



extraordinary medical expenses) and may be based on the Federal Poverty Level, family size, and other extenuating circumstances.

- Charging fees *by individual service* | Families pay a set or sliding fee per each IFSP service they received.³⁹

Out-of-Pocket Expenses

Out-of-pocket expenses are fees typically associated with the use of public or private insurance and may include co-payments, premiums, or deductibles. In terms of a State's system of payments, out-of-pocket expenses would fall under the bullet on the slide that reads: "Any fees charged to the family as a result of accessing family's benefits or insurance."

References & Footnotes

³⁸ Mackey Andrews, S.D., & Taylor, A. (2007). *To fee or not to fee: That is the question!* (NECTAC Notes No.22). Chapel Hill: The University of North Carolina, FPG Child Development Institute, National Early Childhood Technical Assistance Center. Quotation from page 1. Available online at: <http://www.nectac.org/~pdfs/pubs/nnotes22.pdf>

³⁹ Ibid, see page 12.

A State's written policies must also specify how the State defines—



"Ability to pay"

definition of income
& family expenses

"Inability to pay"

When & how the State makes its determination of "ability or inability to pay"

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Slide 14 takes up the next part of §303.521—§303.521(a)(3), to be precise. You'll see this in the box on the next page, with the text of interest in bold.

Several aspects of this provision are worthy of elaboration, especially if you want participants to connect the provision's requirements to real-world practices in their own State. We provide discussion and examples below, should you want to expand upon the barebones of the slide and the provision at §303.521(a)(3).

Ability/Inability to Pay

"Ability to pay" is probably a term the audience already understands in general. In the context of Part C funding, "ability to pay" is a definition that States must have and that States get to define.

Terms to define | States are *not* required to include family cost participation fees in their system of payments for Part C. However, if a State *does* require family fees of some sort or parents are required to pay co-payments or deductibles when private insurance or public benefits and insurance are used to pay for Part

C services, then the State **must** define the term "ability to pay"—including its definition of income and family expenses. The Department states that, "in defining a parent's ability to pay, the State must include consideration of family expenses such as extraordinary medical expenses as many families with infants and toddlers with disabilities have unusually high medical expenses."⁴⁰

The term "inability to pay" must also be defined. As upcoming slides will show, both terms have a significant role to play in how EI services are funded.

Federal poverty lines |

Although definitions of these terms vary from State to State, those definitions tend to be tied to the Federal Poverty Lines (FPL), which change from year to year as determined by the Department of Health and Human Services. FPL varies according to family size and is adjusted yearly for inflation. Public assistance programs, such as Medicaid, define eligibility income limits as some percentage of FPL.⁴¹

Documentation | Families are typically asked to provide documentation of income and expenses to the EI program, so that any family fees (if applicable in the State) can be calculated—including the family’s ability or inability to pay those fees. In States that use a sliding fee scale, such documentation is an essential part of adjusting the scale of fees to the level of the family’s ability to pay.

When and How Determinations Are Made of a Family’s Ability to Pay

Clearly, the State’s written policies for its system of payments must be transparent as to how and when a family’s ability to pay is determined. These policies will vary from State to State, and can involve a decision-making process of multiple “if this-then that” questions to be answered.

§303.521 System of payments and fees.

(a) *General.* If a State elects to adopt a system of payments in §303.500(b), the State’s system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family’s public insurance or benefits or private insurance), and include—

(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;

(2) The basis and amount of payments or fees;

(3) **The State’s definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the State makes its determination of the ability or inability to pay...**

Participants may wonder if States are required to reevaluate a parent’s ability or inability to pay. If the subject comes up, the answer is *no*. As the Department explains:

Some States may not wish to reevaluate a parent’s ability to pay given that a child may receive services at most for three years and many children do not enter the Part C program until they are at least 18 months of age.⁴²

Thus, while States are not required to reevaluate a parent’s ability or inability to pay, States may do so, if they wish. If such redeterminations are included in the State’s system of payments, the State’s written policies must include that information, which must be shared with parents so that they know when and how they may be required to provide financial information.⁴³



References & Footnotes

⁴⁰ 76 Fed. Reg. at 60228.

⁴¹ Investopedia. (2011). *Federal poverty level (FPL)*. Online at: <http://www.investopedia.com/terms/f/fpl.asp>

⁴² 76 Fed. Reg. at 60227-8.

⁴³ 76 Fed. Reg. at 60227-8.

Policies must also include these **assurances**—

Parents will *not* be charged for services child is entitled to receive **at no cost**



Opening View

Slide loads with this view. Emphasis is on reviewing program options for the toddler.

Policies must also include these **assurances**—

Parents will *not* be charged for services child is entitled to receive **at no cost**

Parents' **inability** to pay will *not* result in delay or denial of services

Families will *not* be charged **more than the actual cost** of a Part C service

Families with **insurance** will *not* be charged disproportionately more than families without insurance

Clicks 1—3

Clicks 1-3: Each click will lift off one picture, moving clockwise around the screen until all text is revealed, as shown here.

CLICK AGAIN to advance to next slide.

See discussion on next page 



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Slide 15 continues this look at §303.521—now §303.521(a)(4) goes under the microscope. The slide distills the essence of the provision, shown in the box at the right in bold.

Discussing the Slide

As you can see, there’s a bit more detail in the verbatim regulations than on the slide. It’s up to you to determine how much you wish to elaborate on those details. If you choose to provide more detail, refer participants to **Handout 13**, where the full regulations appear, and consider the points below.

Bullet 1 | *Parents will not be charged for services child is entitled to receive at no cost.*

What services are eligible children entitled to receive at no cost? We’ve just covered a goodly number of them on Slide 12. Ask participants to reiterate the services.

The regulation at §303.521(a)(4)(i) also includes the phrase “including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section.”

continued on the next page ►

§303.521 System of payments and fees.

(a) *General.* If a State elects to adopt a system of payments in §303.500(b), the State’s system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family’s public insurance or benefits or private insurance), and include—

(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;

(2) The basis and amount of payments or fees;

(3) The State’s definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the State makes its determination of the ability or inability to pay;

(4) An assurance that—

(i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section);

(ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child’s family such that, if the parent or family meets the State’s definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost.

(iii) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and

(iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance...

What services are identified in those paragraphs?

Paragraph (a)(4)(ii)—Participants should be able to tell you what services are being referenced in this paragraph. Have them look at **Handout 13** and venture a guess.

It's a bit complicated, but basically the point is that, if the family meets the State's definition of "inability to pay," the infant or toddler must be provided all needed Part C services at no cost.

Paragraph (b)—just covered on Slide 12 and subtitled "Functions not subject to fees."

Paragraph (c)—appears on **Handout 13** and is subtitled "States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three." Paragraph (c) brings up the situation where a State mandates that FAPE be made available to children under age 3. It also includes the situation where a State uses Part B funds to serve children under age 3.

Part B of IDEA requires that special education and related services be provided to eligible children at no charge to the child or parents. Therefore, in either of the situations referenced here, the services provided to an eligible infant or toddler as part of FAPE must be provided at no charge. However, the services must be "identified on the child's IEP as part of FAPE for that child."⁴⁴

Bullet 2 | *Parents' inability to pay will not result in delay or denial of services.*

The bullet harkens back to Slide 14 in its mention of "inability to pay," so participants should be familiar with this term generally and understand that each State with a system of payments must define what is meant by the term. Regardless of how the term is defined in the State, *if a parent or family meets that definition*, the State has two significant obligations:

References & Footnotes

⁴⁴ 76 Fed. Reg. at 60229.

⁴⁵ 76 Fed. Reg. at 60227.

- It may not delay or deny an eligible child or family needed EI services because the family cannot pay for them; and
- It must provide the infant or toddler with a disability, and family, with all needed Part C services at no cost.

Significant obligations, indeed.

Bullet 3 | *Families will not be charged more than the actual cost of a Part C service.*

The detail that's missing from the slide is the phrase "factoring in any amount received from other sources for payment for that service." This phrase (found in the verbatim regulations on **Handout 13**) is important to highlight with the audience. Implications of the phrase include the following:

- The State may not charge a family for more than the actual cost of providing a particular Part C service.
- The lead agency may not receive funds to pay for a particular service (whether from one or a variety of sources, such as family fees or insurance) that exceed the actual cost of providing the service.
- The State may not charge a family for amounts received by the State from other funding sources for that service.⁴⁵

Bullet 4 | *Families with insurance will not be charged disproportionately more than families without insurance.*

The term "insurance" on the slide abbreviates what's used in the verbatim regulations: "public insurance or benefits or private insurance." Under the Part C regulations, States may not charge those with such insurance disproportionately more than those without such insurance. The regulations do not define what constitutes "disproportionately more."

Pshew.

Is that enough info on "system" of payments yet? If so, you'll be glad to know the next slide gives everyone a no-doubt much-needed break.

Opening View

Slide loads with the view of the sleeping baby.



Nuh-huh.


CLICK 1

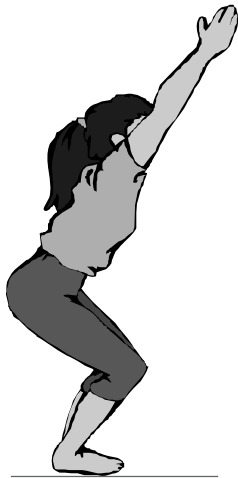
Click 1:
Picture of stretching baby appears.



STRETCH.

CLICK AGAIN to advance to next slide.

See discussion on next page 



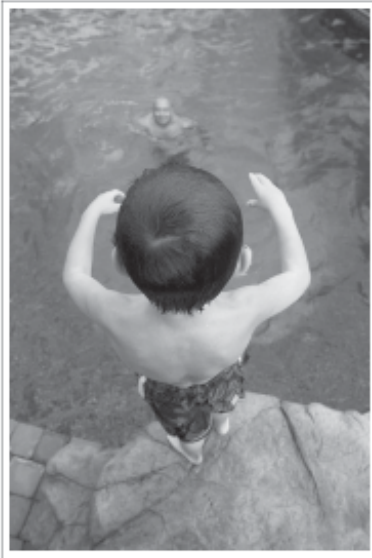
Slide 16 is all about taking a meaningful break, a break that stimulates the mind and muscles, stirs the blood, and reactivates attention.

Tell your audience that, in a moment, the topic will shift to the use of parents' public insurance or benefits. But not yet. First everyone has to clear their mind.

Have the audience get to their feet. Are they up? Good, good... Now guide participants through a few simple stretches and other relaxation techniques.

Devote at least 1 minute to this break. Nothing potentially vigorous enough to strain muscles or cause accidents, but movement nonetheless, accompanied by deep breaths. Interesting research exists to suggest the benefits that physical movement can bring to learning—in particular, a break that involves physical movement refreshes the brain, gets the blood flowing, loosens the kinks that develop from sitting in class or training, and releases stress even as it reactivates attention.

Alternatively, you may prefer to let participants use the break time as they wish—to take a bathroom break, make a phone call, check their email, whatever. Hopefully, everyone will return refreshed and ready to go again.



Use
of Parent's Public
Insurance
& Benefits

Ready to
dive in?

Slide loads
completely.

No clicks are
necessary except
to advance to the
next slide.

CLICK to advance to next slide.

Pertinent Handouts: none

Slide 17 is a topic-setter. There's no actual content to be presented yet, only the alert of what's coming up and the opportunity to refocus on use of Part C funds.

So—are your participants ready to dive in? Even if they aren't...here goes.

For a child or parent *not* already enrolled in a public benefits or insurance program

The State may *not* require a parent to enroll in the public program as a condition for receiving Part C services



Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Slides 18-23 look at the Part C regulations governing the use of a parent's or child's public benefits or insurance program to pay for the EI services the child and family receive. Simply by focusing on the use of a child or family's public benefits or insurance presumes that the parents or the child are *already* enrolled in a public benefits or insurance program. But suppose they're not?

So let us begin the discussion with that situation, where neither the child or parents are not enrolled in a public benefits or insurance program. Such a situation inevitably raises a serious question:

May the State require a parent to enroll in the public program as a condition of receiving Part C services for the child or family?

In a Nutshell

The answer is *no*, the State may not require a parent to enroll the child or parent in a public benefits or insurance program as a condition for receiving early intervention services. However, the State may certainly *ask* a parent to enroll and, in any event, must fully inform the parent as to the benefits and potential consequences of enrolling. What's required in terms of that written notice to parents is discussed on Slide 22.

The parent must then decide if he or she is going to enroll in the public benefits or insurance program. If yes, the parent can either see to the enrollment process on his or her own or—if the parent gives written consent—the lead agency or EIS provider may handle the enrollment process for the parent and/or family.

What the Part C Regulations Say, Verbatim

It's always useful to consult the exact words of the regulations. So here they are:

(2) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, the State—

(i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program...³⁹

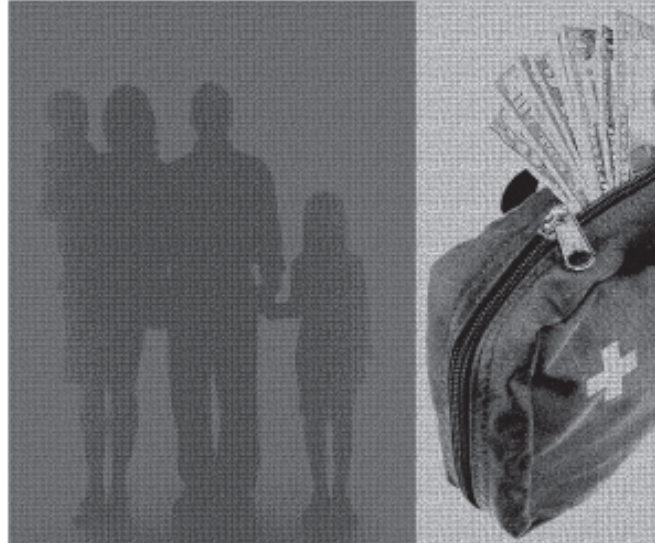
References & Footnotes



⁴⁶ §303.520(a)(2)—Policies related to use of public benefits or insurance or private insurance to pay for Part C services: Use of public benefits or public insurance to pay for Part C services.

Opening View

Q: Is parental consent needed for the State to access a family's public benefits or insurance?



The slide loads with just the question at the top and a large picture covering the answer.

CLICK I

Q: Is parental consent needed for the State to access a family's public benefits or insurance?

Yes, parental consent is needed

if

using funds from the public program imposes certain types of costs on the parent

Costs?



Click 1: The large picture lifts away, and the answer is revealed

CLICK AGAIN to advance to next slide.

See discussion on next page 



Now for the next logical question—what do the Part C regulations require when the child or family is enrolled in a public benefits or insurance program? Is it permissible to access those funds to help pay for the child or family’s Part C services?

Slides 19 through 23 answer this question, building the “story” piece by piece. Naturally, those pieces link together to create the full picture of what is involved when accessing a child or parent’s public insurance or benefits.

Important Underpinnings

Many serious considerations drive the Part C regulations with respect to accessing a parent’s insurance—public or private—or benefits to help pay for the EI services the child is receiving. Among them are that Part C requires that States:

- provide EI services at no cost to eligible children and families, except where Federal or State law provides for a system of payments by families;
- identify and coordinate all available resources in the State to pay for EI services; and

- comply with rules regarding use of public benefits or insurance (as well as rules regarding the use of private insurance when such funds are used) to pay for Part C services instead of using federal Part C funds.

Slides 19-23 reveal what the “ground rules” are.

Discussing the Slide

Slide 19 is very simple. It makes clear that, yes, parental consent must be obtained before the State may access the parent or family’s public insurance or benefits as a way to pay for the EI services the family receives. However, the slide also includes a very important “if.”

Yes, parental consent is needed *if*—using funds from the public program imposes certain types of costs on the parent.

What kinds of costs? is the immediate next question. Slide 19 even asks that question, bouncing in the word “Costs?” This is meant to give you a smooth segue into Slide 20, which presents a list of possible costs a parent might incur if he or she gives permission to the State to access the child or parent’s public insurance or benefits.



-
- Any **decrease** in available lifetime coverage or any other insured benefit of the child or parent under the program
 - **Discontinuation** of public benefits or insurance for the child or parent
 - **Any increase in premiums**
 - **Loss of eligibility** for home & community-based waivers
 - **Parents paying** for services that would otherwise be covered by the public program

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

Here comes the list of the types of costs that a parent might incur when accessing the child or family's public insurance or benefits. **Handout 13** provides the relevant regulations (beginning on page 4).

In a Nutshell

If any of the types of costs shown on the slide would be incurred, the State must ask for, and obtain, the parent's consent to access the public insurance or benefit program to pay for the EI services the child and family receive. If the parent does *not* consent, the State may not access

the public program, *and* it must still make available those Part C services on the IFSP to which the parent has provided consent.

However, if the State ensures that parents will not incur any of these costs, the State does *not* need parental consent to access the public benefits or insurance program, unless the parent is not already enrolled in the program.⁴⁷

Part C's Regulations, Verbatim

What do the regulations say, precisely? Participants can see using **Handout 13**—beginning at §303.520(a)(2). The regulations are also provided in the box on

the next page. (The regulation that is grayed out will be addressed on Slide 23.)

Discussing the Slide

Chances are, participants are fairly familiar with the type of costs mentioned on the slide and in the Part C regulations, given the recency of the healthcare debate in the United States and the passage of the Patient Protection and Affordable Care Act.⁴⁸ These are also the types of costs and consequences that many families face, insurance-wise, when they have a child with a disability, especially one with special health care needs.

Consider taking a moment to talk with participants about the nature of health insurance, coverage, limits to coverage, and the like, which will help them connect the information you're presenting with what they know personally.

Need Definitions?

You may also find it helpful to have a general definition of key terms used on the slides. What we've provided below doesn't come from Part C itself but, rather, from the healthcare or insurance field.

Available lifetime coverage | May also be called "maximum plan dollar limit" | The maximum amount payable by the insurer for covered expenses for the insured and each covered dependent while covered under the health plan. Plans can have a yearly and/or a lifetime maximum dollar limit. The most typical of maximums is a lifetime amount of \$1 million per individual.⁴⁹

Home- and community-based waiver | Allows for federal Medicaid reimbursement for certain services provided to the chronically ill, disabled, and elderly, which are not otherwise covered under the Medicaid program in the State plan. Home- and community-based waiver services help people remain in their homes and communities, rather than be institutionalized.⁵⁰

Premium | The amount that must be paid for a person's health insurance or plan. The person and/or his or her employer usually pay it monthly, quarterly, or yearly.⁵¹



Use of Public Benefits or Insurance to Pay for Part C Services: §303.520(a)(2)

(2) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, the State—

(i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(ii) Must obtain consent, consistent with §§303.7 and 303.420(a)(4), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would—

(A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

(B) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

(C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

(D) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

(iii) If the parent does not provide consent under paragraphs (a)(2)(i) or (a)(2)(ii) of this section, the State must still make available those Part C services on the IFSP to which the parent has provided consent.

Note: The substance of the provision grayed out above will be addressed on Slide 23.

continued on the next page ►



Moving On

In addition to what's listed on the slide, there are other potential costs to families, such as co-payments and deductibles. The next slide touches upon such costs.

References & Footnotes

⁴⁷ §303.520(a)—Policies related to use of public benefits or insurance or private insurance to pay for Part C services: Use of public benefits or public insurance to pay for Part C services.

⁴⁸ Public Law 111–148, Patient Protection and Affordable Care Act, 124 Stat. 119 through 124 Stat. 1025.

⁴⁹ Interdepartmental Committee on Employment-based Health Insurance Surveys. (2002). *Definitions of health insurance terms*. Washington, DC: Bureau of Labor Statistics, U.S. Department of Labor. Available online at: <http://www.bls.gov/ncs/ebs/sp/healthterms.pdf>

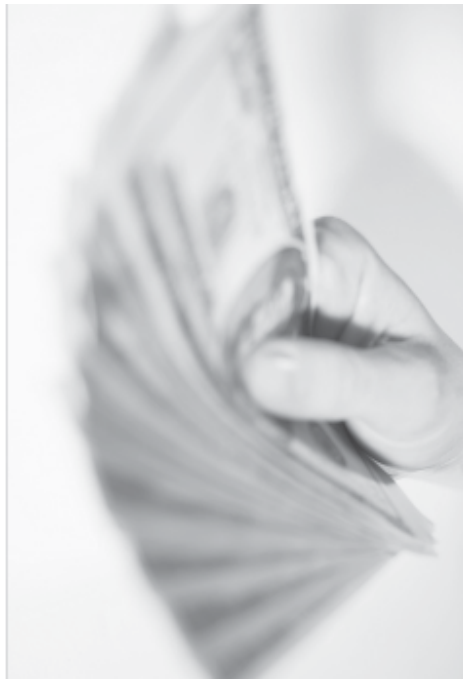
⁵⁰ O'Keeffe, J., Saucier, P., Jackson, B., Cooper, R., McKenney, E., Crisp, S., & Moseley, C. (2010, October). *Understanding Medicaid home and community services: A primer, 2010 edition*. Washington, DC: U.S. Department of Health and Human Services. Retrieved November 12, 2013 from: <http://aspe.hhs.gov/daltcp/reports/2010/primer10.htm>

⁵¹ Healthcare.gov. (2013). *Glossary: Premium*. Retrieved November 12, 2013 from the Healthcare.gov website: <https://www.healthcare.gov/glossary/premium/>



Other costs of accessing a family's public insurance or benefits

- co-payments
- deductibles
- premiums
- required use of private insurance as the primary insurance



Opening View

Slide loads with the top view of the "other costs" and four bullets.

If the State requires that *parents pay* the costs incurred when their public insurance or benefits are accessed to pay for EI services

Other costs of accessing a family's public insurance or benefits

- co-payments
- deductibles
- premiums
- required use of private insurance as the primary insurance

Those costs *must* be identified in State's policies



If not, the State *may not* charge those costs to the parent

CLICK I

Click 1: Pictures lift away and rest of the text is displayed.

CLICK AGAIN to advance to next slide.

See discussion on next page 

Slide 21: Background and Discussion

I Click



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

And the “insurance” story continues.

Here, the slide identifies other possible costs that parents might incur if they give permission to the lead agency or EIS provider to access their public insurance or benefits.

Part C Regulations, Verbatim

The relevant regulation here is §303.520(a)(4). It appears on **Handout 13** (see page 5, left column) and in the box below.



Use of Public Benefits or Insurance to Pay for Part C Services: §303.520(a)(4)

(4) If a State requires a parent to pay any costs that the parent would incur as a result of the State’s using a child’s or parent’s public benefits or insurance to pay for Part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the State’s system of payments policies under §303.521 and included in the notification provided to the parent under paragraph (a)(3) of this section; otherwise, the State cannot charge those costs to the parent.

Discussing the Slide

Participants are probably familiar with the reality of insurance co-pays and deductibles from their own lives. The fact is: They can add up over the course of a year to represent a significant separate cost to the insured. Just ask the audience for a few medical-bills horror stories, and the point will be crystal clear.

As mentioned in the “important underpinnings” discussion under Slide 18, Part C services are supposed to be provided free of charge to families, unless the State has policies in writing describing its system of pay-

ments. Therefore, as the slide indicates:

- States may *not* require parents to pay for costs (such as deductibles, co-pays, or premiums) incurred from using their insurance or benefits *unless* its written policies state that parents/families will be responsible for those costs.
- If the State’s policies do not specify the costs for which parents will be responsible, the lead agency or EIS provider may *not* charge parents for those costs.

Info You May Need

We’ve presumed that most audiences will be familiar with the key terms used in the regulations and on this slide: premiums, co-payments, deductibles, required use of private insurance as the primary insurance. That may not be the case with all audiences! So, for your convenience, we’ve included the meaning of these terms below. Again, these definitions do not come from the Part C regulations but, rather, from the healthcare or insurance field.

Co-payment | *Also known as copay* | A common term for the fixed amount set by an insurance company and paid by a patient for a specified medical service. A copayment is often connected with a physician office visit or an emergency room visit.

Copayments are collected at the time the services are provided. Amounts of \$15, \$25 or \$30 are common for copays.⁵²

Deductible | A fixed dollar amount during the benefit period—usually a year—that an insured person pays before the insurer starts to make payments for covered medical services. Plans may have both per individual and family deductibles. Some plans may have separate deductibles for specific services. For example, a plan may have a hospitalization deductible per admission.⁵³

Premium | The amount that must be paid for a person's health insurance or plan. The person and/or his or her employer usually pay it monthly, quarterly, or yearly.⁵⁴

Primary insurance | A term used for the insurance company that has first responsibility for payment of a claim.⁵⁵

State Practices in Requiring Use of Private Insurance

Some States have enacted insurance mandates requiring some private insurance policies in the State to cover a certain amount of early intervention services.

The ECTA Center is an excellent place to connect with information about which States have legislated on the use of private insurance for Part C services. For the latest information, go to:
<http://ectacenter.org/topics/finance/statelegis.asp>

Specific to autism spectrum disorders | Additionally, the ECTA Center notes that several States have enacted insurance legislation specific to autism spectrum disorders or have modified existing legislation to further define neurological disorders to include ASD for the purpose of covering needed services for eligible children.⁵⁶

Again, find the latest information about such health insurance legislation for ASD at:
<http://ectacenter.org/topics/finance/statelegis.asp>

And kudos to the ECTA Center for the great resource page! One among many, we might add...

For Information on Your State's Policies

To find out more about your State's policies with respect to the use of health insurance to pay for early intervention services, contact your State's Part C coordinator. Not surprisingly, the ECTA Center also maintains a current list of coordinators by State, at:

<http://ectacenter.org/contact/ptccoord.asp>

References & Footnotes

⁵² Healthcare.gov. (2013). *Glossary: Copayment*. Retrieved November 12, 2013 from the Healthcare.gov website: <https://www.healthcare.gov/glossary/co-payment/>

⁵³ Interdepartmental Committee on Employment-based Health Insurance Surveys. (2002). *Definitions of health insurance terms*. Washington, DC: Bureau of Labor Statistics, U.S. Department of Labor. Available online at: <http://www.bls.gov/ncs/ebs/sp/healthterms.pdf>

⁵⁴ Healthcare.gov. (2013). *Glossary: Premium*. Retrieved November 12, 2013 from the Healthcare.gov website: <https://www.healthcare.gov/glossary/premium/>

⁵⁵ eHealth. (n.d.). *Health insurance glossary: Primary coverage*. Retrieved November 12, 2013 from: <http://www.ehealthinsurance.com/health-insurance-glossary/terms-p/>

⁵⁶ Early Childhood Technical Assistance Center. (2013). *State policies on the use of private insurance for early intervention services*. Chapel Hill, NC: Author. Available online at: <http://ectacenter.org/topics/finance/statelegis.asp>



To ensure that parents are fully informed, the State must—

- provide parents with written notice
- state in the notice the costs the parent will incur
- explain the no-cost protections in the notice

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

We come now to a central point about the use of a family's public benefits or insurance (or private insurance, for that matter) to pay for EI services: The importance of parent notification.

Slide 22 is brief, but there's a lot to discuss, including:

- contents of the written notice provided to parents
- the no-cost protections under Part C.

There are several somewhat lengthy regulations to share and discuss, so we've broken these up into separate sections, for easier understanding. Participants should refer to page 4 of **Handout 13**.

Part C Regulations: Basic Requirement

First, let's start with the basic Part C regulation that will set up the rest of the discussion for this slide.

§303.520(a)(1)

(a) *Use of public benefits or public insurance to pay for Part C services.*

(1) A State may not use the public benefits or insurance of a child or parent to pay for Part C services unless the State provides written notification, consistent with §303.520(a)(3), to the child's parents, and the State meets the no-cost protections identified in paragraph (a)(2) of this section.

As you can see, both “written notification” and “no-cost protections” are mentioned in this regulation. Both are conditions that must be met.

This regulation contains two cross-references to other provisions of Part C, where the details of “written notification” and “no-cost protections” are given. Let’s look at written notification first.

The topic may well be familiar already to the audience, allowing you to cover the basics of “notification” quickly, but we provide a detailed discussion below, should you wish to cover the subject in greater depth.

Written Notification to the Parents

The importance of keeping parents fully informed throughout the early intervention process is unmistakable in Part C. There are so many occasions where parents must receive detailed information about a proposed or refused action by the lead agency or EIS provider—before screening of their child (if available), before their child’s evaluation, before changing the EI services the child receives, to name a few.

The use of parents’ public benefits or insurance is no exception. Parents must be informed in full as to what is involved, especially what it may cost them.


What Must the Notice to Parents Contain?

It’s all about the details, isn’t it? How can parents be fully informed without the details? The Part C regulations require that the written notification to parents includes specific information—what that information is can be seen in the box at the right, which comes from §303.520(a)(3). Have a look.

Now for a bit of elaboration.

Parental Consent Before Disclosure of PII

For the lead agency or an EIS provider to bill a child or family’s public benefits or insurance program for EI service the child or family receives, personally identifiable information (PII) about the child must be disclosed. This may not occur without parental consent—if the provision at §303.414

continued on the next page 

Written Notice about the Use of Public Benefits or Insurance to Pay for Part C Services: §303.520(a)(3)

(3) Prior to using a child’s or parent’s public benefits or insurance to pay for Part C services, the State must provide written notification to the child’s parents. The notification must include—

(i) A statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child’s personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (e.g., Medicaid);

(ii) A statement of the no-cost protection provisions in §303.520(a)(2) and that if the parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those Part C services on the IFSP for which the parent has provided consent;

(iii) A statement that the parents have the right under §303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (e.g., Medicaid) at any time; and

(iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).

(regarding parental consent) applies in the State.

So—what’s §303.414 have to say about parental consent?

The title of §303.414 is “Consent prior to disclosure or use.” The provision requires that parental consent be obtained before PII is “disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under Part C.”⁵⁷

If PII may be disclosed without parental consent to those authorized within “participating agencies,” it’s important to know who is considered a “participating agency.” The Part C definition of *participating agency* is provided in the box on this page.

We’ve bolded the last part of the provision, where it’s made clear that public agencies that act solely as funding sources for Part C services are **not** considered to be “participating agencies.” As the Department explains further:

The consent provision in §303.414 applies in States where the State lead agency is not the State Medicaid or public benefits or insurance agency or if the State lead agency chooses to adopt a consent provision even if it is the State Medicaid or public benefits or insurance agency.⁵⁸

Conclusion? As mentioned, in the end the need for parental consent at this time will depend on State policies. A pivotal factor will be whether your State’s lead agency is *separate* from the agency

Definition of “Participating Agency” at §303.403(c)

(c) *Participating agency* means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but **does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.**

[§303.403(c), *emphasis added*,]

that’s responsible for administering the State’s Medicaid program or its public benefits or insurance program.

- **If yes** (the two agencies are separate) | Parental consent would typically be needed before the lead agency or EIS provider may bill the public benefits or insurance program of a child or family.
- **If no** (the lead agency administers *both* the Part C program and the Medicaid or public benefits/insurance program) |

Parental consent may not be needed in order to bill the insurance program and disclose PII about the child.

You can see why it’s important to know your State’s Part C policies. The Part C regulations are specific, yes, but they give much leeway to States in how they design and implement their Part C (and other public) programs.

For more information about PII | Personally identifiable information is discussed as part of Module 9 (*Transition*)



Note to Trainers!

The case studies that accompany this module highlight the two scenarios just described.

Notification) and is the main focus of Module 12 (Confidentiality of Personally Identifiable Information).



Parent Revocation of Consent

The provision at §303.520(a)(3)(iii) indicates parents have the right at any time to withdraw their consent to the disclosure of PII to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid). This right must be stated in the written notice parents receive.

Categories of Costs Parents Will Incur

The written notice to parents must also include a "statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program."⁵⁹

The regulation gives the examples of co-payments or deductibles, or the required use of private insurance as the primary insurance. These were just discussed on Slide 21.

The Department notes that "it is important to include this... element in the written notice to ensure that parents are informed of the general potential costs that may result from using their public benefits or insurance to pay for Part C services."⁶⁰

As you know, these categories of costs must also be explicitly stated in the State's written policies for its system of payments. The Department points out, "The State must comply with both of these requirements in order to use the child's or parent's public benefits or insurance for Part C services." Of their purpose and benefit, the Department says:

- The Secretary believes the notification provision is vital to parents being informed about these potential costs.
- The system of payments policies requirement ensures that, as the State's system of payments policies are being developed and subject to public participation, these potential costs are identified

as part of the overall costs in the State's system of payments for Part C services.⁶¹

No-Cost Protections

The written notice to parents must also include a statement describing each of the no-cost protections at §303.520(a)(2). These are the protections discussed on Slide 20. For your convenience, we repeat them here. The State must have a parent's consent to use a child's or parent's public benefits or insurance to pay for Part C services if that use would result in:

- parents paying for services that would otherwise be covered by the public program;
- any decrease in available lifetime coverage or any other insured benefit of the child or parent under that program;
- discontinuation of public benefits or insurance for the child or parent;
- any increase in premiums; or
- loss of eligibility for home- and community-based waivers.

The no-cost protections provisions are precisely that—provisions to protect parents against incurring any costs associated with permitting the lead agency to use their public benefits or insurance to pay for EI services for their child.

Other Statements in the Written Notice

There are several additional statements that must also be included in the written notification that parents receive. Among these are that:

- If the parent does not consent to the use of his or her public benefits or insurance, the State lead agency must still make available those Part C services on the IFSP for which the parent has provided consent.⁶² Note that the next slide highlights this point.
- If the parent does *not* consent to enrolling in a public benefits or insurance program, the State lead agency must still make available



On the Protections of a Consent Requirement

The *Analysis of Comments and Changes* that accompanied the publication of the Part C regulations included a substantive discussion of the use of a child or family's public benefits or insurance—especially the risk of the family incurring costs. With respect to requiring parents to consent before enrolling in such a program (if they are not currently enrolled), the Department states as follows:

We appreciate the commenters' concerns that the act of enrolling in a public benefits or insurance program may impose costs on parents and families, affect parents' and families' rights under other Federal programs, or have an effect on a parent's credit rating. The act of enrollment involves disclosure of personally identifiable information regarding the child and family...

A consent requirement for enrollment protects parents' financial interests by allowing them to consider the costs they may incur by enrolling in a public benefits or insurance program. Additionally, a consent requirement for enrollment protects parents' rights regarding the disclosure of personally identifiable information.⁶⁴

those Part C services on the IFSP for which the parent has provided consent.⁶³

What about Providing Notice in Other Languages?

Throughout the Part C regulations, there are numerous requirements to provide information to parents in their native language or typical mode of communication.⁶⁵ With respect to the written notice to parents about the use of their public benefits or insurance to pay for EI services, the Department points out that:

[U]nder Title VI of the Civil Rights Act of 1964 and implementing regulations (42 U.S.C. 2000d et seq. and 34 CFR 100.1 et seq.), State lead agencies, as

recipients of Federal funds, must take reasonable steps to ensure that persons of limited English proficiency (LEP) have meaningful access to programs and activities funded by the Federal government, including Part C services and any notices required under these regulations and Part C of the Act. Providing meaningful access may require the State lead agency to ensure that the notice is provided in a language other than English either through oral or written translation.⁶⁶

References & Footnotes

⁵⁷ §303.414(a)(1)—Consent prior to disclosure or use.

⁵⁸ 76 Fed. Reg. at 60223.

⁵⁹ §303.520(a)(3)(iv).

⁶⁰ 76 Fed. Reg. at 60223.

⁶¹ 76 Fed. Reg. at 60224.

⁶² §303.520(a)(2)(iii).

⁶³ §303.520(a)(2)(iii).

⁶⁴ 76 Fed. Reg. at 60222.

⁶⁵ See, for example, the definition of consent at §303.7; the use of the native language during assessment [at §303.321(a)(6)] and during IFSP meetings [at §303.342]; and providing notice to parents about confidentiality [at §303.404], proposed or refused actions [prior written notice and procedural safeguards notice, at §303.421(c)].

⁶⁶ 76 Fed. Reg. at 60223.

Opening View + Click 1

Q:

What happens if a parent does not consent to access of public insurance or benefits?



The State must still make available the Part C services on the child's IFSP for which parents *have* provided consent

Opening view:
The slide loads with just the question at the top and a large picture covering the answer.

Click 1:
The large picture lifts away, and the answer is revealed.

CLICK AGAIN to advance to next slide.

Slide 23: Background and Discussion

I Click

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort



How much more straightforward can a question and answer be than this!

The previous slide, which put a spotlight on what the written notice to parents must contain, touched upon the Part C regulation at issue here—what happens if the parent does *not* provide consent for his or her (or the child's) public benefits or insurance to be used to pay for EI services.

(iii) If the parent does not provide consent... the State must still make available those part C services on the IFSP to which the parent has provided consent.⁶⁷

There's not much more to be said about this slide. The point is very clear—and important. Which is why an entire slide is devoted to it and nothing else.

References & Footnotes

⁶⁷ §303.520(a)(2)(iii)



**Guess what
time it is.**

Opening View

Slide loads completely.

No clicks are necessary except to advance to the next slide.


CLICK to advance to next slide.

Pertinent Handouts:

- Activity Sheet 12 and 13—
Case studies (optional)

Having reached the end of discussion of the use of public benefits or insurance to pay for Part C services, it's time to either engage participants in a "unifying" and review activity, take a break, or both!

This slide is purposefully designed to provide a natural break in the action before starting into what the Part C regulations have to say about the use of *private* insurance to pay for Part C services. Use the opportunity as you wish. We've described a possible activity on the next page, but it's optional.

See discussion on next page 



Meet Susana
Case Study 1

Meet Joey
Case Study 2



Participant Activity

Putting It All Together with Case Studies

Purpose

To have participants work with the “whole picture” of the use of public insurance or benefits, including (1) identifying the key aspects that have been discussed throughout Slides 18-23; and (2) contrasting requirements when the lead agency is also the agency administering Medicaid and when the lead agency does not administer Medicaid in the State.

Materials Needed

- Activity Sheet 12, Case Study 1
- Activity Sheet 13, Case Study 2

Time Activity Takes

15-20 minutes.

Group Size

Have participants work in pairs or individually (5 minutes). Half of the full group should be given Case Study 1 (when the lead agency and the Medicaid agency are within the same agency), while the other half receives Case Study 2 (when the lead agency and the Medicaid agency are different).

Call the full group back together to go over answers aloud and contrast their case studies (10 minutes).

Instructions

1. Divide the audience in two groups—the Case Study 1 group and the Case Study 2 group. Provide each group with the appropriate Activity Sheet. Make it clear that one group is going to look at what happens in States where the lead agency and Medicaid agency are the same, and the other group is going to look at what happens when they’re different.

2. Explain that both activity sheets are basically fill-in-the-blank exercises. Missing words or phrases are to be chosen from the provided Word Box on each sheet.

3. Give the audience 5-10 minutes to complete as much as they can of their activity sheet. If they get stuck, they may consult with other pairs or individuals working on the same case study.

4. Call the audience back together and go over Case Study 1. It’s quite similar to Case Study 2, so you might ask for participants who completed Case Study 2 to call out when their “case” has something different. Then compare and contrast Case Study 1 and 2.

Suggested answers are given on the next page.

Suggested answers to this activity.

Case Study 1	Case Study 2
1. Medicaid	1. Medicaid
2. system of payments	2. system of payments
3. ability to pay	3. ability to pay
4. sliding scale	4. sliding scale
5. parental consent	5. parental consent
6. written notification	6. billing *
7. no-cost protections	7. personally identifiable information *
8. incurring costs	8. written notification
9. premiums	9. no-cost protections
10. copays (or deductibles)	10. incurring costs
11. deductibles (or copays)	11. premiums
12. inability to pay	12. copays (or deductibles)
13. at no cost	13. deductibles (or copays)
14. assessments	14. inability to pay
15. EI services	15. at no cost
	16. assessments
	17. EI services

* *Extra, different requirement*

Back in the pool...



Use
of Parent's
Private Insurance

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 25 is a topic-setter similar to Slide 17. There's no actual content to be presented yet, only the alert of what's coming up and the opportunity to refocus on the use of Part C funds.

So—are your participants ready to get back in this pool, like the baby shown in the slide? Even if they aren't...here goes.

Opening View

The slide loads with just the question at the top and a large picture covering the answer.

Q: When may private insurance be accessed to pay for Part C services?

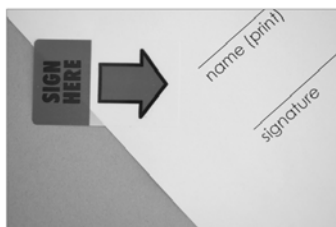


CLICK I

Click 1:
The large picture lifts away, and the answer is revealed.

Q: When may private insurance be accessed to pay for Part C services?

Only with the parent's consent*



* Exceptions apply

Parent consent is required before accessing private insurance to pay for:

- initial provision of an EI service in the IFSP
- increased service provision

CLICK AGAIN to advance to next slide.

See discussion on next page



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

As with our look at the permissible use of public benefits or insurance to pay for EI services, this look at the use of private insurance will extend across several slides—Slides 26-29.

No one slide can be taken apart from the others, for it is *together* that the full story is told. Please make sure that your audience understands the interrelatedness of the content, even though that content is spread out over many slides.

Handout 13 (beginning on page 5) presents the Part C regulations key to the use of private insurance to pay for EI services. We'll break these apart as we move through the slides.

The Basics

The State may use a family's private insurance *only* with the parent's consent (although there is a specific and notable **exception**, as discussed on the next slide). When the lead agency seeks to use parents' private insurance to pay for Part C services, parental consent is needed:

- to pay for the *initial* provision of any EI service listed in the child's IFSP; and
- every time there is an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

Why is Parental Consent Important?

The Department explains succinctly:

...[a] State must obtain parental consent before accessing a parent's private insurance because of the potential costs that can be incurred by a family with a privately insured child or parent as a direct result of using such insurance, as well as the other potential negative effects on the availability of private insurance for other family medical expenses, including services needed by the child that are not covered by Part C.⁶⁸

The Regulations

Have a look at the Part C regulations that underpin these basics. Citing from §303.520(b)(1)(i) and with the pertinent parts bolded, those regulations appear in the box below.

Use of Private Insurance to Pay for Part C Services: §303.520(b)(1)(i)

(b) *Use of private insurance to pay for Part C services.* (1)(i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for Part C services for his or her child or the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. **Parental consent must be obtained—**

(A) When the lead agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(B) Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

The part of these regulations that aren't presented in bold refer to **exceptions** to the need for parental consent, which are discussed on the next slide. First, however...what about those cross-references? Just in case the audience asks:

§303.7 | *The definition of "consent"* | Includes that "the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language." See page 8 of **Handout 13**, where the definition of consent is provided.

§303.420(a)(4) | Subtitled *Parental consent and ability to decline services*, with (a)(4) referring to the need for parental consent for the use of "public benefits or insurance or private insurance."

§303.420(a)(3) | Subtitled *Parental consent and ability to decline services*, with (a)(3) referring to the need for parental consent before "early intervention services are provided to the child."

Ensuring Parent Consent is Informed

Clearly, parental consent is pivotal to the use of private insurance to pay for EI services of a child or family. So is ensuring that the parent is fully informed about the action for which consent is being sought. Not surprisingly, the regulations require the State to fully inform the parent of all potential costs the parent may incur if the lead agency or EIS provider accesses the family's private insurance.



To that end, when seeking parental consent, the State must give parents a copy of the State's policies for its system of payments. As stated at §303.520(b)(1)(iii):

(iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child or parent's private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the State must provide to the parent a copy of the State's system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

As you can see, the system of payment policies must be given to parents *several* times. Those policies will explain the potential costs that parents may incur when their private insurance is used to pay for EI services.

References & Footnotes

⁶⁸ 76 Fed. Reg. at 60225.

Exception to Need for Parental Consent

Parental consent requirements **do not apply if**



The State has enacted a *State statute* regarding private health insurance coverage for EI services & that statute expressly provides the following *guarantees*—

Opening View

Slide loads with this view.

Use of private health insurance to pay for Part C services

- cannot negatively affect **availability** of health insurance to child, parent, or covered family members
- cannot result in **discontinuation** of insurance for child, parent, or covered family members
- cannot count towards or result in **loss of benefits** due to annual or lifetime health insurance coverage caps
- cannot be basis for any increase in **premiums**

CLICKS 1-2

Click 1:
The slide changes, displaying “Use of private...” box and the first bullet (“cannot count toward or result in loss of benefits...”).

Click 2:
The remainder of the bullets display.

CLICK AGAIN to advance to next slide.

See discussion on next page



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

As promised, here's the exception to the need for parental consent to access private insurance.

The Basic Regulation, Verbatim

Under the previous slide's discussions, the non-bolded parts in the regulatory citation referred to the exception. We repeat that regulation in the box to the right, with the bolded text switched to emphasize the reference to the exception to required parental consent.

So what is the exception listed in paragraph (b)(2) of §303.520? We've summarized it immediately below. The verbatim regulations are provided in the box and also appear on **Handout 13**.

The Exception

As the slide indicates, the exception states that parent consent is *not* required if the State has enacted a State statute regarding the use of private health insurance to cover early intervention services under Part C. Parental consent is *not* needed if that statute expressly protects families from a number of cost-bearing consequences.

Participants will already be familiar with potential consequences of accessing insurance—some have already been discussed as “no-cost protections” (see Slides 19 and 21). The regulations refer to consequences such as:

- loss of benefits
- annual or lifetime health insurance coverage caps
- negative impact on the availability of the insurance to the child, parent, or family members
- discontinuation of the policy or coverage
- increase in premiums

Use of Private Insurance to Pay for Part C Services: §303.520(b)(1)(i)

(b) *Use of private insurance to pay for Part C services.* (1)(i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for Part C services for his or her child or **the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance.**

In each of the cases, the regulations refer to the health insurance of the child, parent, or other family members covered by the policy.

In short, if the State statute includes explicit statements protecting parents, children, and family members covered by the insurance policy from the consequences just mentioned (see also the list in the box on the next page where the Part C regulations are presented), parental consent to access the private insurance is *not* required.



Use of Private Insurance to Pay for Part C Services: §303.520(b)(2)

(2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under Part C of the Act, that expressly provides that—

(i) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(ii) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and

(iii) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

Opening View

Slide loads with the lead-in text and the first two "bullets."

Similarities

If a State allows or mandates use of private insurance to pay for EI services that a child & family receive

The State's policies must:

- be **in writing**
- be included in State's **system of payments**



Click 1

Click 1: Third bullet loads, as well as the arrowed text at the bottom.

Similarities

If a State allows or mandates use of private insurance to pay for EI services that a child & family receive

The State's policies must:

- be **in writing**
- be included in State's **system of payments**
- identify potential **costs** parent may incur & if parent is required to pay those costs



Otherwise, State may *not* charge those costs to parents

continued on next page



CLICK 2


Similarities

If a State allows or mandates use of private insurance to pay for EI services that a child & family receive

The State's policies must:

- be **in writing**
- be included in State's **system of payments**
- identify potential **costs** parent may incur & if parent is required to pay those costs
- be given to **parents** at specific times

→ Otherwise, State may *not* charge those costs to parents



Click 2:
The last bullet loads (“be given to parents at specific times”).

CLICK AGAIN to advance to next slide.

Slide 28: Background and Discussion

2 Clicks



Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

The slide identifies four similarities between the use of private insurance and public insurance to pay for Part C services. Having already heard about these points earlier in the training session (as they applied to the use of public insurance), participants should recognize each point and be able to tell you something about it. Make sure that you indicate that these points also broadly apply to the use of *private* insurance. The wording of pertinent regulations might not be identical, but the requirements end up being quite similar.

It's also important to note that these are not the only similarities between how the Part C regulations treat these two sources of funding. There are also provisions that apply to *both* sources of funding (discussed further below), which do make the requirements identical.

What All the Points Have in Common

One of the truths implicit in the four points is **the importance of informing parents fully** as to how the use of their private insurance (or their public benefits or insurance) may affect their short-term or long-term coverage. This includes any costs they may

incur as a result of allowing the State to access their insurance—copays, deductibles, and the like. Without these details, parents cannot provide their informed consent for the use of their insurance.

Accordingly, the regulations at §303.520(b)(1)(iii) require the State to provide parents with a copy of its system of payment policies when using the parent’s private insurance to pay for Part C services. Even in States that have passed a statute requiring the use of private insurance to pay for Part C services (which must include requisite protections for parents and families), it is still “important for a parent to be informed of potential costs if a State were to use a parent’s private insurance.”⁶⁹

This emphasis on informing parents has its parallel in the written notification that the State must provide parents before using their public benefits or insurance (see Slide 22).



Where in the Regulations...?

You don’t have to delve into the precise regulations governing the points on the slide, but it may be helpful to *have* that information, should anyone in the audience ask. So here it is!

A State’s policies governing the use of a family’s private insurance to pay for Part C services must:

Point 1 | be in writing | The requirement that any policies regarding to the use of a family’s private insurance must be in writing comes from §303.521(a) and applies to States that elect to adopt a system of payments. “System of payments” was introduced on Slide 6 and explored in more depth in Slides 11-15.

Here’s the pertinent regulation (with emphasis added in bold to draw your eye to the key parts supporting point 1), which reads:

§303.521 System of payments and fees.

(a) *General.* If a State elects to adopt a system of payments in §303.500(b), the State’s system of payments policies **must be in writing** and specify which functions or services, if any, are subject to the system

of payments (including any fees charged to the family as a result of using one or more of the family’s public insurance or benefits or **private insurance**), and include...

Point 2 | be included in its system of payments policies | Same as above! (Pshew, that was simple.)

Point 3 | identify potential costs to parents and whether parents are expected to pay those costs | Again, same as above. Additionally, the regulation at §303.520(b)(1)(ii) requires:

(ii) If a State requires a parent to pay any costs that the parent would incur as a result of the State’s use of private insurance to pay for early intervention services (such as co-payments, premiums, or deductibles), those costs must be identified in the State’s system of payments policies under §303.521; otherwise, the State may not charge those costs to the parent.

Point 4 | be given to parents at specific times | As with the use of public insurance, the State must provide parents with a copy of its written policies for the State’s system of payments for Part C. This requirement is backed up by §303.520(b)(1)(iii), which reads:

(iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child or parent’s private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the **State must provide to the parent a copy of the State’s system of payments policies** that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy). (*emphasis added*)

Beyond Similarities

As mentioned, the four points on the slide aren't the only areas in which there are similarities between what's required before a parent's private insurance or public benefits or insurance may be used in Part C. There are also provisions that govern *both* sources of funding, making the requirements not just similar but *identical*.

The design of this slide (with only four points) allows you to summarize that key content and then build atop it by mentioning other points of parallel without going into exhaustive detail. Here are two parallels you may wish to mention to your audience.

Inability to pay | A parent or family's "inability to pay" is relevant to any discussion of the use of insurance (private or public) to pay for Part C

services. Whenever a parent or family is determined unable to pay for services, the infant or toddler with a disability must be provided all Part C services at no cost.⁷⁰

Parent's ultimate protection—Right of refusal |

In discussing the use of a family's insurance (be it private or public), the Department points out that "parents ultimately retain the right to decline or revoke consent for any particular Part C service in the IFSP for their child if they do not wish to have their private insurance used for a particular service."⁷¹

Although the reference here is to private insurance, parents have the same right of refusal for services when the use of their public benefits or insurance is at issue.⁷²



References & Footnotes

⁶⁹ 76 Fed. Reg. at 60225.

⁷⁰ §303.521(a)(4)(ii)—System of payments and fees: General.

⁷¹ 76 Fed. Reg. at 60226.

⁷² §303.420(d)—Parental consent and ability to decline services.

Final Points



- **How** does a family contest a fee or the determination of its ability to pay?
- **How** are fees & costs collected from families categorized & used?

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Celebrate! We're in the home stretch of this training module, with just two final points to discuss. They are shown on the slide as questions (which Slides 30 and 31 will answer). The barebones slide offers participants an advanced organizer as to this final content.

Q: How does a family contest a fee or the determination of its ability to pay?



The State's system of payments must include written policies telling parents how they may contest the imposition of a fee or the State's determination of ability to pay, including:

- mediation
- due process
- State complaint
- another procedure set up by the State to resolve financial claims

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort

As the slide indicates, the State's system of payments must include written policies informing families how they may contest such issues as the imposition of a fee upon the family or the State's determination of their "ability to pay." At a minimum, the written policies must tell parents that they have the right to:

- participate in mediation,
- file a State complaint,
- request a due process hearing, or
- use any other procedure established by the State for the resolution of financial claims.

The relevant regulations can be found at §303.521(e). These are cited in the box on the next page and also appear on **Handout 13**.

Discussing the Slide

These dispute resolution options are considered part of IDEA's procedural safeguards. Together and separately, they give families and lead agencies a way to resolve differences and disagreements that may arise. All are discussed at some length in Module 14, *Options for Dispute Resolution*.

While this slide is designed to treat the subject quickly, we offer a brief synopsis of the dispute resolution methods below, in case you need to offer more detail about any of the options.

Giving Parents the Written Policies

The State must inform families of their procedural safeguard options for dispute resolution. The lead agency may provide parents with a copy of the State's system of payments policies when it requests consent for provision of EI services, or the information about how to contest a fee or the determination of the family's ability to pay for EI services may be included in the prior written notice and procedural safeguards notice that parents must also receive.

Mediation

In mediation, parents and representatives of the EI system sit down with an impartial third person (called a *mediator*), talk about the areas where they disagree, and try to reach agreement. Part C's regulations require that the mediation process meet certain, specific conditions, which include the following:

- Mediation must be voluntary on the part of both parties.
- Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other right under Part C of IDEA.
- Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- The State must select mediators on a random, rotational, or other impartial basis.
- The State must bear the cost of the mediation process.
- An agreement reached by the parties must be set forth in a written mediation agreement.
- The lead agency must make sure that its representative participating in mediation has the authority to enter into a binding agreement on its behalf.
- Discussions that occur during mediation must be confidential. They may not be used as evidence in any subsequent due process hearing or civil proceeding.⁷³

State Complaint

A State complaint may be filed by parents or by an organization or individual, including those from another State. Written directly to the State's lead agency, a State complaint must describe what requirement of Part C the lead agency, public agency, or EIS provider has violated, among other specific things. The complaint must also be signed.

Procedural Safeguards for the System of Payments and Fees: §303.521(e)

(e) *Procedural Safeguards.* (1) Each State system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one of the following:

(i) Participate in mediation in accordance with §303.431.

(ii) Request a due process hearing under §303.436 or 303.441, whichever is applicable.

(iii) File a State complaint under §303.434.

(iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this part, including the right to pursue, in a timely manner, the redress options described in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.

(2) A State must inform parents of these procedural safeguard options by either--

(i) Providing parents with a copy of the State's system of payments policies when obtaining consent for provision of early intervention services under §303.420(a)(3); or

(ii) Including this information with the notice provided to parents under §303.421.

Within 60 days, the lead agency must:

- carry out an independent, onsite investigation (if it determines such action to be necessary);
- give the complainant the opportunity to submit additional information;
- give the lead agency, public agency, or EIS provider an opportunity to respond to the complaint;
- review all relevant information;
- make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C; and
- issue a written decision to the complainant that addresses each allegation in the complaint and the reasons for the lead agency's final decision.⁷⁴

Due Process Hearing

When due process is used as a way to resolve disputes, parents and the lead agency present evidence in a legal setting before an impartial third person (called a *hearing officer*). The hearing officer decides how to resolve the problem based upon that evidence and the requirements of IDEA.

What due process procedures has the State adopted, Part C's or Part B's? | You'll note that the actual regulation cited above⁷⁵ says that parents may request a due process hearing under "§303.436 or 303.441, whichever is applicable." The provision is



phrased this way, because States have the option to adopt the due process hearing procedures under Part C of IDEA or the procedures specified for Part B.

This is not a new option for States. It's existed since the original Part C regulations were published in 1989.⁷⁶ Most States have opted to use the due process procedures under Part C, which have fewer steps than the procedures under Part B.

Regardless of which option your State uses, the following points can be made about the due process hearing.

- Both parties in the dispute have the opportunity to present their views in a formal legal setting, using witnesses, testimony, documents, and legal arguments.

- Both parties have specific rights in the hearing, such as the right to be accompanied by an attorney.
- Given that the due process hearing is a legal proceeding, a party will often choose to be represented by an attorney.
- The impartial hearing officer determines how the dispute will be resolved, based on the evidence presented and the requirements of IDEA.

For more detailed information about due process, please refer to Module 14.

Other Procedures Established by the State

A State may also establish other procedures for the speedy resolution of financial disputes. These other procedures, however, may not be used to delay or deny the procedural rights of parents under Part C. This includes "the right to pursue, in a timely manner, the redress options described in paragraphs (e)(3)(i) through (e)(3)(iii) of this section."

More cross-references. What might these "redress options" be? You'll never guess. Mediation, State complaint, and due process.

References & Footnotes

⁷³ §303.431—Mediation.

⁷⁴ §03.432 through §303.434—State Complaint Procedures.

⁷⁵ §03.521(e)—System of payments and fees: Procedural safeguards.

⁷⁶ The original Part C regulations were promulgated in 1989 to implement the Education of the Handicapped Act amendments of 1986 (Pub. L. 99-457), which established the early intervention program for infants and toddlers with disabilities. (76 Fed. Reg. at 60217)

Opening View

Slide loads with the question at the top and the large picture covering the answer.

Q: How are fees and costs collected from families categorized and used?



CLICK I

Click 1:
The large picture lifts away, and the text on the left ("fees and costs collected...") appears.

Q: How are fees and costs collected from families categorized and used?

Fees & costs collected from families are categorized as **"program income"**



continued on next page 

CLICK 2

Q: How are fees and costs collected from families categorized and used?

Click 2:
The text on the right (“Must be used...”) appears.

Fees & costs collected from families are categorized as “program income”

Must be used for the purposes of Part C



CLICK AGAIN to advance to next slide.

Slide 3 I: Background and Discussion

2 Clicks

Pertinent Handouts:

- Handout 13 | Subpart F—Use of Funds and Payor of Last Resort



Almost done! Almost...

In answer to the question on the slide: The fees and costs collected from families to pay for their children’s EI services are categorized as program income. As such, they:

- must be used for the purposes of the Part C grant;
- may be added to the State’s Part C grant funds;
- are not considered as State or local funds;
- may not be part of how the State meets Part C’s “supplement, not supplant” requirements at §303.225(b).

Regulations, Verbatim

The relevant regulation can be found at §303.521(d), on **Handout 13**, and in the box at the right.

And that’s it for the last content slide in this training module. You got through in one piece, we hope!

Family Fees in the System of Payments and Fees: §303.521(d)

(d) *Family fees.* (1) Fees or costs collected from a parent or the child’s family to pay for early intervention services under a State’s system of payments are program income under 34 CFR 80.25. A State may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the State’s Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

(2) Fees collected under a system of payments are considered neither State nor local funds under §303.225(b).



Roundup Time!

Slide loads completely.

No clicks are necessary except to advance to the next slide.

CLICK to END the slideshow.

Use this slide for a review and recap of your own devising, open the floor up for a question and answer period, or have participants complete a closing activity of your choice and discuss in the large group afterwards.

Emphasize the local or personal application of the information presented here about use of Part C funds.



Space for Notes
