

Subpart F—Use of Funds and Payor of Last Resort

IDEA 2004's Part C Regulations

The Part C regulations organize Subpart F as follows:



General

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

Use of Funds

§303.501 Permissive use of funds by the lead agency.

Payor of Last Resort—General Provisions

§303.510 Payor of last resort.

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

Payor of Last Resort & System of Payments Provisions—

Use of Insurance, Benefits, Systems of Payments, and Fees

§303.520 Policies related to use of insurance to pay for Part C services.

§303.521 System of payments and fees.

Note:

Consent is a term that's used frequently in these regulations. It's an important term with a specific definition (given at §303.7). We've provided that definition on page 8 of this handout.

Subpart F—Use of Funds and Payor of Last Resort

General

§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.

Use of Funds

§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—

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(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

(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.




Payor of Last Resort—General Provisions

§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).

(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.

(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.

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§303.51 | 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.

(c) *Procedures for resolving disputes.* (1) Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State’s early intervention service program. Those procedures must include a mechanism for resolution of disputes within agencies and for the Governor, Governor’s designee, or the lead agency

to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

(2) The method must—

(i) Permit the agency to resolve its own internal disputes (based on the agency’s procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(3) If, during the lead agency’s resolution of the dispute, the Governor, Governor’s designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made—

(i) The Governor, Governor’s designee, or lead agency must reassign the financial responsibility to the appropriate agency; and

(ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

(d) *Delivery of services in a timely manner.* The methods adopted by the State under this section must—

(1) 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; and

(2) Be consistent with the written funding policies adopted by the State under this subpart and include any provisions the State has adopted under §303.520 regarding the use of insurance to pay for Part C services.

(e) *Additional components.* Each method must include any additional components necessary to ensure effective cooperation and coordination

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among, and the lead agency's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in the State's early intervention service programs.

Payor of Last Resort & System of Payments Provisions—Use of Insurance, Benefits, Systems of Payments, and Fees

§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.

(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.

(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.

(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).



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(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.



(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.

(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.

(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).

(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.

(3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section, regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish a new baseline of State and local expenditures under §303.225(b) in the next

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Federal fiscal year following the effective date of the statute.

(c) **Inability to pay.** If a parent or family of an infant or toddler with a disability is determined unable to pay under the State's definition of inability to pay under §303.521(a)(3) and does not provide consent under paragraph (b)(1), the lack of consent may not be used to delay or deny any services under this part to that child or family.



(d) **Proceeds or funds from public insurance or benefits or from private insurance.** (1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

(2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under §303.225(b).

(3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under §303.225.

(e) Funds received from a parent or family member under a State's system of payments. Funds received by the State from a parent or family member under the State's system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds—

(1) Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));

(2) Must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

(3) Are considered neither State nor local funds under §303.225(b).

§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

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disproportionately more than families who do not have public insurance or benefits or private insurance;

(5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

(6) Provisions that permit, but do not require, the lead agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.

(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, in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b).

(3) Service coordination services, as defined in §§303.13(b)(11) and 303.33.

(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.

(c) States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three. If a State has in effect a State law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a

disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and the child’s family, and those FAPE services must meet the requirements of both Parts B and C of the Act.

(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).

(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—



continued on next page

(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.

§303.7 Consent

§303.7 Consent.

Consent means that—

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, as defined in §303.25;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).