

## **Part C Systems of Payment**

### **Background Information**

Part C of the Individuals with Disabilities Education Act (Part C) is a formula grant administered by States to assist them in developing and implementing a statewide, comprehensive, coordinated, multidisciplinary interagency system that provides early intervention services for infants and toddlers with disabilities through age two and their families. Part C funds are designed to serve as “glue money,” facilitating the identification and coordination of available resources and implementing the State’s early intervention (EI) program for infants and toddlers with disabilities. Part C funds are intended to be used as the payor of last resort, when other Federal, State, and local funds are not available to pay for EI services.

In order to ensure that any Part C system of payments (SOP) policies that States choose to adopt, including any schedule of sliding or cost participation fees, meet the requirements of the IDEA, the U.S. Department of Education’s Office of Special Education Programs (OSEP) reviews each State’s policies as a part of the Part C grant application approval process. Specifically, OSEP reviews the State’s SOP policies and procedures for compliance with the requirements in 34 CFR §§303.510, 303.520 and 303.521.<sup>1</sup>

The purpose of OSEP’s fiscal monitoring in this area is to examine State implementation of its system of payments (SoP) policies and procedures in the following areas:

- I. General requirements;
- II. Use of private insurance; and
- III. Use of public benefits and insurance (public insurance).

For States that have received approval of their SoP, OSEP will inquire about how the lead agency monitors the implementation of its SoP and supports equitable service delivery throughout the State. We will also examine any potential barriers to equity or opportunity, two of the cornerstones of Results Driven Accountability (RDA). Areas that OSEP may examine through its review include how State systems ensure that consent and notification requirements, sliding or cost participation fees, or access to private insurance or public benefits, where applicable, are implemented consistent with the State’s approved SoP.

For those States that are in the process of developing an SoP and have provided OSEP a date for the SoP’s completion on its most recent Part C application, OSEP will follow up with the lead agency on:

- a. The current status of SoP;
- b. The anticipated completion date for the SoP, and whether the State will submit its policies by the date provided in its Part C grant application; and
- c. Any barriers to the development and implementation of the State’s SoP.

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<sup>1</sup> The *OSEP Checklist for Reviewing System of Payments (SOP) Policies Section II.A.3.a. of the IDEA Part C Grant Application* is provided as an attachment to this protocol.

- I. **General SoP Requirements.** For this area, as applicable, OSEP will examine how the State's general supervision system monitors the use of public benefits or insurance, private insurance, and/or a schedule of sliding or cost participation fees to pay for Part C services.

Specifically, OSEP will examine the State's SoP, related procedures, and other supporting documentation to determine:

- a. How the lead agency ensures that Part C funds are used, as needed, to prevent a delay in the timely provision of early intervention services.
- b. How the lead agency ensures that, when paying for functions and services, local programs/ EIS providers consider all available funding sources for which the child may be eligible (including public insurance/benefits and/or private insurance), and/or family fees in accordance with the approved SoP, and meet the notice and consent requirements discussed below.
- c. How the lead agency ensures compliance with the State's definition of ability to pay (including documenting when and how the State makes its determination of the ability or inability to pay), if a State charges out of pocket costs to families, including copayments, deductibles, or family fees.
- d. How the lead agency ensures that parents are informed of their procedural safeguard options with regard to payment for Part C services.
- e. How the lead agency ensures that fees are *not* being charged to parents for the services that a child is entitled to receive at no cost.

**Documents needed:**

- The State's SoP (Draft or Final) policies.
- The State's Method (Draft or Final), if applicable.
- Documentation related to the implementation of aspects of that SoP (e.g., State forms related to considering and accessing potential payor sources before Part C funds are spent).
- Documentation related to the lead agency's mechanisms for ensuring that Part C funds are used to make interim payments when necessary to prevent a delay in EI services.
- Any evidence that the lead agency has utilized Part C funds as an interim payor source to prevent a delay in service provision.
- Any monitoring protocols/evidence of data queries related to payor sources, or any documentation/examples demonstrating how consideration was given to other available funding sources (consistent with the State's SoP).

**Sample Questions:**

1. What mechanisms (including processes/procedures) does the lead agency use to ensure that Part C funds are used, as needed, to prevent a delay in the timely provision of early intervention services?
2. When Part C funds are used, how does the lead agency ensure that EIS providers consider other available funding sources (consistent with the State's SoP), and maintain documentation related to the resulting funding decisions?
3. How does the lead agency ensure adherence to the State's definition of ability to pay in charging for EI services?
4. How does the lead agency document when and how it, or the local program/EIS provider, makes its determination of the ability or inability to pay?
5. How does the lead agency ensure that parents are informed of their procedural safeguard options with regard to payments for services?
6. How does the State ensure consistent implementation of its SoP policy across the State, when public insurance or benefits, private insurance or family fees are used to pay for Part C services?

II. **Monitoring Protocol: Use of Private Insurance.** For this area, OSEP will examine how the State's general supervision system monitors the implementation of the consent requirements (where required) in accessing private insurance to pay for Part C EI services.

For States that do not have a statute/legislation that includes applicable protections related to accessing private insurance to pay for EI services, OSEP will examine the State's SoP, related procedures, and other supporting documentation to determine:

- a. How the lead agency ensures that parental consent for the use of private insurance is obtained:
  1. When it, or its EIS providers, seek to use private insurance to pay for the initial provision of an EI service in the individualized family service plan (IFSP). 34 CFR §303.520(b)(1)(i)(A).
  2. Each time consent for services is required under 34 CFR §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP. 34 CFR §303.520(b)(1)(i)(B).
  3. When use of private insurance is a prerequisite for the use of public benefits or insurance. 34 CFR §303.520(b)(1)(i).
- b. How the lead agency ensures that a lack of consent to access private insurance to pay for EI services is not used to delay or deny EI services to any children or families that are determined unable to pay under the State's definition of inability to pay.

For States whose approved SOP included a State statute/legislation that included the applicable protections related to accessing private insurance to pay for EI services under 34 CFR 303.520(b)(2), OSEP will verify that the State's legislation continues to ensure that:

- a. The lead agency's use of private health insurance to pay for EI services does not 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;
- b. The lead agency's use of private health insurance to pay for EI services does not 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 that health insurance coverage is not discontinued due to the use of the insurance to pay for EI services; and
- c. The lead agency's use of private health insurance to pay for EI services is not used as a 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.

For all States, whether they have a State statute/legislation including applicable protections or not, OSEP will examine the State's SoP, related procedures, and other supporting documentation to determine:

- a. How the lead agency ensures that parents are provided a copy of the State's SoP policies either:
  1. When parental consent is required for the use of private insurance, including when the State seeks to use the parent's private insurance to pay for the initial provision of an early intervention service on an IFSP, and each time consent is required due to an increase in the provision of services; or
  2. If a State has a statute that includes certain protections, when the State initially uses benefits under a child or parent's private insurance policy to pay for EI services. 34 CFR §303.520(b)(1)(iii).

**Documents needed:**

- Any State monitoring protocols/reports.
- Policies and procedures related to parental notification/consent provisions.
- Sample State consent forms.
- Evidence of State trainings/implementation of policies.

**Sample Questions:**

For States that do not have a statute/legislation including applicable protections:

1. What mechanisms has the lead agency established to ensure that parental consent for the use of private insurance to pay for Part C services is obtained, consistent with IDEA?
2. What mechanisms has the lead agency established to ensure that a lack of consent for the use of private insurance to pay for Part C services does not result in the

delay or denial of EI services to children or families that are determined unable to pay?

For all States:

1. What mechanisms has the lead agency established to ensure that the parent notification/ provision of SoP policies are consistently implemented?
2. What State trainings are provided to local programs/EIS providers with regard to informing parents of SoP policies, particularly regarding consent?

III. **Monitoring Protocol: Use of Public Benefits or Insurance**. For this area, as applicable, OSEP will examine how the State's general supervision system monitors the consent requirements for the use of public benefits or insurance: (1) where child or parent is not already enrolled in the program; or (2) if the use of that public insurance would result in specified costs to the family.

OSEP will examine the State's SoP, and related procedures, to determine:

- a. How the lead agency ensures compliance with the requirements that parents cannot be required to sign up for public benefits or insurance as a condition of receiving EI services, and consent must be obtained prior to using a child or parent's public benefits or insurance (when that child or parent is not already enrolled in the public benefits or insurance). 34 CFR § 303.520(a)(2)(i).
- b. How the lead agency ensures compliance with the consent requirement when the use of public insurance or benefits to pay for Part C services would result in specified costs (such as a decrease in the available lifetime coverage or any other insured benefit for that child or parent under that program; the child's parents paying for services that would otherwise be covered by the public benefits or insurance program; an increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or risk of loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures). 34 CFR § 303.520(a)(2)(ii).
- c. How the lead agency is ensuring that, consistent with 34 CFR §303.520(a)(3), prior to using a child's or parent's public insurance to pay for EI services, parents are provided with written notification that includes the following elements:
  1. Parental consent must be obtained under 34 CFR §303.414, if that provision applies, before the State lead agency or EIS provider discloses a child's personally identifiable information (PII) to the State public agency responsible for the administration of the State's public benefits or insurance program for billing purposes;
  2. Information about IDEA no-cost protection provisions in 34 CFR 303.520(a)(2);

3. Information about the parent's right to withdraw consent for sharing PII; and
4. Categories of cost that parents might 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).

**Documents Needed:**

- Any State monitoring protocols/reports.
- Sample State notification/consent forms.
- State policies and procedures related to parental notification/consent.
- Evidence of State trainings or other mechanisms designed to implement its policies.

**Sample Questions:**

1. What mechanism(s) is the lead agency using to ensure compliance with the requirements that parents cannot be required to sign up for public benefits or insurance as a condition of receiving EI services, and parent consent must be obtained prior to using a child's or parent's public insurance (when that child or parent is not already enrolled in such a program)?
2. How does the lead agency ensure compliance with the consent requirement when the use of public insurance or benefits to pay for Part C services would result in specified costs (listed above)?
3. How does the lead agency ensure that parents are provided with written notification that includes IDEA required elements, prior to using a child's or parent's public insurance to pay for EI services?