

## TO BE RESCINDED

3701-8-08

**Statewide system of payments for early intervention services.**

- (A) The lead agency for the help me grow (HMG) early intervention system shall ensure written policies and procedures meet the requirements of the:
- (1) Use of funds provisions in section 34 C.F.R. 303.501; and
  - (2) Payor of last resort provisions in sections 34 C.F.R. 303.510 to 303.521, regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of IDEA within Ohio.
- (B) Ohio has established, consistent with sections 34 C.F.R. 303.13(a)(3) and 303.203(b), a system of payments for early intervention services under Part C of IDEA, which may include a schedule of sliding fees required to be paid under Federal, state, local for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of sections 34 C.F.R. 303.520 and 303.521.
- (1) Except as provided in (b) below of this section, funds under Part C of IDEA 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 IDEA. Therefore, funds under Part C 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 sections 34 C.F.R. 303.520 and 303.521.
  - (2) 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 Part C of IDEA may be used to pay the provider of services, for services and functions authorized under Part C of IDEA, including health services, as defined in section 303.16, but not medical services, functions of the child find system described in sections 34 C.F.R. 303.115 to 303.117 and sections 34 C.F.R. 303.301 to 303.320, and evaluations and assessments in section 34 C.F.R. 303.321, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.
  - (3) Nothing in Part C of IDEA 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 (SSA), 42 U.S.C. 701, et seq. 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 IDEA.

(C) Consistent with sections 34 C.F.R. 303.120 to 303.122 and sections 34 C.F.R. 303.220 to 303.226, the lead agency may use funds under Part C for activities or expenses that are reasonable and necessary for implementing the HMG early intervention system for infants and toddlers with disabilities including funds:

- (1) For direct early intervention services for infants and toddlers with disabilities and their families under Part C of IDEA that are not otherwise funded through other public or private sources, subject to sections 34 C.F.R. 303.510 to 303.521;
- (2) To expand and improve services for infants and toddlers with disabilities and their families under Part C of IDEA that are otherwise available;
- (3) The lead agency for the HMG early intervention system does not provide FAPE to any child, and
- (4) The lead agency for the HMG early intervention system does not provide services to children at risk for developmental delay.

(D) Methods to ensure the provision of, and financial responsibility for, early intervention services include all of the following:

- (1) The lead agency for the HMG early intervention system shall ensure it has in place methods for state interagency coordination.
- (2) Under these methods, the department shall ensure that the interagency agreement or other method for interagency coordination is in effect between each Ohio public agency and in order to ensure:
  - (a) The provision of, and establishing financial responsibility for, early intervention services provided under Part C of IDEA; and
  - (b) Such services are consistent with the requirement in section 635 of IDEA and the Ohio application under section 637 of IDEA, including the provision of such services during the pendency of any dispute between state agencies.
- (3) The methods in paragraphs (D)(2)(a) and (D)(2)(b) of this rule meet all requirements in section 637 of IDEA and be set forth in one of the following:
  - (a) State law or regulation;

- (b) 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
  - (c) Other appropriate written methods determined by the governor, or the governor's designee, and approved by the secretary through the review and approval of Ohio's application.
- (4) Each method includes 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 HMG early intervention system. Those procedures include a mechanism for resolution of disputes within agencies and for the governor, governor's designee, or office of health transformation to make a final determination for interagency disputes, which determination is binding upon the agencies involved.
- (5) The method:
  - (a) Permits 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
  - (b) Includes the process that the department 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.
- (6) If, during the department's resolution of the dispute, the governor, governor's designee, or office of health transformation determines that the assignment of financial responsibility under section 637 of IDEA was inappropriately made:
  - (a) The governor, governor's designee, or office of health transformation reassigns the financial responsibility to the appropriate agency; and
  - (b) The lead agency for the HMG early intervention system shall make arrangements for reimbursement of any expenditure incurred by the agency originally assigned financial responsibility.
- (7) The methods adopted by Ohio under section 637 of IDEA:
  - (a) Include a mechanism to ensure that no services that a child is entitled to receive under Part C of IDEA are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

- (b) Are consistent with the written funding policies adopted by Ohio under section 637 of IDEA and include any provisions Ohio has adopted under section 34 C.F.R. 303.520 regarding the use of insurance to pay for Part C services.
- (8) Each method includes any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision, including monitoring of, EIS providers, including all public agencies, involved in the HMG early intervention system.
- (E) Policies related to use of public benefits or insurance or private insurance to pay for early intervention services include all of the following:
- (1) Ohio may not use the public benefits or insurance of a child or parent to pay for Part C services unless the early intervention service provider provides written notification, consistent with section 34 C.F.R. 303.520(a)(3), to the child's parents, and meets the no-cost protections identified in this paragraph.
  - (2) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, Ohio:
    - (a) Does 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 obtains 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;
    - (b) Obtains consent, consistent with sections 34 C.F.R. 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 on form HEA 8042 if that use would:
      - (i) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;
      - (ii) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;
      - (iii) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or
      - (iv) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

- (3) If the parent does not provide consent under paragraph (E)(2)(b) of this rule, the lead agency for HMG early intervention still makes available those Part C services on the IFSP to which the parent has provided consent.
- (4) Prior to using a child's or parent's public benefits or insurance to pay for Part C services, an early intervention service provider provides written notification to the child's parents. The notification includes:
  - (a) A statement that a child's personally identifiable information is shared with Ohio medicaid, is shared with parents;
  - (b) A statement of the no-cost protection provisions in section 34 C.F.R. 303.520(a)(2) and that if the parent does not provide the consent under section 34 C.F.R. 303.520(a)(2), the lead agency for the early intervention system still makes available those Part C services on the IFSP for which the parent has provided consent;
  - (c) A statement that the parents have the right under section 34 C.F.R. 303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the Ohio public agency responsible for the administration of the Ohio public benefits or insurance program (e.g., medicaid) at any time; and
  - (d) 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.
- (5) Parents do not incur any costs as a result of using public benefits or insurance (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), this information is included in the State's system of payments policies under section 34 C.F.R. 303.521 and included in the notification provided to the parent under paragraph (E)(2) of this rule.
- (6) Parent inability to pay is part of Ohio's system of payments and is further described in rule 3701-8-08.1 of the Administrative Code and in accordance with section 34 C.F.R. 303.521(a)(3).
- (7) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 C.F.R. 80.25.
- (8) If the state receives reimbursements from federal funds (e.g., medicaid reimbursements attributable directly to federal funds) for services under Part C

of IDEA, those funds are considered neither state nor local funds under section 34 C.F.R. 303.225(b).

- (9) If the state spends funds from private insurance for services under Part C of IDEA, those funds are considered neither state nor local funds under section 34 C.F.R. 303.225.
- (10) The lead agency for the HMG early intervention system does not receive funds from a parent or family member under the Ohio system of payments established under section 34 C.F.R. 303.521.

(F) System of payments and fees:

- (1) The lead agency for the HMG early intervention system has adopted a system of payments in section 34 C.F.R. 303.500(b), the state's policy for payor of last resort are in writing in rule 3701-8-08.1 of the Administrative Code and specify which functions or services 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.
- (2) The lead agency for the HMG early intervention system ensures that:
  - (a) 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 in this rule;
  - (b) 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 Part C of IDEA to the child or the child's family such that, if the parent or family meets the definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost;
  - (c) 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;
  - (d) 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;
  - (e) 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

- (f) 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.
- (3) The lead agency for the HMG early intervention system has established policies and procedures for the use of funds necessary to implement the state's payment for early intervention services when other sources are not identifiable, and a system for payment with existing sources, which includes the use of public benefits or private insurance.
- (4) Certain early intervention functions or services are required to be provided at public expense for eligible infants and toddlers and their families by federal or state regulation. The functions and services provided at no cost to parents through Part C funds are:
  - (a) Child find including public awareness and referral;
  - (b) Screening, evaluation, or assessment;
  - (c) Development of an individualized family service plan;
  - (d) Service coordination; and
  - (e) Procedural safeguards.
- (5) Eligible infants and toddlers and their families may receive early intervention services at no cost to parents. The HMG early intervention system does not have a sliding fee scale or require parents to pay co-pays or deductibles for provision of early intervention services specified on a child's IFSP.
- (6) Early intervention services provided to eligible infants and toddlers and their families are financed through multiple funding sources.
- (7) Sources which may be available to finance individualized services, as appropriate, may include, but are not limited to, the following:
  - (a) Title XIX of the Social Security Act (medicaid);
  - (b) Part C, Individuals with Disabilities Education Act (IDEA); and
  - (c) State appropriation.
- (8) The lead agency for the HMG early intervention system includes the use of private insurance in its system of payments.

- (a) A parent is provided first with written notification of request to access child's or family's private insurance, with this rule attached, to ensure communication of a parent's right to consent before use of insurance; and of the no-cost protection provisions; and of the lead agency's obligation to make early intervention services available to the eligible infant or toddler when consent to use private insurance is not provided by the parent.
  - (b) A parent is asked to provide written consent to access his or her private insurance before the payor of last resort is utilized, by completing form HEA 8042, in accordance with rule 3701-8-08.1 of the Administrative Code.
- (9) The lead agency for the HMG early intervention system does not charge family fees, copayments, or deductibles for early intervention services. A parent who wishes to contest an action or determination related to the system of payments may:
  - (a) Participate in mediation in accordance with section 34 C.F.R. 303.431.
  - (b) Request a due process hearing under section 34 C.F.R. 303.436 or 303.441, whichever is applicable.
  - (c) File a state complaint under section 34 C.F.R. 303.434.
  - (d) 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 listed in this rule.
- (10) The lead agency for the HMG early intervention system shall inform parents of these procedural safeguard options by:
  - (a) Requiring annual conversation of "Parent's Rights" by the service coordinator in rule 3701-8-07.1 of the Administrative Code;
  - (b) Including this information in the early intervention parental rights brochure provided to parents under sections 34 C.F.R. 303.421 and 303.521(e) and by rule 3701-8-10 of the Administrative Code.

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Five Year Review (FYR) Dates: 11/7/2017

CERTIFIED ELECTRONICALLY

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Certification

01/16/2018

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Date

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