

UNDERSTANDING THE NEW IDEA PART C REGULATIONS

MASSACHUSETTS ICC RETREAT

OCTOBER 5-6, 2011



PART C REGULATIONS

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<http://idea.ed.gov/>

PART C REGULATIONS

Subpart A – General *[303.1 through 303.37]*

**Subpart B – State Eligibility for a Grant and Requirements for a
Statewide System**

[303.100 through 303.126]

**Subpart C- State Application and Assurances *[303.200 through
303.236]***

**Subpart D – Child Find, Evaluations and Assessments, and IFSPs
*[303.300 through 303.346]***



PART C REGULATIONS

Subpart E – Procedural Safeguards

[303.400 through 303.449]

Subpart F – Use of Funds and Payor of Last Resort *[303.500 through 303.521]*

Subpart G – SICCC *[303.600 through 303.605]*

Subpart H – State Monitoring and Enforcement; Federal Monitoring and Enforcement; Reporting; and Allocation of Funds *[303.700 through 303.734]*





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IDEA 2004: Building the Legacy

Part C (birth - 2 years old)


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The Individuals with Disabilities Education Act (IDEA), is a United States federal law that governs how states and public agencies provide early intervention, special education, and related services to children with disabilities.

Welcome to the U.S. Department of Education, Office of Special Education Programs' (OSEP's) Part C of the IDEA website.

This site was created to provide a "one-stop shop" for resources related to Part C of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, announced on September 6, 2011. It is a "living" website and will change and grow as resources and information become available. When fully implemented, the site will provide searchable versions of IDEA and the regulations, access to cross-referenced content from other laws (e.g., the Head Start Act, the Family Education Rights and Privacy Act (FERPA), etc.), webinars on selected topics, non-regulatory guidance, links to OSEP's Technical Assistance and Dissemination (TA&D) Network, a Q&A Corner where you can submit questions, and a

News

- **Final Regulations in the Federal Register**
[Click here](#) to download the final Part C regulations printed 9/28/11.
- **Posny remarks on IDEA Part C Final Regulations**
[Click here](#) to view the September 26, 2011 video of OSERS Assistant Secretary Alexa Posny's remarks on the Individuals with Disabilities Education Act (IDEA) Part C final regulations, highlighting key changes.

CHILD FIND AND PUBLIC AWARENESS



PROGRAM AND SERVICE COMPONENTS

Pre-referral

- Public awareness
- Child find

Referral

Post-referral

- Screening
- Evaluation and assessment
- Development, review & implementation of IFSPs

PUBLIC AWARENESS PROGRAM--INFORMATION FOR PARENTS.

Adopt procedures for assisting the primary referral sources described in § 303.303(c) in disseminating the information described in paragraph (b) of this section to parents of infants and toddlers with disabilities.




PUBLIC AWARENESS PROGRAM--INFORMATION FOR PARENTS.


Information specific to toddlers with disabilities. Each public awareness program also must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of services under section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.



CHANGES TO CHILD FIND

- Requires “rigorous standards” to appropriately identify children to reduce need for future services
 - Added programs for coordination of child find efforts
 - Home Visiting
 - Child Protection and Welfare including CAPTA
 - Family Violence Prevention and Services Act
 - Early Hearing Detection and Intervention (EHDI)
 - Children’s Health Insurance Program (CHIP)
 - Child Care
- 

PRIMARY REFERRAL SOURCES

- Emphasis on word “include”
 - Added:
 - Public agencies and staff in the child welfare system, including child protective services and foster care
 - Homeless family shelters
 - Domestic violence shelters and agencies
- 


REFERRAL

- Added CAPTA language with clarification that intent is not to include siblings of child, but only child “substantiated”
- Requires referral as soon as possible, but in no case more than seven days, after the child has been identified


EVALUATION AND ASSESSMENT



TIMELINE


- Retains 45 day timeline from date the lead agency or EIS provider receives a referral to the IFSP meeting
 - Establishes two circumstances in which 45 day timeline would not apply:
 - Child or parent is unavailable due to exceptional family circumstances
 - Parent has not provided consent despite documented repeated attempts
- 

TIMELINE

- Both exceptions must be documented in the child's early intervention record
 - Activity must be completed as soon as possible after the documented circumstance no longer exists
 - The initial family assessment must be completed within the 45 day timeline if the parent concurs
- 

SCREENING POLICIES AND PROCEDURES


Lead agency may adopt Screening procedures

- Means activities ...that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, ...infants and toddlers suspected of having a disability and in need of early intervention services; and
 - Includes the administration of appropriate instruments by personnel trained to administer those instruments.
- 


SCREENING PROCEDURES

- For every child under the age of three who is referred to the Part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to—
 - (1) Provide an evaluation of the child under § 303.321 unless the child is suspected of having a disability or the parent requests an evaluation under paragraph (a)(3) of this section; or
 - (2) Make early intervention services available under this part to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under § 303.21.


SCREENING REQUIREMENTS

- Must provide notice of screening including right to evaluation & obtain parental consent
 - If screening results indicate:
 - “child is suspected of having a disability” must provide written prior notice and obtain consent to conduct evaluation/assessment
 - “child is not suspected of having a disability” must provide written prior notice including right to request evaluation
- 

EVALUATION

- An evaluation is required unless eligibility has been determined through a diagnosed condition
 - If child is found eligible, following are required:
 - Multidisciplinary assessment of child; and
 - Family-directed assessment of the family
 - If child is found not eligible, written prior notice is required
- 


DEFINITION OF EVALUATION

- Evaluation means the procedures used by qualified personnel to determine a child 's initial and continuing eligibility under this part, consistent with the definition of infant or toddler with a disability in § 303.21.
 - An initial evaluation refers to the child 's evaluation to determine his or her initial eligibility under this part
- 


DEFINITION OF ASSESSMENT

- Assessment means the ongoing procedures used by qualified personnel to identify the child 's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child 's eligibility under this part and includes the assessment of the child, consistent withand the assessment of the child 's family, consistent with ...
- Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child 's first IFSP meeting.

INFORMED CLINICAL OPINION

- Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child.
 - Lead agency must ensure that informed clinical opinion may be used as an independent basis to establish a child 's eligibility ...even when other instruments do not establish eligibility;
 - In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility
- 

EVALUATION PROCEDURES

- Must include:
 - Administering an evaluation instrument
 - Taking the child's history including interviewing parent
 - Identifying the child's level of functioning in each of the developmental areas
 - Gathering information from other sources
 - Reviewing medical, educational or other records
- 

INFANT OR TODDLER WITH A DISABILITY

- Included more specific listing of potential diagnosed conditions
- Removed “severe” from sensory impairment
- Added category of children who are eligible for services under section 619 and who previously were served by Part C until they enter or are eligible to enter kindergarten
 - Must receive an educational component:
 - Promotes school readiness
 - Incorporates pre-literacy, language and numeracy skills
 - Provides written notification to parents regarding rights and responsibilities regarding choice between Part C and Section 619

ASSESSMENT PROCEDURES

- Must include:
 - Review of evaluation results
 - Personal observation of the child
 - Identification of child's needs in each of developmental areas




FAMILY ASSESSMENT

- Must:
 - Be voluntary on part of each family member participating
 - Be based on information obtained through an assessment tool and an interview
 - Include family description of its resources, priorities and concerns related to enhancing child's development


IFSP



IFSP

- Adds term “results” when “outcome” is used
 - Adds language “Each early intervention service must be provided as soon as possible after the parent provides consent for that service...”
 - Changes language to “The service coordinator designated by the public agency to be responsible for implementing the IFSP.”
- 

IFSP CONTENT

- Changes language in Status from “must be based on professionally acceptable objective criteria” to “based on the information from that child ‘s evaluation and assessments.”
 - Changes “major outcomes” to “measurable results or measurable outcomes”
 - Adds “(including pre-literacy and language skills, as developmentally appropriate for the child)” to outcomes or results statement
- 

IFSP SERVICE LANGUAGE

- The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including:
- (i) The length, duration, frequency, intensity, and method of delivering ...

IFSP CHANGES

Added and defined “length” and “duration”:


- Length means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and
- Duration means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).

ADDITIONAL IFSP NE LANGUAGE


“The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be--

- (1) Made by the IFSP Team (which includes the parent and other team members);
- (2) Consistent with the provisions in § § 303.13(a)(8), 303.26, and 303.126; and
- (3) Based on the child ‘s outcomes that are identified ...”

NEW LANGUAGE IN OTHER SERVICES

- Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part; and
 - If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.
- 


IFSP ADDITION

- Confirmation that child find information about the child has been transmitted to the LEA ... and with parental consent ... transmission of additional information needed by the LEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP ... and
 - Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.
- 

PROCEDURAL SAFEGUARDS




PROCEDURAL SAFEGUARDS

- General Responsibilities
 - Confidentiality of Information
 - Parental Consent and Notice
 - Surrogate Parent
 - Dispute Resolution Options
- 

GENERAL RESPONSIBILITIES

- Adds requirement to make available to parents an initial copy of the child's early intervention record, at no cost to the parents.


CONFIDENTIALITY OF INFORMATION

- Incorporates Part B language with modifications
 - Clarifies procedures apply as soon child is referred for EI services
 - Lead agency or an EIS provider must accept referral without parent consent
 - Primary referral source may be required to obtain parental consent prior to making a referral under other applicable laws (such as HIPAA, CAPTA, or State laws). “
- 


CONFIDENTIALITY

- Reinforces applicability of FERPA to Part C
- Changed timeline for parental access to records from 45 days to 10 days
- Added “A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.”
- Clarifies right to amend records only applies to information about the parent and child, not other family member


PARENTAL CONSENT AND NOTICE

- Clarifies parental consent required before:
 - Administering screening
 - All evaluations and assessments
 - Providing early intervention services
 - Use of public benefits or insurance or private insurance are accessed, if required
 - Disclosure of personally identifiable information
 - May not use hearing procedures under Part B or Part C to challenge parent's refusal to provide consent (now including consent to evaluation)
- 

SURROGATE PARENT

- For children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child.
 - In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements.
- 


SURROGATE PARENT

- Expands language regarding who may not be a surrogate parent to include “Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child”
 - Requires reasonable efforts to ensure assignment of surrogate parent not more than 30 days after determination child needs a surrogate parent.
- 


MEDIATION

- May be requested at any time
- Mediators must meet impartiality criteria
- Mediation agreement is enforceable in state or federal court
- Agreement is signed by both the parent and a representative of the lead agency who has the authority to bind such agency

STATE COMPLAINT PROCEDURES

- Adds reference to compensatory services
 - Deletes three year reference for filing deadline; only one year now
 - Gives agency opportunity to respond
 - Requires mediation option
 - Requires party filing complaint to provide copy to agency or provider serving child at same time as filing complaint
- 

DUE PROCESS HEARING

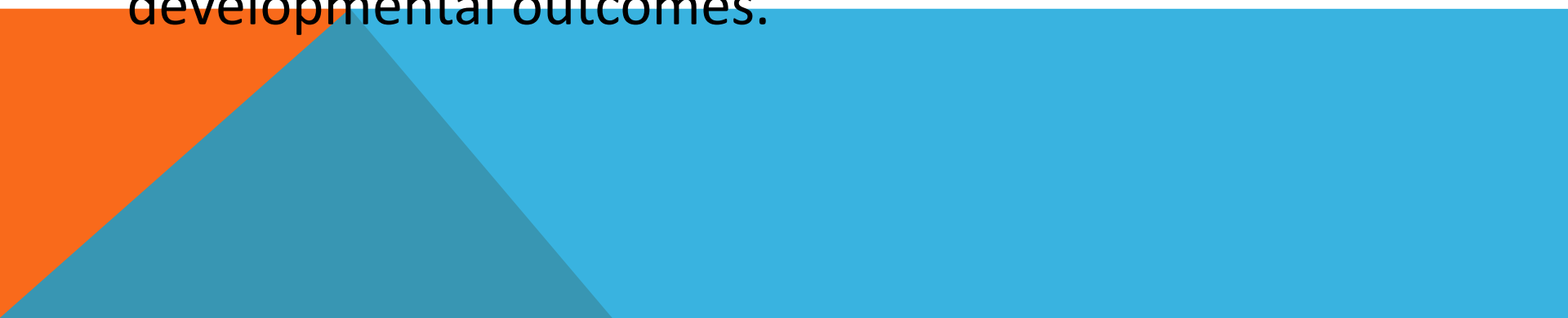
- Retains state option to use either Part B or Part C process
 - Incorporates Part B procedures into Part C regulations with modifications including option of 30 or 45 day timeline
 - Under Part C process, extension of 30 day timeline can now be granted
- 

DEFINITIONS



ASSISTIVE TECHNOLOGY DEVICE

“Whether a hearing aid or an appropriate related audiological service is considered an assistive technology device or an early intervention service, respectively, for an infant or toddler with a disability depends on whether the device or service is used to increase, maintain, or improve the functional capabilities of the child and whether the IFSP Team determines that the infant or toddler needs the device or service in order to meet his or her specific developmental outcomes.”



ASSISTIVE TECHNOLOGY

The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.




EARLY INTERVENTION SERVICES

“While nursing services and nutrition services are not specifically mentioned in the Act, they historically have been included in the definition of early intervention services.”

Adds “Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.”


VISION SERVICES

“clarified ...evaluations and assessments of visual functioning include the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development. [The Department] also agrees that reference to independent living applies to older children and have deleted the reference...”



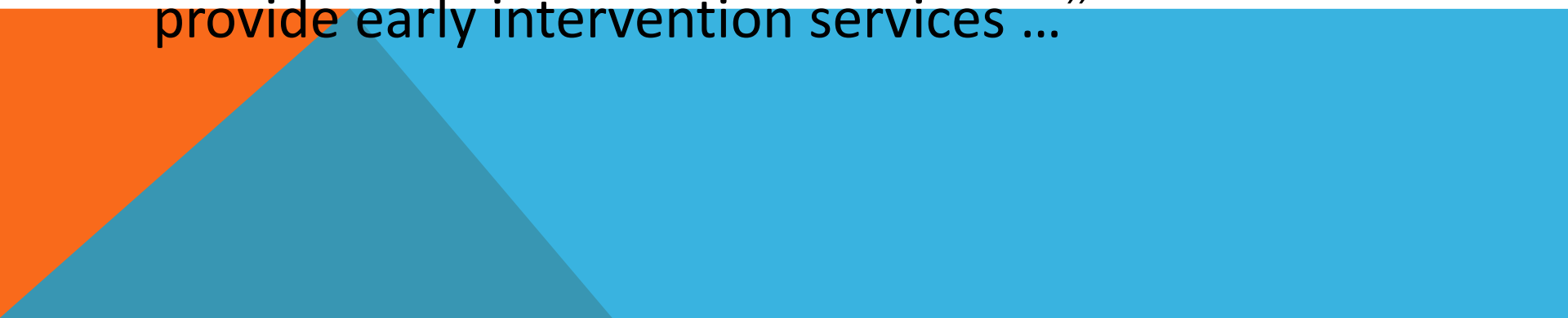
SPECIAL EDUCATORS

“The term ‘special educators’ consists of many distinct professions including teachers of children with hearing impairments and teachers of children with visual impairments. Therefore, including teachers of children with hearing impairments and teachers of children with visual impairments as examples of special educators in ... is appropriate and listing these terms separately is not necessary.”




OTHER SERVICES

Adds “Other services. The services and personnel identified and defined in ...do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel ... Nothing in this section prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified ...of another type of personnel that may provide early intervention services ...”



MULTIDISCIPLINARY

- The involvement of two or more separate disciplines or professions and with respect to:
 - Evaluation of the child...and assessments of the child and family ...may include one individual who is qualified in more than one discipline or profession;
 - The IFSP Team in § 303.340 must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with § 303.343(a)(1)(iv)).
- 

NATIVE LANGUAGE

- The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, ...and
- For evaluations and assessments conducted ... the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

NATIVE LANGUAGE

Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).




NATIVE LANGUAGE

“[the Department] has not included in these final regulations the requirement in proposed § 303.25(a)(2) that native language be used in all direct contact with the child. However, as recipients of Federal financial assistance, Part C lead agencies must comply with the requirements in Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance.”


NATURAL ENVIRONMENTS

- Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of § 303.126.
- “[the Department] does not believe that a clinic, hospital or service provider’s office is a natural environment for an infant or toddler without a disability; therefore, such a setting would not be natural for an infant or toddler with a disability.”

PARENT

- Parent means--
 - A biological or adoptive parent of a child;
 - A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);
- 

PARENT (CONT)

- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - A surrogate parent who has been appointed in accordance with § 303.422 or section 639(a)(5) of the Act.
- 

PARENT (CONT)

The biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified ...to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.


PARENT (CONT)

If a judicial decree or order identifies a specific person or persons ...to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

TRANSITION



TRANSITION

- Includes timelines for notification step of children who may be eligible for special education
 - Includes option for an opt-out policy
 - Requires notification to LEA and SEA
 - Clarifies transition plan is not separate document – part of IFSP
 - Requires interagency and intra-agency agreements
 - Transition conference must meet IFSP requirements
- 

TRANSITION

Notification Requirements (there is only one)

- No fewer than 90 days before 3rd birthday, if child “may be eligible for preschool services under Part B”, must notify SEA and LEA of the child.
- If Part C eligibility is determined more than 45 days but less than 90 days before 3rd birthday, and child “may be eligible for preschool”, must notify SEA and LEA as soon as possible after determining eligibility for Part C
- If child is referred with fewer than 45 days before 3rd birthday, and child “may be eligible for preschool” with parental consent, must notify SEA and LEA – no eligibility determination for Part C required.
- Opt Out Policy

TRANSITION

If a child is referred to the lead agency fewer than 45 days before that child's third birthday, the lead agency is not required to conduct an evaluation, assessment or an initial IFSP meeting.




FINANCE




PUBLIC INSURANCE

Use of public benefits:

- Must provide written notification to parents;
 - Must ensure no cost protection provisions;
 - May not require parents to enroll in public benefits or insurance program; and
 - Must obtain consent if use does not meet the no cost protection provisions.
- 


PUBLIC INSURANCE (CONTINUED)

Written notification:

- Consent for release of child's personally identifiable information for purpose of billing to the state agency responsible for the public benefit or program;
 - Statement of no-cost protections and that if the family refuses to consent, the child is still eligible to receive all IFSP services that the family has consented to;
 - Right to withdraw consent at any time; and
 - Statement of general categories of cost that the parent may incur.
- 

PUBLIC INSURANCE (CONTINUED)

No cost protections:

- Decrease in available lifetime coverage or other insured benefit for the child or parent;
 - Payment by the family for services that would otherwise be covered by the public benefits or insurance program;
 - Increase in premiums or discontinuation of public benefits or insurance
 - Loss of home and community-based waivers based on aggregate health-related expenditures
- 

USE OF PRIVATE INSURANCE TO PAY FOR PART C SERVICES

- Must obtain written parental consent
 - At initial IFSP;
 - Each subsequent time consent for services is required due to increase in service provision;
- Any cost for use must be included in system of payments policy
 - Policy must be provided to the family that identifies potential cost that may be incurred

PRIVATE INSURANCE TO PAY FOR PART C SERVICES (CONTINUED)

Parental Consent not required if:

- If State has enacted statute regarding private health insurance coverage that expressly provides :
 - Use does not affect annual or lifetime cap for child or family
 - Use does not negatively affect availability of insurance coverage or result in discontinuance of coverage for child or family
 - Use does not result in an increase in the annual premium for child or family


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.”

System of Payments:

- *“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...”*

SYSTEM OF PAYMENT AND FEES POLICY

- Payment system and schedule of fees
 - Basis and amount of fees
 - Definition of ability and inability to pay including process for determining
 - Assurance regarding services to be provided at no cost
 - Provision regarding failure to provide income information
 - Provision that permits the lead agency to use Part C funding to pay some costs (premiums, deductibles, co-pays)
 - Procedural Safeguards
- 

**STATE INTERAGENCY
COORDINATING COUNCIL**



SICC CHANGES

The NPRM provision saying a “parent” may not be employee was not kept in final regulation

Permits ICC to coordinate and collaborate with state Early Learning Council

Permits one person to represent several programs or agencies on the council



Data Collection

Lead agency must conduct its own child count or use EIS providers to complete its child count.

If the lead agency uses EIS providers to complete its child count, then the lead agency must:

- (a) Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;
- (b) Obtain certification from each EIS provider that an unduplicated and accurate count has been made;
- (c) Ensure that documentation is maintained to enable the State and the Secretary to audit the accuracy of the count.