

## Questions to OSEP regarding §303.520 and §303.521

The topic of Family Cost Participation (the use of public insurance, private insurance and family fees) has been the subject of discussion and debate over the years and has been renewed with the publication of the 2011 Federal regulations for the Part C system. As state budgets have been stressed with the economic downturn, and federal funds that are flat or shrinking, the ability of state part C system to utilize all available fiscal resources is critical. As recognized in Sec. 631 Findings and Policies”

*“(b) POLICY.--It is the policy of the United States to provide financial assistance to States--(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources **(including public and private insurance coverage).**”*

As states implemented their statutory charge, the use of public and private insurance as well as family fees has been a critical component to their success in funding necessary supports and services to eligible children and their families.

In the recently completed finance survey conducted by ITCA, 40 states reported using Medicaid, 29 states reported using Private Insurance (fee for service and managed care) and 18 states reported using family fees to finance their early intervention system. The total amount of revenue generated from states able to provide those data was \$934,317,079. If all states were able to report the revenue it would be over \$1Billion dollars. The breakdown is as follows:

- Of the forty states that reported the use of Medicaid, 30 states (75%) were able to provide revenue information in the amount of \$831,807,445;
- Of the twenty-nine states that reported the use of private insurance (fee for service and managed care), fourteen states (48%) were able to provide revenue information in the amount of \$88,697,701; and
- Of the eighteen states that reported the use of family fees, nine states (50%) were able to provide revenue information in the amount of \$13,811,933.

As demonstrated by these numbers, the interpretation of the 2011 regulations has the potential for significant negative financial impact on state Part C systems at a time when there are no new state or federal dollars available to replace public and private insurance revenue as well as family fee revenue.

On the following pages are questions that have been raised by our members in relation to the broad umbrella of family cost participation contained in §303.520 and §303.521.

- *§303.520 (a) (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.” And §303.520 (a)(2)(ii) “...with regard to using the public benefits or insurance of a child or parent to pay for Part C services, the State--(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....”*
  - **Does the requirement for written notification to the child’s parents and the requirement for consent to use insurance, if there is a cost, need to be two separate processes or can one document be created that meets both requirements?**
  - **Could the consent to bill public insurance when an increase of service is recommended be contained on the IFSP change page or must it be a separate document?**
  - **What if the consent is obtained over the phone? Does the system still need to get written permission before billing?**
  - **If there is no cost to the parents as a result of accessing public insurance, must consent for release of identifiable information still be obtained:**
    - **When the lead agency is the same as the Medicaid Agency?**
    - **When the lead agency is not the same as the Medicaid Agency?**
- *§303.520 (b)(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.”*
  - **Must the System of Payment policy explicitly state that they will not pay for a family’s premium?**
  - **This also seems to state that a State may choose whether to pay for co-pays and deductibles that the family may incur. If they choose not to pay for them, must specific language related to who will be responsible for co-pays and deductibles be included in their system of payment policy?**

- *303.520 (b) Use of private insurance to pay for Part C services. (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.*
  - **Is it still permissible for a state to bill commercial health insurance that is exempt from any state insurance mandates and that will affect parents annual and lifetime caps, as long as parents have signed consent?**
  - **If a family's policy does not fall under the state statute, does permission need to be obtained?**
- *§303.520 (b) (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 Federal fiscal year following the effective date of the statute."*
  - **Can the baseline be recalculated on an annual basis if the state has the requisite statutory language?**
  - **If there is statutory authority to recalculate once, why can't the baseline be recalculated on an ongoing basis as long as the "total State effort" is maintained?**
- *§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--.... (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;

- **If the state does not charge any out of pocket for parents who have an ability to pay definition?**
- **Can the state use both family income and availability of insurance in calculating ability to pay?**
- *§303.521(a)(4)(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)*
  - **How does OSEP define “actual cost”? Does that include all agency/provider costs to deliver the service? Does that include total system costs?**
  - **If funding to the provider is not done on a fee for service basis, how will the provider break out an hour of cost per child?**
- *§303.521(a)(4)(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.*
  - **Can states have a System of Payment policy that charges a fee to families who refuse access to their public or private insurance?**
  - **Can the state bill commercial insurance AND parents as long as the combination of the two does not exceed the state's cost for ei services (excluding the state's cost for those services that must be offered at no cost to families)?**
  - **If the state can bill commercial insurance and charge a fee to parents as stated above, can the state impose a higher fee schedule on those parents who have commercial health insurance but decline access to their insurance?**
- *303.521(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.

- **If a state does not charge any fees to the family , must they include a description of policies and procedures to inform parents that if they wish to contest the imposition of a fee or the State's determination of the parent's ability to pay?**
- **If a state is required to add that language to their SOP, it really confuses parents. The SOP should be an easy to understand document that explains the state's process. If the state does not charge family fees, them why confuse the SOP with all that language?**

### **Additional Fiscal Questions**

- *§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).*
  - **Is it correct that we have to seek Medicaid whenever possible and have documented that the family either refused or consented?**
  - **Do we also have to seek private insurance as well if our state statute protects families from all costs?**