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# Part C Statutory Provisions Related to Finance

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*IDEA 2004 Part C Statutory Provisions Related to Finance*

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## **SEC 631 FINDINGS AND POLICY**

(a)(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

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

## **SEC. 632 DEFINITIONS**

(4)(b) The term 'early intervention services' means developmental services that—are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

## **SEC. 635 REQUIREMENTS FOR STATEWIDE SYSTEM**

(a)(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out— (A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part; (B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources; (C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies; (D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers; (E) the resolution of intra- and interagency disputes; and (F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).”

**SEC. 637 STATE APPLICATION AND ASSURANCES.**

(a) APPLICATION.--A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this part;

(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

(b) ASSURANCES- The application described in subsection (a)--

(1) Shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

(2) Shall contain an assurance that the State will comply with the requirements of section 640;

(3) Shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

(4) Shall provide for--

(A) Making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

(B) Keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;

(5) Provide satisfactory assurance that Federal funds made available under section 643 to the State--

(A) Will not be commingled with State funds; and

(B) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

(6) Shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State; ...

## **SEC. 638 USE OF FUNDS**

In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

(1) 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;

(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and

(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), 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 or private community-based organizations, services, and personnel for the purposes of—

(A) identifying and evaluating at-risk infants and toddlers;

(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

(C) conducting periodic follow-up on each such 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.

## **SEC. 640 PAYOR OF LAST RESORT.**

(a) NONSUBSTITUTION- Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES-

(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES-

(A) IN GENERAL- The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure--  
(i) The provision of, and financial responsibility for, services provided under this part; and  
(ii) Such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B- The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12), where appropriate.

(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY-

(A) IN GENERAL- If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

(B) REIMBURSEMENT- Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

(3) SPECIAL RULE- The requirements of paragraph (1) may be met through--

(A) State statute or regulation;

(B) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(C) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.

(c) REDUCTION OF OTHER BENEFITS- Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

## **SEC. 641 INTERAGENCY COORDINATING COUNCIL**

(d) MANAGEMENT AUTHORITY.--Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending

council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

(e) FUNCTIONS OF COUNCIL.—

(1) DUTIES.--The council shall—

(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

**SEC. 643 ALLOCATION OF FUNDS.**

**(a) RESERVATION OF FUNDS FOR OUTLYING AREAS-**

**(1) IN GENERAL-** From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

**(2) CONSOLIDATION OF FUNDS-** The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

**(b) PAYMENTS TO INDIANS-**

**(1) IN GENERAL-** The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children

operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

(2) ALLOCATION- For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) INFORMATION- To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

(4) USE OF FUNDS- The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) REPORTS- To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) PROHIBITED USES OF FUNDS- None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) STATE ALLOTMENTS-

(1) IN GENERAL- Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the

amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(2) MINIMUM ALLOTMENTS- Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of--

(A) 1/2 of 1 percent of the remaining amount described in paragraph (1); or

(B) \$500,000.

(3) RATABLE REDUCTION-

(A) IN GENERAL- If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

(B) ADDITIONAL FUNDS- If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

(4) DEFINITIONS- In this subsection--

(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) REALLOTMENT OF FUNDS- If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

(e) RESERVATION FOR STATE INCENTIVE GRANTS-

(1) IN GENERAL- For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 635(c) in order to facilitate the implementation of such policy.

(2) AMOUNT OF GRANT-

(A) IN GENERAL- Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

(B) MAXIMUM AMOUNT- No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

(3) CARRYOVER OF AMOUNTS-

(A) FIRST SUCCEEDING FISCAL YEAR- Pursuant to section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

(B) SECOND SUCCEEDING FISCAL YEAR- Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 633 (from their allotments under this section) during such second succeeding fiscal year.

**SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.