



Current Part C Regulations	NPRM Federal Register (Justification)	Part C 2007 Proposed Regulations	Comments and Analysis
<p><u>§ 303.520 Policies related to payment for services.</u> (a) <i>General.</i> Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State’s early intervention program. The policies must— (1) Meet the requirements in paragraph (b) of this section; and (2) Be reflected in the interagency agreements required in § 303.523.</p>		<p><u>§ 303.511 Establishing financial responsibility for, and methods of, ensuring services.</u> (a) <i>General.</i> Each State must ensure that it has in place methods for establishing financial responsibility (consistent with the methods adopted under Part B of the Act, where appropriate) and providing early intervention services under this part. The methods must meet the requirements of this subpart, and be set forth in-- (1) State law or regulation; (2) 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 (3) Other appropriate written methods determined by the Governor of the State, or the Governor's designee, and approved by the Secretary through the review and approval of the State's application.</p>	<p>303.511(a)(2): EIFA believes that the addition of the requirement that signed inter- and intra-agency agreements clearly identifying the financial and service provision responsibilities is an important and welcomed change to the regulations. We would also recommend that OSEP require states to report on these agreements and the dollar amounts that flow into the system as a 618 data element.</p>

<p><u>§ 303.520 Policies related to payment for services.</u></p> <p>(b) <i>Specific funding policies.</i> A State's policies must—</p> <p>(1) Specify which functions and services will be provided at no cost to all parents;</p> <p>(2) Specify which functions or services, if any, will be subject to a system of payments, and include—</p> <p>(i) Information about the payment system and schedule of sliding fees that will be used; and</p> <p>(ii) The basis and amount of payments; and</p> <p>(3) Include an assurance that—</p> <p>(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and</p> <p>(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family; and</p> <p>(4) Set out any fees that will be charged for early intervention services and the basis for those fees.</p>			
<p><u>§ 303.520 Policies related to payment for services.</u></p> <p>(c) <i>Procedures to ensure the timely provision of services.</i> No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.</p>			

	<p>Proposed § 303.520(a) and (b), regarding policies related to use of public insurance or benefits and private insurance for payment for services, would clarify when public insurance or benefits and private insurance may be used to pay for services pursuant to sections 632(4)(B), 635(a)(10), and 640 of the Act.</p> <p>Proposed § 303.520(a)(1)(i), consistent with sections 632(4)(B) and 639(a)(2) of the Act, would allow a State to access a parent’s public insurance or benefits when the parent is already enrolled if the parent provides consent to disclose personally identifiable information in accordance with proposed § 303.414. Proposed § 303.520(a)(1)(ii) would clarify that a lead agency may use public insurance or benefits, without first obtaining parental consent under proposed §§ 303.7, 303.414, and 303.420(a)(3), for children in foster care when these children are eligible under the State’s Medicaid plan. This provision was added because the Act places significant emphasis on finding children in foster care, and it is important to clarify for lead agencies the circumstances under which they may access public insurance or benefits for these children. Moreover, the provisions in existing laws deem virtually all children receiving foster care assistance under section 472 of the Social Security Act to be automatically eligible for Medicaid under Title XIX of the Social Security Act.</p> <p>Proposed § 303.520(a)(1)(iii) would clarify that a State may access a parent’s public insurance or benefits program when the parent is not already enrolled in a public insurance or benefits program if the parent provides consent under proposed §§ 303.7, 303.414, and 303.420(a)(3), to enroll in such a program. This provision would be added to clarify existing confidentiality requirements. This provision also is necessary to ensure parents are aware of the opportunity to enroll, and provide informed consent prior to enrollment, in a public insurance or benefits program because enrollment in a public insurance or benefits program can potentially have significant negative impact on an individual’s insurability, credit rating, immigration status, and status under other Federal assistance programs.</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services.</u></p> <p>(a) Public insurance and benefits. (1) The State may use the public insurance or benefits program of a parent or infant or toddler with a disability under this part (consistent with the program requirements of the public insurance or benefits program), if--</p> <p>(i) The parent or the infant or toddler with a disability is already enrolled or participating in a public insurance or benefits program, provided that the parent provides consent as defined in § 303.7 to disclose personally identifiable information if required under § 303.414;</p> <p>(ii) The parent has not provided consent under §§ 303.7, 303.414, or 303.420(a)(3), but the infant or toddler with a disability is in foster care and eligible to participate in the public insurance or benefits program; or</p> <p>(iii) The parent is not enrolled in a public insurance or benefits program but agrees to enroll and provides consent to enroll in a public insurance or benefits program in accordance with §§ 303.7, 303.414, and 303.420(a)(3).</p>	<p>303.520(a)(1): EIFA concurs with OSEP that families should provide informed consent when the system accesses public insurance and benefits. We want to maximize the public dollars available to states and we believe that families must be provided with information about all costs related to participation in these programs. We agree that Part C was intended to be a system; however, we are concerned that many states have not ensured that Part C monies did not supplant programs that existed prior to the enactment of Part H. Rather than hold those agencies accountable states have enacted a more complex system of private insurance and parent fees.</p> <p>EIFA recommends that OSEP work closely with Congress and DHHS to incorporate references to Part C and Part C provisions into Title V and Title XIX., in order to clarify how the funding streams should work together.</p> <p>303.520(a)(1)(i): EIFA would request that OSEP clarify in the regulations that consent must be provided annually in conjunction with the IFSP and that it is not necessary to obtain consent each time a service is provided.</p>
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	<p>Proposed § 303.520(a)(2) would clarify that, if a State requires parents to pay the costs incurred as a result of participating in a public insurance or benefits program (such as co-payments, premiums or deductibles or the required use of private insurance as the primary insurance), these costs must be identified in the State's policies regarding its system of payments under proposed § 303.521.</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services. (cont.)</u> (2) If the State requires a parent to pay any types of costs that the parent may incur as a result of participating in a public insurance or benefits program (such as co-payments, premiums or deductibles or the required use of private insurance as the primary insurance), those types of costs must be identified in the State's policies regarding its system of payments under § 303.521; otherwise, the State will not be allowed to charge those costs to the parent.</p>	<p>303.520(a)(2): EIFA supports the proposed requirement that states identify and inform families about the state's system of payments and of all potential costs to parents related to the provision of Part C services. It makes the system of payments more transparent for families.</p> <p>EIFA recommends that, as a part of the System of Payments, families should be informed about ERISA issues that may impact how Part C interacts with their health insurance.</p> <p>EIFA also recommends that family procedural safeguards need to be integrated into each state's System of Payments.</p>
	<p>Proposed § 303.520(a)(3) would clarify that when obtaining parental consent under proposed § 303.520(a), the lead agency must provide parents with a copy of the State's system of payments policies that identify potential costs that the parent may incur while enrolled in a public insurance or benefits program and to ensure that the consent is informed. Proposed § 303.520(a)(3) is being added to ensure that parents would be informed of those costs as part of consenting to the use of public insurance or benefits to pay for early intervention services.</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services. (cont.)</u> (3) In obtaining parental consent required under this section, the lead agency must provide a copy of the State's system of payments policies that identify potential costs that the parent may incur while enrolled in a public insurance or benefits program (such as co-payments, premiums or deductibles or the required use of private insurance as the primary insurance by the public insurance or public benefits program).</p>	<p>303.520(a)(3): EIFA supports the proposed requirement that states identify and inform families of ALL potential costs when a state requires parents to pay any costs related to the provision of Part C services.</p>

	<p>Proposed § 303.520(b)(1)(i) would permit States to use private insurance to pay for early intervention services if the State obtains parental consent as defined in proposed § 303.7 and in accordance with proposed §§ 303.414 and 303.420(a)(3) prior to accessing the parent’s private insurance.</p> <p>Proposed § 303.520(b)(1)(ii) would require that any types of costs (including co-payments, premiums or deductibles) that may be charged to the parent as a result of using the parent’s private insurance be identified in the State’s system of payments policies under proposed § 303.521. Proposed § 303.520(b)(1)(iii) would require that a copy of this policy be provided to parents when obtaining consent.</p> <p>Proposed § 303.520(b)(1)(iv) would incorporate requirements in current § 303.520(b)(3) that, if a parent or family is determined unable to pay under the State’s definition of inability to pay that is required in proposed § 303.521(a)(3) and does not provide consent under proposed § 303.520(b)(1)(i), the lack of consent may not be used to delay or deny any Part C services to the child or family.</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services. (cont.)</u></p> <p>(b) Private insurance. (1)(i) Except as provided in paragraph (b)(2) of this section, the State may use the private insurance of a parent to pay for services under this part only if the parent provides consent to do so in accordance with Sec. Sec. 303.7, 303.414, and 303.420(a)(3).</p> <p>(ii) If the State requires a parent to pay any types of costs that the parent may incur as a result of the State’s use of private insurance to pay for early intervention services, those types of costs (such as deductibles or co-payments) must be identified in the State’s system of payments policies under § 303.521; otherwise, the State will not be allowed to charge those costs to the parent.</p> <p>(iii) In obtaining parental consent required under this section, the lead agency must provide a copy of the State’s system of payments policies that identify the potential types of costs that the parent may incur while enrolled in a private insurance program (such as co-payments, premiums or deductibles).</p> <p>(iv) If a parent or family is determined unable to pay under the State’s definition of inability to pay under § 303.521(a)(3) and does not provide consent under paragraph (b)(1)(i) of this section, the lack of consent may not be used to delay or deny any services under this part to a child or the family.</p>	<p>303.520(b): EIFA supports OSEP’s proposed requirement that as part of obtaining parental consent that the lead agency identify all potential costs to families. We have heard from families that lead agencies are not always aware of all of the costs parents incur as a result of participating in Part C activities. This is an important step in ensuring that families are informed of potential costs and can make informed decisions on behalf of their child and family. EIFA also recommends that OSEP make collection of data on these costs a 618 data element.</p> <p>EIFA further recommends that OSEP support a study to document the effect of the regulations in 303.520 and 303.521 on family decision-making regarding participation in Part C.</p> <p>303.520(b)(1)(iv) and 303.521(a)(4)(ii): Inability to pay. EIFA is concerned that there is no data on the effects to families by the increased use of private insurance and parent fees, there are no reports on the number of families who request waivers for parent costs due to inability to pay or the number of waivers granted. EIFA recommends that OSEP require states allow families to use high out-of-pocket costs for other expenses related to their child’s disability (e.g., medical and educational costs) and to address issues related to cost-of-living disparities in states (most state’s use a cost-of-living differential to determine the rates they pay their providers, it is therefore appropriate that they do the same for families).</p>
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	<p>Proposed § 303.520(b)(2) would provide a specific exception to the parental consent requirements in proposed § 303.520(b)(1) for those States that have adopted specific statutes requiring private insurance companies and other entities to provide coverage for Part C early intervention services. This exception would only apply if the State statute ensures that—(1) lifetime coverage caps for the infant or toddler with a disability and parents are not triggered by the use of health insurance benefits to pay for Part C early intervention services; (2) the health insurance coverage of the infant or toddler with a disability and his or her family may not be discontinued due to the use of the health insurance to pay for Part C services; and (3) health insurance premiums and costs for the infant or toddler with a disability or his or her family may not be increased solely due to use of the health insurance to pay for Part C services.</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services. (cont.)</u> (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 ensures that the use of private health insurance to pay for Part C services cannot— (i) Count towards the lifetime coverage caps for the infant or toddler with a disability and parents under their health insurance; (ii) Negatively affect the availability of health insurance to the infant or toddler with a disability and family, and health insurance coverage may not be discontinued due to the use of the health insurance to pay for services under Part C of the Act; or (iii) Be the basis for increasing the health insurance premiums of the infant or toddler with a disability or the child's family.</p>	<p>303.520(b)(2): All families should be given the opportunity to provide informed consent prior to having their private insurance accessed to provide Part C services. The proposed regulatory language perpetuates the myth that when a state enacts a statute to protect families who use their private insurance for Part C services that all families (in that state) are afforded these protections. Unfortunately, this is an issue of ERISA and non-ERISA health insurance plans. Insurance coverage provided through a self-funded plan cannot be regulated by a state. Therefore state statutes and regulations do not provide official protections to families with this form of health coverage. In some states 50-80% of families are provided health coverage through self-funded programs and are therefore not provided with official protections.</p> <p>The fact that the proposed regulation purports the myth that such legislation and/or regulation protects all families in a state points to the need for informed consent for all families prior to utilization of their private insurance. It is therefore critical that OSEP require that state's inform families about potential costs and obtain informed consent prior to utilization of private insurance.</p>
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<p><u>§ 303.520 Policies related to payment for services.</u> (d) <i>Proceeds from public or private insurance.</i> (1) Proceeds from public or private insurance are not treated as program income for purposes of 34 CFR 80.25. (2) If a public agency spends reimbursements from Federal funds (<i>e.g.</i>, Medicaid) for services under this part, those funds are not considered State or local funds for purposes of the provisions contained in § 303.124. (Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10)) [58 FR 40959, July 30, 1993, as amended at 64 FR 12536, Mar. 12, 1999]</p>	<p>Proposed § 303.520(b)(3) would clarify that if a State has enacted a State statute regarding private health insurance coverage that meets the requirements in proposed § 303.520(b)(2) for early intervention services under Part C of the Act that ensures that the use of private health insurance to pay for Part C services, the State may reestablish, for nonsupplanting purposes, in the next Federal fiscal year following the effective date of the statute, a new baseline of State and local expenditures under proposed § 303.225(b). This provision would be added to ensure that States that enacted protective statutes as part of the State's system of payments to ensure funding for Part C services would be able to factor in the change in funding sources for nonsupplanting purposes under Part C of the Act.</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services. (cont.)</u> (3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section regarding private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish in the next Federal fiscal year following the effective date of the statute, a new baseline of State and local expenditures under § 303.225(b).</p>	<p>OSEP and states alike must be aware that insurers will change their policies to avert these protections. Additionally, even in states with these protective legislative practices families report that they have had their employment and health insurance coverage compromised. Families report difficulty changing jobs, loss of health insurance for other employees as the result of the high costs of providing coverage to their family and child.</p>
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	<p>Proposed § 303.520(c)(1) and (2), regarding the treatment of public and private insurance proceeds and reimbursements from public benefits under 34 CFR 80.25, would remain substantively unchanged from current § 303.520(d). However, given the Federal interest in ensuring the use of overall Federal funds (including Part C and Medicaid funds) to increase the availability of services to children with disabilities, the Department seeks comment on whether funds from public benefits (such as Medicaid reimbursements) should continue to be excluded from treatment as program income under 34 CFR 80.25. Specifically, the Department invites comment on the potential estimated cost to States in characterizing these funds as program income (and the concomitant requirement that such funds be used for Part C purposes) as well as the potential estimated benefits to the Federal program and children served under Part C.</p> <p>Proposed § 303.520(c)(3) would add that if the State spends funds from a State public insurance or benefits program or the State portion of a Federal public benefits program (such as the State portion of Medicaid costs) for services under this part, those funds may, but are not required to, be considered State or local funds under proposed § 303.225(b). This proposed provision would also add however that, if a State has elected to include such funds for purposes of nonsupplanting provisions in proposed § 303.225(b), it must continue to aggregate such amounts for all future years. Proposed § 303.520(c)(4) would add that if the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds for nonsupplanting purposes under proposed § 303.225.</p>	<p>(c) Proceeds or funds from public insurance or benefits or from private insurance. (1) Proceeds or funds from public insurance or public benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.</p> <p>(2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under § 303.225(b).</p> <p>(3) If the State spends funds from a State public insurance or benefits program or the State portion of a Federal public benefits program (such as the State portion of Medicaid costs) for services under this part, those funds may be considered State or local funds under § 303.225(b); however, if a State elects to include such funds for purposes of nonsupplanting provisions in § 303.225(b), it must continue to aggregate such amounts for all future years.</p> <p>(4) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under § 303.225.</p>	<p>303.520(c): EIFA supports the notion that all payments whether from parents, private insurers or public programs should be treated as program income and should be used solely for Part C activities. EIFA recommends that OSEP provide states guidance to insure that these dollars flow from states to their localities. We would also recommend that OSEP require states to report on the dollar amounts that flow into the system as a 618 data element.</p>
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	<p>Proposed § 303.520(d)(1) and (2) would clarify that funds received from a parent or family under a State's system of payments are "program income" under 34 CFR 80.25, would not need to be deducted from the total allowable costs charged under Part C of the Act, and must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(1) and (2). Proposed § 303.520(d)(3) would clarify that these funds would not be considered either State or local funds for non-supplanting purposes under proposed § 303.225(b).</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services. (cont.)</u> (d) Funds received under a State's system of payments. Funds received by the State from a parent or family under the State's system of payments established under § 303.521 are considered program income under 34 CFR 80.25. These funds-- (1) Do not need to be deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1)); (2) Must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and (3) Are considered neither State nor local funds under § 303.225(b).</p>	
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<p>§ 303.521 Fees. (a) <i>General.</i> A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.</p>	<p>Proposed § 303.521(a), regarding a State’s system of payments and fees, would incorporate language from current § 303.521(a) regarding a schedule of sliding fees and would further require States to identify in their system of payments policies: (1) Any cost participation fees (such as co-pays or deductible amounts) required to be paid under Federal, State, local or private insurance or benefits programs for which the infant or toddler with a disability or family is enrolled, that meet the requirements of proposed §§ 303.520 and 303.521; and (2) which functions or services will be subject to the system of payments, including any fees charged to the family as a result of using the family’s public or private insurance.</p> <p>Proposed § 303.521(a)(3) would require a State to include in its system of payments policies the State’s definition of inability to pay (including its definition of income and family expenses). Proposed § 303.521(a)(4) would be substantively unchanged from current § 303.520(b)(3) except that proposed § 303.521(a)(4)(iii) would require States to assure that families will not be charged more than the actual cost of the services and 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. Thus, when read together, under proposed §§ 303.520(b) and 303.521, a Part C lead agency would continue to be able to require parents either to pay the costs of providing early intervention services <u>or</u> to provide their consent for use of their public insurance or benefits or private insurance. Parents would have the option under proposed § 303.520(a) and (b) to allow the State to use their public insurance or benefits or private insurance or to pay the fees established by the State according to any system of payments established by the State under proposed §§ 303.520 and 303.521.</p>	<p>§ 303.521 System of payments and fees. (a) <i>General.</i> 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-pays or deductible amounts) 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 family is enrolled, that meets the requirements of §§ 303.520 and 303.521. The State’s system of payments policies must be in writing and specify which functions or services, if any, will be subject to a system of payments (including any fees charged to the family as a result of using the family’s public or private insurance), and include—</p> <p>(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;</p> <p>(2) The basis and amount of payments or fees;</p> <p>(3) The State’s definition of inability to pay (including its definition of income and family expenses); and</p> <p>(4) An assurance that--</p> <p>(i) 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 under paragraphs (a)(4)(ii), (b), and (c) of this section);</p> <p>(ii) 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 this part to the child or the child’s family such that, if the parent or family meets the State’s definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost including any costs to the family under this section and § 303.520(a)(2) and (b)(1)(ii); and</p>	<p>303.521(a): EIFA is concerned that the use of private insurance and parent payments (whether for public benefits, public or private insurance or as a set of fees) has increased, yet there are no regulations that ensure that families have procedural safeguards and due process rights. Nor is there a requirement that states collect data with regard to the fees collected from families as a result of their participation in Part C programs. Families have reported overbilling, late billing to their insurer which meant that they were told they were responsible for the unpaid bills and other irregularities for which families have had no formal guidance or recourse.</p> <p>These regulations do not provide guidance to states on the frequency of determining a family’s ability or inability to pay. There is no requirement that a family be provided with an Explanation of Benefits (EOB), which would help ensure that the number of units billed matches the number of units of service provided to children and their families.</p> <p>Therefore we recommend that family rights be incorporated into the System of Payments; that the 618 data system include data about payments sources (including fees), and that families be provided with an explanation of each item that is billed to their insurance.</p>
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	<p>Proposed § 303.521(a)(5) would specify that a State’s system of payments policies must include provisions that failure to provide the requisite income information and documentation may result in a charge of a fee and specify the fee that may be charged to the parent. Proposed § 303.521(a)(6) would clarify that the system of payments policies must include provisions that a lead agency may, but is not required to, use Part C funds or other funds to pay for costs or fees to be paid by a parent under proposed §§ 303.521(a)(1) and 303.520(a)(2) (use of public insurance or benefits) or (b)(1)(ii) (use of private insurance). However, for a parent determined unable to pay under proposed § 303.521(a)(4)(ii), proposed § 303.521(a)(6) would clarify that, consistent with current requirements, the lead agency must use Part C funds or other funds to cover the costs for the Part C services provided to the child of the parent.</p>	<p><u>§ 303.521 System of payments and fees. (cont.)</u> (iii) Families will not be charged any more than the actual cost of the Part C service, and families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or (5) 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 (6) Provisions that allow but do not require the lead agency to use Part C or other funds to pay for any costs or fees to be paid by a parent under paragraph (a)(1) of this section, or § 303.520(a)(2) or (b)(1)(ii). However, for a parent determined unable to pay under § 303.521(a)(4)(ii), the lead agency must use Part C or other funds to cover the costs for the parent.</p>	<p>EIFA is concerned that the proposed System of Payments, where parents assume more and more of the cost of participating in Part C, will result in a bifurcated system. Some families may choose not to participate because they would rather make their own choices about what to purchase with their money, or are priced out of the system, leaving families who have no other means of obtaining services for their children. It is conceivable that families could choose to only accept the ‘free’ components, but then purchase services, on their terms, elsewhere. While Part C faces serious funding issues, it is imperative that both OSEP and states seriously consider the potential consequences to the system of creating a system that asks families to assume responsibility of paying for their services.</p>
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<p>§ 303.521 Fees. (b) <i>Functions not subject to fees.</i> The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:</p> <p>(1) Implementing the child find requirements in § 303.321.</p> <p>(2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.</p> <p>(3) Service coordination, as included in §§ 303.22 and 303.344(g).</p> <p>(4) Administrative and coordinative activities related to—</p> <p>(i) The development, review, and evaluation of IFSPs in §§303.340 through 303.346; and</p> <p>(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.</p>	<p>Proposed § 303.521(b), regarding functions not subject to fees, would remain unchanged from current § 303.521(b).</p>	<p>§ 303.521 System of payments and fees. (cont.) (b) Functions not subject to fees. The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:</p> <p>(1) Implementing the child find requirements in §§ 303.301 through 303.303.</p> <p>(2) Evaluation and assessment, in accordance with § 303.320, and including the functions related to evaluation and assessment in § 303.13(b).</p> <p>(3) Service coordination services, as defined in §§ 303.13(b)(9) and 303.33.</p> <p>(4) Administrative and coordinative activities related to--</p> <p>(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§ 303.342 through 303.345; and</p> <p>(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D and this subpart.</p>	
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<p><u>§ 303.521 Fees.</u> (c) <i>States with mandates to serve children from birth.</i> If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families. (Approved by the Office of Management and Budget under control number 1820–0550) (Authority: 20 U.S.C. 1432(4))</p>	<p>Proposed § 303.521(c) regarding States with FAPE mandates, or that use Part B funds to serve infants or toddlers with disabilities under age three, would incorporate the longstanding requirements in current § 303.521(c) that if a State is required by law to provide FAPE to infants or toddlers with a disability under the age of three, those services that constitute FAPE must be provided at no cost and must comport with the requirements of Parts B and C of the Act.</p> <p>Specific sections of the Act permit States to use Part B funds for infants or toddlers with a disability under Part C of the Act and do not require the provision of FAPE. These are: —Section 611(e)(2)(C)(i), which allows States to use Part B funds for direct and support services (which can include child find for children with disabilities under Part B of the Act); —Section 611(e)(1)(D), which allows States to use State administrative setaside funds under section 611 of the Act for Part C administration if the SEA is the lead agency; —Section 619(f)(1), which allows States to use Part B section 619 funds for support services (including mediation) for children under three and above five if the services primarily benefit three through five year olds; —Section 619(f)(6), which allows Part B section 619 funds to be used to provide service coordination or case management for families receiving services under Part C of the Act; and —Sections 611(e)(7) (regarding the ability to use funds available under Part B of the Act in sections 611(e)(1)(A), 619(f)(5), and 643(e) (regarding funds under Part C of the Act), which provisions allow the use of specific Part B and Part C funds for providing Part C services to children in States that elect to serve children under section 635(c) of the Act and proposed § 303.211. In addition, section 619(a)(2) of the Act provides that Part B section 619 funds can be used to pay for the provision of special education and related services for two year olds who will turn three during the school year. However, these special education and related services (that constitute FAPE for the two-year old) would be required to be provided at no cost to the family, consistent with the requirements of Part B of the Act.</p>	<p><u>§ 303.521 System of payments and fees. (cont.)</u> (c) States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three. If a State has in effect a State law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and family, and those FAPE services must meet the requirements of both Parts B and C of the Act.</p>	
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	<p>Proposed § 303.521(d)(1) would clarify that family fees collected under a State's system of payments are considered program income under EDGAR, 34 CFR 80.25. Under this provision, a State would be permitted to add these fees to its Part C grant funds rather than deducting the program income from the State's Part C grant (which the Department has the discretion to authorize under 34 CFR 80.25). Under this provision, any family fees collected must be used by the State for the purposes of the Part C grant. Proposed § 303.521(d)(2) would clarify that, under EDGAR, family fees collected under a State's system of payments would be considered neither State nor local funds under proposed § 303.225(b).</p>	<p><u>§ 303.521 System of payments and fees. (cont.)</u> (d) Family fees. (1) Fees or costs collected from a parent or the child's family to pay for early intervention services under a State's system of payments are program income under 34 CFR 80.25. A State may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the State's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act. (2) Fees collected under a system of payments are considered neither State nor local funds under § 303.225(b).</p>	
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