

OSEP Checklist for Reviewing System of Payments (SOP) Policies

Each application must include the policies or procedures adopted by the State as its system of payments that meet the requirements in new 34 CFR §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees). 34 CFR §303.203(b)(1). Listed below are the three areas of requirements for system of payments policies and procedures that derive directly from these regulations: I. General SOP Requirements, II. Use of Private Insurance, and III. Use of Public Insurance.

I. General SOP requirements—

These apply if the State is using any of the following to pay for Part C services: public benefits or insurance, private insurance, or a schedule of family or sliding fees.

| General SOP requirements | Is it met by State’s submission? Questions? |
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| The system of payments policies must be in writing. §303.521(a). | |
| The system of payments policies must 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) §303.521(a). | |
| The system of payments policies must include 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. §303.521(a)(1). | |
| The system of payments policies must include the basis and amount of payments or fees. §303.521(a)(2). | |
| The system of payments policies must include 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. §303.521(a)(3). | |

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| General SOP requirements | Is it met by State's submission? Questions? |
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| <p>The system of payments policies must include an assurance that fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including child find, evaluations and assessments, service coordination services, administrative and coordinative activities related to procedural safeguards and the development, review and evaluation of IFSPs and interim IFSPs, and all Part C services when the parent or family meets the State's definition of inability to pay). [FAPE mandate States have additional requirements regarding those services that must be provided at no cost to the families] §303.521(a)(4)(i), (a)(4)(ii), (b), and (c).</p> | |
| <p>The system of payments policies must include an assurance that 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. §303.521(a)(4)(ii).</p> | |
| <p>The system of payments policies must include an assurance that 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). §303.521(a)(4)(iii).</p> | |
| <p>The system of payments policies must include an assurance that 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. §303.521(a)(4)(iv).</p> | |

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| General SOP requirements | Is it met by State's submission? Questions? |
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| <p>The system of payments policies must include 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. §303.521(a)(5).</p> | |
| <p>The system of payments policies must include provisions that permit, but do not require, the lead agency to use part C or other funds to pay for costs such as the premiums, deductibles, or co-payments. §303.521(a)(6).</p> | |
| <p>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:</p> <ul style="list-style-type: none"> (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 listed above. <p>(2) A State must inform parents of these procedural safeguard options by either—</p> <ul style="list-style-type: none"> (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. §303.521(e). | |

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II. If State is Using Private Insurance –Requirements for SOPs

- 1. Consent—parental consent is required for use of private insurance, unless the State has a State statute with specific protections.**

| Requirements for SOPs | Is it met by State’s submission? Questions? |
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| <p>Unless there is a State statute that provides certain protections explained below, then parental consent must be obtained—</p> <p>(A) When the lead agency or EIS provider seeks to use the parent’s private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and</p> <p>(B) (B) Each time consent for services is required under § 303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child’s IFSP. §303.520(b)(1)(i).</p> | |
| <p>The consent requirements for use of private insurance include the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. §303.520(b)(1)(i).</p> | |
| <p>If a parent or family of an infant or toddler with a disability is determined unable to pay under the State’s definition of inability to pay under § 303.521(a)(3) and does not provide consent for use of private insurance, the lack of consent may not be used to delay or deny any services under this part to that child or family. §303.520(c).</p> | |

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2. Parental consent for use of private insurance is not required if there is a State statute with specific protections.

| Requirements for SOPs | Is it met by State's submission? Questions? |
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| <p>Parental consent for use of private insurance is not required if there is a State statute regarding private health insurance coverage for early intervention services under Part C that includes the following specific protections:</p> <ul style="list-style-type: none"> (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. <p>§303.520(b)(2).</p> | |

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- 3. The following two provisions apply to all States that use private insurance, regardless of whether there is a State statute with specific protections, or the State obtains consent for use of private insurance.**

| Requirements for SOPs | Is it met by State's submission? Questions? |
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| <p>The State must provide to the parent a copy of the State's system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy). That policy must be provided to the parents when parental consent is required (explained above), or, if the State has a State statute with the specific protections, then the policy must be provided when the State initially uses benefits under a child or parent's private insurance policy to pay for EIS. §303.520(b)(1)(iii).</p> | |
| <p>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. §303.520(b)(1)(ii).</p> | |

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**III. If State is Using Public Benefits or Insurance (e.g. Medicaid or CHIP)—
Requirements for SOPs.**

- 1. Consent for use of public insurance or benefits is required if the child or parent is not already enrolled in the program, or if the use of public insurance or benefits would result in certain specified costs.**

| Requirements for SOPs. | Is it met by State’s submission? Questions? |
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| <p>A State may not require a parent to sign up for, or enroll in, public benefits or insurance programs as a condition of receiving part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program. §303.520(a)(2)(i).</p> | |
| <p>A State must obtain consent to use a child’s or parent’s public benefits or insurance to pay for part C services if that use would—</p> <ul style="list-style-type: none"> (A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program; (B) Result in the child’s parents paying for services that would otherwise be covered by the public benefits or insurance program; (C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child’s parents; or (D) (D) Risk loss of eligibility for the child or that child’s parents for home and community-based waivers based on aggregate health-related expenditures. §303.520(a)(2)(ii). | |
| <p>If the parent does not provide consent for use of public insurance or benefits when required under 34 CFR 303.520(a)(2)(i) or (a)(2)(ii), the State must still make available those part C services on the IFSP to which the parent has provided consent. §303.520(a)(2)(iii).</p> | |

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2. Regardless of whether parental consent is required, written notification must be provided to parents prior to using a child’s or parent’s public benefits or insurance.

| Requirements for SOPs. | Is it met by State’s submission? Questions? |
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| <p>Prior to using a child’s or parent’s public benefits or insurance to pay for part C services, the State must provide written notification to the child’s parents. The notification must include—</p> <ul style="list-style-type: none"> (i.) A statement that parental consent must be obtained under § 303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child’s personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (<i>e.g.</i>, Medicaid); (ii.) A statement of the no-cost protection provisions in § 303.520(a)(2) and that if the parent does not provide the consent under § 303.520(a)(2), the State lead agency must still make available those part C services on the IFSP for which the parent has provided consent; (iii.) A statement that the parents have the right under § 303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (<i>e.g.</i>, Medicaid) at any time; and (iv.) (iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance). §303.520(a)(3). | |

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| Requirements for SOPs. | Is it met by State's submission? Questions? |
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| <p>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 copayments 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 under § 303.521 and included in the notification provided to the parent that is explained above; otherwise, the State cannot charge those costs to the parent. §303.520(a)(4).</p> | |