



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2004

Honorable Deborah K. Fleming
Director
Department of Health
117 Hathaway Building
Cheyenne, WY 82002

Dear Director Fleming:

We have determined that your State's application for Federal Fiscal Year (FFY) 2004, under Part C of the Individuals with Disabilities Education Act (Part C), can be conditionally approved. Therefore, I am enclosing your State's Part C grant award.

The conditional approval is based on our review and acceptance of the Department of Health Part C application for FFY 2004, including:

1. those portions of the State's existing Part C application on file with the Secretary that remain in effect;
2. the assurance from the Department of Health that the statewide system of early intervention services required by Part C and its implementing regulations is in effect; and
3. the June 28, 2004 letter from the Department of Health to the Office of Special Education Programs, in which the Department of Health assures that it will take steps necessary to complete revisions to its application to conform it to the requirements of Part C, specifically to: (1) make all changes necessary to the State's Application by May 31, 2005, as specified in OSEP's June 17, 2004 memorandum; (2) ensure compliance, in the interim, with the following Part C requirements at 34 CFR §§303.404, 303.406, and 303.510-512 including sending a memorandum to all agencies and providers that are part of the State's Part C early intervention system to inform them of changes that impact on the provision of early intervention services in the State; (3) provide documentation to OSEP as soon as possible but no later than May 31, 2005, that the State incorporated all of the IDEA Part C regulations at 34 CFR Part 303 as its State's rules and regulations (previously dated June 1997) governing services for infants and toddlers birth to two years of age with disabilities and their families per the Department of Health's April 16, 2004 letter to OSEP; and (4) ensure that the State-wide system of early intervention required by Part C of IDEA and its implementing regulations at 34 CFR Part 303 will be in effect throughout the FFY 2004 grant period.

This year, a number of States have either established systems of payments or are considering establishing or revising their systems of payments. Under 34 CFR §303.173(a), each State's Part C application must include the State's policies and procedures that identify: (1) how it will pay for early intervention services (under 34 CFR §303.520(a)); (2) any system of payments that the State chooses to establish (under 34 CFR §303.521(a)); and (3) all funding sources (under 34 CFR §303.522). Although a State is not required under Part C to access public and private insurance available to a family, if a State requires parents under Part C to access their public and/or private insurance, the State must include this information in its Part C application as well as an assurance, under 34 CFR §303.520(b)(3)(ii), that the inability of a parent to pay will not result in the denial of any service under Part C.

States must ensure that all of the functions and early intervention services under 34 CFR §303.521(b) are carried out at public expense (i.e., no cost to the family). Additionally, under 34 CFR §303.521(c), States that provide children with disabilities under age 3 with a free appropriate public education (FAPE) under State law (i.e., birth-mandate States) must ensure that no fees are charged for the FAPE services provided to these children and their families. If a State has a system of payments under 34 CFR §303.521(a), any parent fees collected (for co-payments or other fees for services charged and received by the State's Part C program) are "program income" under 34 CFR §80.25. Program income is not included as part of total "State and local expenditures" for purposes of a State's meeting the non-supplanting requirements under Part C at 20 U.S.C. §1437(b)(5)(B) and 34 CFR §303.124.

Your State has on file with the Secretary a system of payments under 34 CFR §303.521(a). As noted above, fees for services charged and received by your State's Part C program are "program income" under 34 CFR §80.25. This letter authorizes your State to add "program income" to its Part C FFY 2004 grant such that the amount of program income received by your State does not need to be deducted from the net allowable costs that can be charged to the Part C grant (as would ordinarily be required under 34 CFR §80.25(g)(1)). When the State adds program income to the net allowable costs charged to the Federal Part C grant, under 34 CFR §80.25(g), all program income funds must be spent on FFY 2004 Part C grant application purposes.

Section I.C. of the FFY 2004 application for Part C funds requested updated information about each State's restricted indirect cost rate. Our records indicate that you are not charging indirect costs to the Part C program. By accepting Part C grant funds, your agency (as the Lead Agency designated under Part C) is agreeing not to charge indirect costs to the Part C program throughout the FFY 2004 grant year.

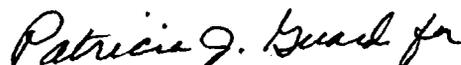
The enclosed grant award for FFY 2004 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application and appendices, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

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Section 604 of the IDEA provides that “[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.” Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosure

cc: Jason Jones
Part C Coordinator