

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument (FMI): FFY 2016

Alaska Department of Health and Social Services (DHSS)

Please note the following abbreviations are used in the Fiscal Monitoring Instrument (FMI):

EI — early intervention
EIS provider — early intervention service provider
FFY — Federal fiscal year
IDEA — Individuals with Disabilities Education Act
IFSP — individualized family service plan
LA — lead agency
SoP — System of Payments

Scope of Monitoring:

OSEP's IDEA Part C Fiscal Monitoring in 2018 examined implementation by the State lead agency (LA) of the State's System of payments (SoP) as funding sources to pay for the provision of IDEA Part C early intervention (EI) services.

Regarding the State's SoP, OSEP examined how the State LA ensures compliance with IDEA Part C if the State uses one or more of the following three sources of funding to pay for IDEA Part C services:

- (I) Private health insurance;
- (II) Public health insurance benefits; and
- (III) Family Fees.

In conducting the monitoring, OSEP reviewed the State's SoP policies and procedures and other related State-submitted documentation. OSEP also conducted virtual monitoring and telephone interviews with State LA staff on March 19, 21 and 26, 2018.

IDEA Part C
Summary of Monitoring Criteria

Monitoring Area 1, IDEA Part C: System of Payments (SoP)

Under IDEA Part C, a State may establish an SoP to fund early intervention (EI) services consistent with 34 CFR §§303.13(a)(3) and 303.203(b). These systems can include cost participation fees (such as co-payments, premiums, or deductibles) required to be paid under Federal, State, local or private programs of insurance consistent with 34 CFR §§303.520 and 303.521. States must also demonstrate compliance with the requirements regarding the use of IDEA Part C funds and payor of last resort provisions in 34 CFR §303.510(a) and (b). The focus of this monitoring activity is to examine the State's implementation of its SoP policies and procedures, where applicable.

Description of State SoP:

The Alaska Department of Health and Social Services (DHSS) is the lead agency (LA) that administers the Alaska Part C program, Alaska's Infant Learning Program (ILP). DHSS contracts with 16 local ILPs that provide direct EI services to 19 service areas throughout the State. These local ILPs consist of community based service agencies, private non-profit agencies, local school districts, tribal health corporations, and independent agencies. According to monitoring discussions, local ILPs receive a 25% advance of funds allocated for a State fiscal year (FY) each quarter within that FY and receive mid-year adjustments based on program expenditures. DHSS reported that State and Federal funds are kept separate and not comingled. Under its SoP, Alaska utilizes the following funding sources to support its ILP system: public insurance, private insurance and family fees. Family fees are based on family income and size and a sliding fee scale. According to the Alaska ILP "*Billing Policy Summary*," if families consent to use of private insurance, Alaska ILP will waive co-pays, deductibles and reduce the family participation fee by fifty percent. Families that consent to use of public insurance are not charged the family participation fee. Other funding sources supporting EI services in the State include IDEA Part C funds, State general revenue, and local-level private contributions. DHSS reported that in FY 2018, Medicaid was the payor source for 61 percent of families, while 22 percent had private insurance, and two percent paid a family fee. The State does not have legislation in place that includes the protections under 34 CFR §303.520(b)(2) regarding private health insurance safeguards. As a result, written parental consent must be obtained prior to accessing private insurance. DHSS requires that local ILPs develop third party billing systems through its request for proposal (RFP) process. According to the RFP, local ILPs are required to enroll in the Alaska Medicaid Assistance Program and collect revenue from third party payor sources including Medicaid and family cost share. DHSS uses IDEA Part C funds at the State and local levels to facilitate coordination of the program and direct service provision.

DHSS's support, technical assistance and monitoring of local ILPs is conducted by two Health Program Managers within the LA. The managers monitor local ILPs by using data collected from desk audits, local ILP program self-assessments, and a child record review. DHSS reported that its desk audit process analyzes data and information on each local program's performance and

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compliance, based on monitoring indicators that are established by DHSS, and closely aligned with IDEA’s State Performance Plan indicators and programmatic measures¹. Further, DHSS reported that it selects a sample of programs to monitor based on its local level program determinations and a risk assessment process that includes components from data collected from the desk audit, self-assessments and data collection process. According to Alaska’s ILP “*Monitoring and Procedures Manual*”, onsite monitoring is based on individual program need; however, DHSS reported during monitoring discussions with OSEP that although onsite visits have occurred in the past, onsite monitoring has not been conducted in at least three years.

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
I. General Requirements:			
Criterion 1.1	The State is implementing its SoP policies and procedures consistently with the payor of last resort requirements for the use of IDEA Part C funds, including ensuring that IDEA Part C funds are not used for services that would have been otherwise paid for from another public or private source.	Yes	34 CFR §303.510(a) and (b).
Criterion 1.2	If families are charged out of pocket costs such as copayments, deductibles, or family fees, the State is implementing its SoP policies and procedures consistently with the State’s: <ul style="list-style-type: none"> • definition of inability to pay/ability to pay; • definition of income, family expenses, and extraordinary medical expenses; and • process for determining ability or inability to pay. 	Yes	34 CFR §303.521(a)(3)

¹ According to Alaska’s ILP “*Monitoring and Procedures Manual*” the desk audit data consists of: “data system reports, 618 data reports, annual self-assessment, family survey results, child outcome data, complaints, dispute data, previous monitoring reports and previous corrective action reports.”

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Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.3	<p>The State is implementing its SoP policies and procedures consistently with the requirement that fees will not be charged to parents for the following services that a child is entitled to receive at no cost including;</p> <ul style="list-style-type: none"> • 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. 	Yes	34 CFR §§303.521(a)(4)(i) and 303.521(b)
Criterion 1.4	The State ensures 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 Part C services.	No	34 CFR §303.521(a)(4)(ii)
Criterion 1.5	The State ensures that Part C services are not delayed or denied to parents or families determined unable to pay under the State’s definition of inability to pay.	No	34 CFR §303.520(c)
Criterion 1.6	The State ensures that parents are provided with documentation that identifies their procedural safeguard options with regard to any disputes for payment for Part C services under the State’s SoP.	Yes	34 CFR §303.521(e)

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Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<p>II. Use of Private Insurance: A State may use private health insurance to pay for IDEA Part C services. If the State uses a parent’s private health insurance, it must either: (1) have legislation that includes certain protections; or (2) obtain prior written parental consent. In a State that has adopted legislation with protections, if a private insurance plan is not subject to the statutory protections, the State is still responsible for obtaining prior written parental consent.</p>			
<p>Criterion 1.7 For States that do not have a statute/legislation that includes applicable protections related to accessing private insurance, OSEP examined how the LA is consistently implementing the consent requirements for use of private insurance.</p>	<p>The State is ensuring that prior written parental consent for the use of private insurance is obtained:</p> <ul style="list-style-type: none"> • When the LA and/or its early intervention service (EIS) providers, seek to use private insurance to pay for the initial provision of an EI service in the IFSP; • Each time consent for services is required due to an increase in frequency, length, duration, or intensity in the provision of services in the child’s IFSP; and • When the use of private insurance is a prerequisite for the use of public benefits or insurance. 	<p>Yes</p>	<p>34 CFR §§ 303.520(b)(1)(i), 303.520(b)(1)(i)(A), 303.520(b)(1)(i)(B) and 303.420(a)(3).</p>

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Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<p>Criterion 1.7.1 For States whose approved SoP included a State statute/legislation that included the applicable protections related to accessing private insurance to pay for EI services.</p>	<p>The State has in place legislation to ensure that the following protections are in place regarding the use of private health insurance:</p> <ul style="list-style-type: none"> • The lead agency’s use of private health insurance to pay for EI services does not 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; • The lead agency’s use of private health insurance to pay for EI services does not 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 that health insurance coverage is not discontinued due to the use of the insurance to pay for EI services; and • The lead agency’s use of private health insurance to pay for EI services is not used as a 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>N/A</p>	<p>34 CFR §303.520(b)(2)</p>

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Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<p>Criterion 1.7.2</p> <p>For all States regarding the use of private insurance, regardless if the State has statute/legislation including applicable protections.</p>	<p>The State is ensuring that parents are provided a copy of the State’s SoP policies either:</p> <ul style="list-style-type: none"> • When parental consent is required for the use of private insurance, including when the State seeks to use the parent’s private insurance to pay for the initial provision of an early intervention service on an IFSP, and each time consent is required due to an increase in the provision of services; or • If a State has a statute that includes certain protections, when the State initially uses benefits under a child or parent’s private insurance policy to pay for EI services. 	<p>Yes</p>	<p>34 CFR §303.520(b)(1)(iii)</p>
<p>III. Use of Public Benefits or Public Health Insurance:</p> <p>A State may use public health benefits or public insurance to pay for IDEA Part C services. If the State uses such public benefits or insurance, it must: (1) obtain prior written parental consent for the use of public benefits or insurance 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; and (2) provide written notification to parents prior to using a child’s or parent’s public benefits or insurance, regardless of whether or not parental consent is required.</p>			
<p>Criterion 1.8</p>	<p>The State ensures compliance with the requirement that parents cannot be required to sign up for public benefits or insurance as a condition of receiving IDEA Part C EI services.</p>	<p>No</p>	<p>34 CFR §303.520(a)(2)(i)</p>
<p>Criterion 1.8.1</p>	<p>The State ensures compliance with the requirement that consent must be obtained prior to using a child’s or parent’s public benefits or insurance when that child or parent is not already enrolled in the public benefits or insurance.</p>	<p>Yes</p>	<p>34 CFR §303.520(a)(2)(i)</p>

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Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.8.2	<p>The State ensures compliance with consent requirements when the use of public insurance or benefits to pay for Part C services would result in specified costs such as:</p> <ul style="list-style-type: none"> • A decrease in the available lifetime coverage or any other insured benefit for that child or parent under that program; • The child’s parents paying for services that would otherwise be covered by the public benefits or insurance program; • Any increase in premiums or discontinuation of public benefits or insurance for that child or that child’s parents; or risk of loss of eligibility for the child or that child’s parents; or • Loss of eligibility for the child or that child’s parents for home and community-based waivers based on aggregate health-related expenditures). 	No	34 CFR §303.520(a)(2)(ii).
Criterion 1.8.3	<p>The State ensures that, prior to using a child’s or parent’s public insurance to pay for EI services, parents are provided with written notification that includes:</p> <ul style="list-style-type: none"> • The requirement that parental consent must be obtained (where applicable) before the State lead agency or EIS provider discloses a child’s personally identifiable information (PII) to the State public agency responsible for the administration of the State’s public benefits or insurance program for billing purposes; • Information about IDEA Part C public benefits/insurance no-cost protection provisions; • Information about the parent’s right to withdraw consent for sharing PII (where such consent is required); and 	No	34 CFR §303.520(a)(3) and 34 CFR §303.414

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Criterion Number	Description	Noncompliance identified?	Applicable Requirements
	<ul style="list-style-type: none"> Categories of costs that parents might incur as a result of participating in a public benefits or insurance program. 		

Finding:

Criterion 1.1, 1.2, 1.3 1.6, 1.7, 1.7.2 and 1.8.1: OSEP’s monitoring activities consisted of interviews with LA staff, a review of documents submitted by the LA, such as Alaska’s ILP Operations Manual, a review of Alaska’s ILP monitoring system that included its tools and procedures for desk audits, self-assessments (child record review and local ILP) and Alaska Infant Learning Program monitoring indicators. OSEP found that the State does not have a monitoring system reasonably designed to ensure the compliance of its local ILPs with the following requirements:

1.1) Payor of last resort for the use of IDEA Part C funds, including ensuring that IDEA Part C funds are not used for services that would have been otherwise paid for from another public or private source in accordance with 34 CFR §303.510(a). Alaska’s SoP states that local ILPs are “responsible for the identification and coordination of all available resources for providing early intervention services to eligible children and their families within Alaska, including those from Federal, State, local and private resources.” During monitoring discussions, DHSS reported that EI service providers are required to document payor sources for Part C services on the State’s Individualized Family Service Plan (IFSP). DHSS also reported that training and oversight of this requirement is the responsibility of the DHSS Health Managers. However, DHSS was unable to produce evidence from its monitoring system, such as ILP monitoring indicators, components from the desk audit or the local ILP self-assessment protocols that demonstrate oversight of this requirement has occurred.

1.2) Documentation of when and how the State makes its determination of parent’s ability or inability to pay; and when the State charges out of pocket costs to families, including copayments, deductibles, or family fees as required by 34 CFR §303.521(a)(3). According to the State’s SoP, “an annual participation fee is charged to families as determined by their ability to pay” and “families are responsible for paying their insurance premiums.” During monitoring discussions, DHSS reported its family cost participation and billing fees are implemented throughout the State by its local ILP programs. Local ILP programs are responsible for training their staff while the LA provides materials for its implementation including training videos, guidance memos, checklists and forms. According to monitoring discussions between OSEP and DHSS, and consistent with the State’s SoP, local ILPs determine families’ ability and inability to pay at intake. DHSS also reported that local ILPs are responsible for developing billing policies and procedures that are compliant with Alaska’s SoP. However, DHSS was unable to provide evidence from its monitoring system, such as ILP monitoring

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indicators, components from the desk audit or the local ILP self-assessment protocols, demonstrating that local ILPs are implementing those policies and procedures consistent with the State's SoP.

1.3) Fees are not being charged to parents for the services that a child is entitled to receive at no cost as required by 34 CFR §§303.521(a)(4)(i) and 303.521(b). During monitoring discussions, DHSS reported that it has not provided oversight into the collection of fees from families by local ILPs to ensure that families are not being charged for the services a child is entitled to receive at no cost.² DHSS reported that instead of monitoring to ensure this requirement is being implemented, it is relying on families to report the mistake to the State.

1.6) Parents are informed of their procedural safeguard options with regard to payment for Part C services as required by 34 CFR §303.521(e). When asked how the LA verifies that ILPs are properly meeting this requirement, the LA explained that parents receive procedural safeguards at intake. However, DHSS could not demonstrate that local ILPs are documenting that parents received a copy of the State's procedural safeguards with regard to payment for Part C services. The lack of confirmed notification to parents of their procedural safeguard options is particularly problematic, given that DHSS is not monitoring to ensure that local ILPs are not charging inappropriate fees as noted above.

1.7) Prior written parental consent for the use of private insurance is obtained as required by 34 CFR §§303.520(b)(1)(i), 303.520(b)(1)(i)(A), 303.520(b)(1)(i)(B) and 303.420(a)(3). During monitoring discussions, DHSS reported that local ILPs are required to have billing policies and practices that include the requirement that EI service providers obtain consent when seeking to use private insurance. However, DHSS was unable to demonstrate that its monitoring tools provide a mechanism to ensure that parental consent is obtained: 1) when its local ILP programs use private insurance to pay for the initial provision of EI services, 2) due to an increase in frequency, length, duration or intensity in the provision of services in the IFSP, and 3) when the use of private insurance is a prerequisite for the use of public insurance. DHSS also reported that it used OSEP's fiscal monitoring protocols as a self-assessment tool prior to OSEP's monitoring. Through the self-assessment, DHSS identified inconsistent billing policies and practices from local ILPs regarding consent for the use of private insurance due to an increase in frequency, length, duration, or intensity in the provision of services in the child's IFSP as required under 34 CFR §303.520(b)(1)(i). The State reported that local ILPs were obtaining consent for these purposes annually.

1.7.2) Parents are provided a copy of the State's SoP policies when parental consent is required for the use of private insurance when the State seeks to use the parent's private insurance to pay for the initial provision of an early intervention service on an IFSP, and each time consent is required due to an increase in the provision of services as required by 34 CFR §303.520(b)(1)(iii). During monitoring discussions, and consistent with the State's SoP, DHSS reported that its local ILP programs provide families with a "modified version" of its SoP, *Alaska EI/ILP Billing Policy Summary*, when it seeks to use private insurance to pay for the initial

² Under 34 CFR §303.521(b), no fees may be charged to families for the following functions: 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.

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provision of EI services. DHSS was unable to demonstrate that it is ensuring that this requirement is met through its monitoring or oversight activities.

1.8.1) *Consent is obtained prior to using a child's or parent's public benefits or insurance when that child or parent is not already enrolled in the public benefits or insurance programs as required by 34 CFR §303.520(a)(2)(i).* DHSS was able to produce evidence of policies and procedures, including local ILP grant assurances that support this requirement. However, the LA 's monitoring system did not include a component to ensure its local ILPs are operating consistently with the State's SoP policy.

Citation: Under 34 CFR §303.120(a)(2), the LA is required to monitor and enforce the implementation of Part C of the IDEA by its local ILPs, to ensure that the State complies with Part C of the Act. This includes ensuring that local ILPs are implementing and complying with the State's SoP policies and procedures. If the LA identifies noncompliance, it must ensure that the noncompliance is corrected as soon as possible and in no case later than one year after the LA's identification of the noncompliance consistent with 34 CFR §303.120(a)(2)(iv).

Further Action Required: Criterion 1.1, 1.2, 1.3 1.6, 1.7,1.7.2 and 1.8.1

We want to acknowledge that the State has already begun correction related to several of these criterion. To correct the identified noncompliance, within 90 days of receipt of this letter, DHSS must:

1. Provide OSEP with evidence of revised monitoring procedures under IDEA section 635(a)(10)(A) and 34 CFR §303.120(a)(2) with regard to the SoP requirements described above (criterion 1.1, 1.2, 1.3 1.6, 1.7, 1.7.2 and 1.8.1), that demonstrate that local ILPs are:
 - A. documenting payor of last resort assessments;
 - B. making determinations of ability to pay, and when to charge families fees, consistent with policies and procedures of the State's SoP;
 - C. ensuring that fees are not being charged to parents for the services that a child is entitled to receive at no cost;
 - D. informing families of their procedural safeguard options with regard to payment for Part C services;
 - E. using the modified "*Consent to Bill*" form correctly to document obtaining prior written parental consent for the use of private insurance;
 - F. providing parents a copy of the State's SoP policies when required;
 - G. obtaining consent prior to using a child or parent's public benefits or insurance when that child or parent is not already enrolled in the public benefits or insurance.
2. Establish a timeline for the implementation of the LA's revised monitoring procedures related to its SoP requirements specifically identified in criterion 1.1, 1.2, 1.3 1.6, 1.7, 1.7.2 and 1.8.1.

Additionally, within one year of the receipt of this letter, DHSS must provide OSEP with completed monitoring reports or supporting evidence demonstrating the State's implementation of its revised monitoring system and oversight of the requirements listed in corrective actions 1 and 2.

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Further, for criteria 1.7, the LA must provide OSEP with evidence that it has informed its local ILPs of the requirements under 34 CFR §303.520(b)(1)(i) regarding obtaining consent for the use of private insurance due to an increase in frequency, length, duration or intensity in the provision of EI services in the child's IFSP.