

OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP) FISCAL MONITORING INSTRUMENT (FMI): FFY 2017

New York State Department of Health (NYSDOH)

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 2017 examined implementation by the State lead agency (LA) of the State's:

- (1) **System of payments (SoP)** as funding sources to pay for the provision of IDEA Part C early intervention (EI) services; and

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 draft¹ SoP policies and procedures and other related State-submitted documentation. OSEP also conducted virtual monitoring and telephone interviews with State LA staff on June 19, 2017 and June 23, 2017.

¹ The State submitted its final SoP policy to OSEP on September 27, 2017. OSEP will respond to the State regarding its SoP policy submission under separate cover.

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 a SoP to fund early intervention 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 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 New York State Early Intervention Program (EIP) is administered by the New York State Department of Health (NYSDOH) through its Bureau of Early Intervention. Under New York State Public Health Law (PHL), EI services must be provided at no cost to parents and no fees are charged to parents (including co-payments and deductibles). The State's EI services are paid for using a combination of funds including: reimbursement from private and public insurance, local municipality revenue and State general revenue. Contracts are in place between the NYSDOH and each county in the State and New York City. Each county coordinates EI services at the local level. IDEA Part C funds are not used to pay for EI services in the State, but instead are used for administration at the State and county level. New York State Insurance Law provides protections regarding the use of private insurance to pay for the IDEA Part C services consistent with 34 CFR § 303.520(b)(2) for State regulated private insurance plans. When a family's public insurance is accessed to pay for EIP services, New York's Public Health Law and Insurance Law provide protections for families consistent with 34 CFR § 303.520(a)(2)(ii).

I. General Requirements:

Criterion Number	Description	Noncompliance identified?	Applicable 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 Part C funds, including ensuring that Part C funds are not used for services that would have been otherwise paid for from another public or private source.	No	34 CFR §303.510(a) and (b).
Criterion 1.2	<p>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:</p> <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. 	No	34 CFR §303.521(a)(3)

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.3	<p>The State is implementing its SoP policies and procedures consistent 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 individualized family service plans (IFSPs) and interim IFSPs. 	No	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.	No	34 CFR §303.521(e)

Finding:

None.

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.

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<p>Criterion 1.7</p> <p>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 intital 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>No</p>	<p>34 CFR §§</p> <p>303.520(b)(1)(i),</p> <p>303.520(b)(1)(i)(A),</p> <p>303.520(b)(1)(i)(B) and</p> <p>303.420(a)(3).</p>

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<p>Criterion 1.7.1</p> <p>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>No</p>	<p>34 CFR § 303.520(b)(2)</p>

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 intital 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>§303.520(b)(1)(iii)</p>

Finding:

None.

III. Use of Public Benefits or Public Health Insurance:

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.

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.8	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.	No	34 CFR § 303.520(a)(2)(i)
Criterion 1.8.1	The State ensures compliance with the requirement that consent must be obtained 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.	No	34 CFR § 303.520(a)(2)(i)

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 Number	Description	Noncompliance identified?	Applicable Requirements
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 • Categories of costs that parents might incur as a result of participating in a public benefits or insurance program. 		34 CFR §303.520(a)(3) and 34 CFR §303.414

Finding:

None.