

§ 303.523

(6) Other Federal programs.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(10)(B))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.523 Interagency agreements.

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility, in accordance with § 303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes.* (1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

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(Authority: 20 U.S.C. 1435(a)(10)(C) and (a)(10)(F))

NOTE: A State may meet the requirement in paragraph (c)(1) of this section in any way

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permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 ("financial designee") shall assign financial responsibility to—

(i) An agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) The lead agency, in accordance with the "payor of last resort" provisions in § 303.527.

(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made—

(i) The financial designee shall reassign the responsibility to the appropriate agency; and

(ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with § 303.525.

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(Authority: 20 U.S.C. 1435(a)(10)(C) and (a)(10)(E))

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution

of disputes among public agencies or service providers.

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(Authority: 20 U.S.C. 1435(a)(10)(D))

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

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(Authority: 20 U.S.C. 1435(a)(11))

NOTE: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

§ 303.527 Payor of last resort.

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of part C of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments—reimbursement.* (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family,

funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or “well-baby” health care (see § 303.13(c)(1)).

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (SSA) (relating to maternal and child health) or title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

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(Authority: 20 U.S.C. 1440)

NOTE: The Congress intended that the enactment of part C not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) an amendment to title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child's IFSP adopted pursuant to part C of the Act.

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