

Annotated Version
OSEP Checklist for Reviewing System of Payments (SOP) Policies under
Section II.A.3.a. of the IDEA Part C Grant Application

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). There are 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 Benefits and Insurance.

OSEP reviewed the State’s system of payment policies and procedures (which was the document titled, _____, and dated _____) submitted under Section II.A.3.a of the State’s IDEA Part C grant application under IDEA Sections §§303.510, 303.520 and 303.521, and has identified the following issues:

I. <u>General SOP Requirements: The requirements in this section apply to any State that uses public benefits or insurance, private insurance, or a schedule of family or sliding fees to pay for Part C services.</u>			
<u>IDEA Part C Requirement</u>	<u>State Policy Reviewed</u>	<u>Issue</u>	<u>Required Action</u>
The system of payments policies must be in writing. §303.521(a).		<i>The State’s SOP policy may be reflected in a variety of documents, including State statutes, regulations, policies, consent and notice documents, and interagency agreements. Because States must provide parents with a copy of the State’s SOP policy under certain circumstances, it is important for each State to identify the specific documents that reflect the provisions of the SOP policy.</i>	
The system of payment policies must address the payor of last resort requirements in §303.510(a) and (b). §303.203(b)(1).		<i>The State’s SOP must ensure that Part C funds are used only as the payor of last resort.</i> <i>The State’s SOP must provide that Part C funds may be used to prevent a delay in the timely provision of early intervention services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.</i>	
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).		<i>This requirement must be addressed and the State must make clear which functions or services are paid for using public insurance or benefits, private insurance or family fees.</i>	
The system of payments policies must include the		<i>If parents are not charged family fees, co-payments or</i>	

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<p>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).</p>		<p><i>deductibles, the SOP does not need to include a specific payment system or schedule of sliding fees or cost participation fees, but the SOP must explain that parents are not charged family fees, co-payments or deductibles.</i></p> <p><i>If the State uses private insurance or public insurance or benefits to pay for Part C services, the SOP must explain whether the parents must pay the co-payments, deductibles and/or premiums for private insurance or public insurance or benefits.</i></p>	
<p>The system of payments policies must include the basis and amount of payments or fees. §303.521(a)(2).</p>		<p><i>If parents are not charged family fees, co-payments or deductibles, the SOP does not need to include the basis and amount of payment or fees because none are charged to the parents, but the SOP must explain that parents are not charged family fees, co-payments or deductibles.</i></p>	
<p>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).</p>		<p><i>If parents are not charged family fees, co-payments or deductibles, the SOP does not need to include the definitions of ability to pay and inability to pay, but the SOP must explain that parents are not charged family fees, co-payments or deductibles.</i></p> <p><i>The SOP must explain when and how the State makes its determination of the ability or inability to pay.</i></p>	
<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). §303.521(a)(4)(i), (a)(4)(ii), (b), and (c).</p>		<p><i>This is a longstanding requirement related to the core services provided by IDEA Part C that did not change with the new regulations.</i></p> <p><i>This assurance must be specifically INCLUDED in the SOP, even if parents are not charged family fees, co-payments or deductibles.</i></p>	
<p>The system of payments policies must include an assurance that the inability of the parents of an</p>		<p><i>If parents are not charged family fees, co-payments or deductibles, the SOP does not need to include this</i></p>	

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<p>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><i>assurance, but the SOP must explain that parents are not charged family fees, co-payments or deductibles.</i></p> <p><i>This assurance has two parts regarding inability to pay: (1) inability to pay will not result in a delay or denial of services, and (2) 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.</i></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><i>If parents are not charged family fees, co-payments or deductibles, the SOP does not need to include this assurance, but the SOP must explain that parents are not charged family fees, co-payments or deductibles.</i></p> <p><i>States have to address the language in the parenthetical regarding factoring in any amount received from other sources for payment for that service.</i></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>		<p><i>If parents are not charged family fees, co-payments or deductibles, the SOP does not need to include this assurance, but the SOP must explain that parents are not charged family fees, co-payments or deductibles.</i></p>	
<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><i>The State is not required to charge a fee for failure to provide income information.</i></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><i>SOP policies must address this requirement.</i></p> <p><i>If the State uses Federal Part C funds to pay for premiums, deductibles, or co-payments, it must do so consistent with the payor of last resort requirements in §303.510.</i></p> <p><i>The State is not required to use Part C funds to pay for costs such as premiums, deductibles, or co-</i></p>	

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		<p><i>payments.</i></p> <p><i>A State may not prohibit the use of Federal Part C funds to pay for co-payments, deductibles, and premiums when such payment is needed for the timely provision of services.</i></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> <p>(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> <p>(2) A State must inform parents of these procedural safeguard options by either—</p> <p>(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</p> <p>(ii) Including this information with the notice provided to parents under § 303.421. §303.521(e).</p>		<p><i>If parents are not charged family fees, co-payments or deductibles, the SOP must still INCLUDE this requirement because these procedures may be used for other issues such as when consent is required and how the State met specific no-cost protections in §303.520(a).</i></p> <p><i>In the SOP requirements, there are three separate circumstances when the State must provide written documents to parents. Under §303.521(e), the State must inform parents of procedural safeguard options. Parents must be informed of those procedural safeguard options by either providing a copy of the SOP policies to the parents when obtaining consent for provision of early intervention services under §303.420(a)(3), or including the information with the notice provided to parents under §303.421.</i></p> <p><i>The other two times that the State must provide written documents to parents are described in §303.520(b)(1)(iii) [private insurance costs] and §303.520(a)(3) [public benefits or insurance notice].</i></p>	

<u>II. Use of Private Insurance</u>			
<u>IDEA Part C Requirement</u>	<u>State Policy Reviewed</u>	<u>Issue</u>	<u>Required Action</u>
1. Consent - parental consent is required for use of private insurance, unless the State has a State statute with specific protections.			
Unless there is a State statute that provides certain		<i>The State's SOP policy must include a consent</i>	

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<p>protections explained below, then parental consent must be obtained— (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 (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><i>requirement if the State uses private insurance to pay for Part C services and the State does not have a State statute with the protections in §303.520(b)(2).</i></p> <p><i>The State’s SOP policy must specify that consent for the use of private insurance to pay for Part C services must be obtained both initially and each time services in the IFSP increase.</i></p> <p><i>If the State has a State statute that includes the protections explained below, but those protections only apply to certain insurance policies in the State, the SOP must still include the §303.520(b)(1)(i) consent requirements for those insurance policies that are not covered by the State statute.</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><i>The State’s SOP policy must include this consent for use of private insurance provision if the State uses a public benefits or insurance program to pay for Part C services (which program almost always requires use of private insurance as primary payor).</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>		<p><i>The SOP policies must address this requirement, if the State uses private insurance to pay for Part C services, and the State does not have a State statute with specific protections under §303.520(b)(2).</i></p> <p><i>If the State does not charge family fees, copayments, or deductibles, the State does not need to include a definition of inability to pay in its SOP.</i></p>	
<p>2. Parental consent for use of private insurance is not required if there is a State statute with specific protections.</p>			
<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: (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</p>		<p><i>The State is not required to obtain consent to use private insurance if the State has a State statute with all of the protections in §303.520(b).</i></p>	

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<p>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;</p> <p>(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</p> <p>(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> <p>§303.520(b)(2).</p>			
<p>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.</p>			
<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 for the use of private insurance, 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</p>		<p><i>The SOP must address whether the State or parent are responsible for paying the premiums, copayments, and deductibles for private insurance.</i></p> <p><i>In the SOP requirements, there are three separate circumstances when the State must provide written documents to parents. Under §303.520(b)(1)(iii), the State must provide parents a copy of the State’s system of payment policies that identify the potential costs that the parent may incur when their private insurance is used to pay for Part C services.</i></p> <p><i>The copy of the SOP policies must be provided to parents when parental consent is required to use the private insurance. If consent is not required because</i></p>	

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policy to pay for EIS. §303.520(b)(1)(iii).		<p><i>the State has a State statute with specific protections, then the SOP must be provided to parents when the State initially uses benefits under a child or parent’s private insurance policy to pay for EIS. This provision applies only if the State is using private insurance to pay for Part C services.</i></p> <p><i>The other two times that the State must provide written documents to parents are described in §303.521(e) [procedural safeguards] and §303.520(a)(3) [public benefits or insurance notice if the State is using public benefits or insurance to pay for Part C services].</i></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><i>The SOP must address whether the State or parent are responsible for paying the <u>premiums</u>, <u>co-payments</u> or <u>deductibles</u> for private insurance.</i></p> <p><i>The SOP policies must identify the general types of costs (e.g., copayments, deductibles, premiums), but not the family-specific costs.</i></p>	

<u>III. Use of Public Benefits or Insurance</u>			
<u>IDEA Part C Requirement</u>	<u>State Policy Reviewed</u>	<u>Issue</u>	<u>Required Action</u>
1. Consent for use of public benefits or insurance 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.			
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><i>A State may not require a parent to enroll in public benefits or insurance by requiring them to pay a higher fee if they do not enroll. Parents who do not enroll in public benefits or insurance can be placed on a fee scale based on their income and expenses (the fee must be \$0 if the parents meet the State’s definition of inability to pay).</i></p> <p><i>The SOP must require consent prior to using the</i></p>	

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		<i>public benefits or insurance of a child or parent who is not already enrolled in such a program.</i>	
<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> <p>(A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;</p> <p>(B) Result in the child’s parents paying for services that would otherwise be covered by the public benefits or insurance program;</p> <p>(C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child’s parents; or</p> <p>(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>			
<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>			
<p>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.</p>			
<p><u>Prior to using a child’s or parent’s public benefits or insurance to pay for part C services</u>, the State must provide written notification to the child’s parents. The notification must include—</p> <p>(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 (e.g., Medicaid);</p>		<p><i>The State’s SOP policy must explain that the State must provide written notification (at least one time) prior to using public benefits or insurance to pay for Part C services.</i></p> <p><i>The State’s SOP policy must also make clear that the notice includes the required content, which content is set forth in §303.520(a)(3)(i) through (iv).</i></p> <p><i>If the Part C lead agency and the State agency that administers the public insurance or benefit program (e.g. Medicaid) are the same State agency, parental</i></p>	

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<p>(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;</p> <p>(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 (e.g., Medicaid) at any time; and</p> <p>(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).</p>		<p><i>consent for disclosure of personally identifiable information to bill the public insurance or benefit program is generally not required under §303.414, so §303.520(a)(3)(i) and (iii) would not need to be in the notice to parents, unless the State lead agency chooses to add a consent requirement. The notice would need to address the State’s consent requirement.</i></p> <p><i>As required in §303.520(a)(3)(iv) and §303.520(a)(4), the notice to the parents and the SOP must address whether parents would be required to use private insurance as a primary insurance before using public insurance or benefits (and as noted earlier in the private insurance section, include applicable consent provisions for the use of private insurance).</i></p> <p><i>In the SOP requirements, there are three separate circumstances when the State must provide written documents to parents. Under §303.520(a)(3), if the State is using public benefits or insurance to pay for Part C services, the State must provide written notification to parents about consent to disclose records and right to withdraw consent, no cost protections, and general costs the parents would incur when using public benefits or insurance to pay for Part C services. That notice must be provided to parents prior to using a child’s or parent’s public benefits or insurance to pay for part C services.</i></p> <p><i>The other two times that the State must provide written documents to parents are described in §303.520(b)(1)(iii) [private insurance costs if the State is using private insurance to pay for Part C services] and §303.521(e) [procedural safeguards].</i></p>	
<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</p>		<p><i>As required in §303.520(a)(3)(iv) and §303.520(a)(4), the notice to the parents and the SOP must address whether parents would be required to use private</i></p>	

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<p>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>		<p><i>insurance as a primary insurance before using public insurance or benefits.</i></p> <p><i>The SOP policies must identify the general types of costs (e.g., copayments, deductibles, premiums), but not the child- or family-specific costs.</i></p>	
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