



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

Mr. James R Nelson
Director
Division of Community Health and Prevention
Illinois Department of Human Services
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MAR 22 2000

Dear Mr. Nelson:

This is in response to your letter of October 26, 1999, in which you asked for clarity on issues related to the availability of payment sources to support early intervention services, specifically to the coordination of Medicaid and Part C funds and private insurance payments.

On October 22, 1997, the Department published, in the Federal Register, a Notice of Proposed Rulemaking (NPRM) implementing the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). The Department accepted public comment on this NPRM through January 20, 1998, and particularly invited public comment on six specific regulatory changes. In the NPRM, changes were proposed to conform Part C to similar Part B regulatory changes. In addition, the Department proposed a new regulation at 34 CFR §303.520(d) that would have provided that "a lead agency may not require parents, if they would incur a financial cost, to use private insurance proceeds to pay for the service that must be provided" in accordance with a child's individualized family service plan (IFSP). OSEP requested comments on this provision and on the related issue of public insurance proceeds.

On April 14, 1998, the Department published technical changes to incorporate the Part C statutory changes. At that time, the Department also published a notice requesting advice and recommendations on Part C regulatory issues. The July 31, 1998 deadline for comments was extended until August 14, 1998. The final regulations published on March 12, 1999, did not contain the insurance provision because "the policy . . . will not be finalized until more thorough examination of the issues can be done through the process initiated by the April 14 and August 14, 1998 solicitations for comments, and in light of the specific Part C statutory language and framework." 64 Fed Reg. 12655 (March 12, 1999). Comments received as the result of the notices requesting advice are being reviewed.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Pending any further regulatory action, the Department will accept a State's reasonable interpretation of the statute on issues involving the use of a family's insurance. Thus, a State would be prudent if it followed the Department's position on accessing family private insurance proceeds as set forth in OSEP's policy letters to Thaler (24 IDELR 858, 7/12/96) and Lucas (25 IDELR 828, 7/22/96), reflected also in the proposed NPRM provision. Under that position, while a State may require that families receiving early intervention services be subject to a system of payments, a State may not require that families use private insurance to pay for early intervention services where the parents would incur financial costs or losses (decrease in available lifetime coverage or any other benefit, increase in premiums or the discontinuations of the policy, or out-of-pocket expense such as payment of a deductible amount incurred in filing a claim). Financial losses do not include incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim. If parents would incur costs, the State may access the insurance if it obtains the parents' consent.

Regarding families with Medicaid coverage, the Part C statute and regulations provide that Part C funds are "payor of last resort." IDEA §640, 34 CFR §303.527. Your letter also presented DHS' positions related to the withholding of Part C "reimbursement" for early intervention services for parents' refusal to enroll in Medicaid or to access insurance benefits. As you point out, states must assure that the inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family. (See 34 CFR §303.520(b)(3)(ii)). Unfortunately, until there is further rulemaking, the Department is not able to respond in a more helpful way. We hope to be able to provide a response to your inquiry in the future.

We appreciated receiving comments from the State of Illinois on issues related to accessing private and public insurance proceeds. Those comments, along with comments from others, are extremely informative and will help guide our thinking on this matter.

Sincerely,

Kenneth R Warlick
Director
Office of Special Education Programs

cc: Ms. Janet Gulley
Acting Bureau Chief