Slide notes

Maintenance of Effort is the 10th and final module in the Fiscal 101 series. The requirements for Maintenance of Effort, which is often referred to as MOE, are located in the Supplement not Supplant requirement contained in the IDEA Part C statute.

Slide notes

MOE requirements are found in 34 CFR 303.225 of the Part C regulations. While the term maintenance of effort (MOE) cannot be found as such in the Part C regulations, it is the common term used to refer to the "supplement not supplant" requirement for IDEA Part C Funds. Simply stated, a state must maintain the same level of financial commitment (prior year's expenditure, not budgeted) for its subsequent Part C system's fiscal year.

While funding sources may shift, say as a result in a large growth in Medicaid eligible infants and toddlers and accompanying Medicaid support, or a former state appropriation might be reduced because the Medicaid (as a state/federal partnership) has been increased to a level concurrent with (or higher) than a prior year expenditure, it's very important to continually reinforce that current provisions do not allow a reduction.

Further definition is that state and local funds means PUBLIC funds (including State and local funding, state matching funds for Medicaid, and state general funds). Additionally, federal calculations are done in the aggregate at the state level meaning there is no local MOE requirement in Part C, while it should be noted that some states apply this standard at the state level through contract terms and conditions.

Maintenance of Effort requirements are also not intended to discourage any state from accessing/maximizing other payer sources in order to grow the program. However, it should be noted that accessing Private Insurance funding to support program growth is not considered as effort for the purposes of meeting this requirement.

Despite bringing additional, and often substantial, new funding into a state, a lead agency needs to exercise caution and due diligence in pursuing Private Third Party insurance funding as a state might inadvertently be seen as supplanting its own on-going liability by this cost shifting.

States should discuss this matter internally and ask their OSEP State Lead for an INFORMAL conversation as to its project impact on MOE requirements. Also note that additional common sources of funds that are not (currently) included in MOE calculations are fees, the Federal reimbursements for Medicaid, and charitable contributions.

Slide notes

The current Part C regulations allow exceptions to the MOE requirements for two specific reasons.

Decreases in the number of children eligible for Early Intervention Services. Any state considering a change in eligibility should have a conversation with its OSEP State Lead to receive guidance as to the considerations that need to be addressed, especially if the change is a reduction in eligibility criteria.

For any change in eligibility, the lead agency must: conduct a public process that engages all stakeholders (families, service providers and other interested parties); thoroughly inform them of the proposed changes; and provide multiple opportunities for all stakeholders to provide comment.

Maintenance of Effort (MOE), Continued

Allowance may be made for:

- a decrease in the number of children who are eligible to receive EI services

- unusually large amounts of funds expended for such long-term purchases as acquisition of equipment and construction

Slide notes

While not common in Part C, long term purchases for items such as equipment or construction may be allowed for exemptions to Maintenance of Effort requirements. However, in general, an exception to the MOE requirement for equipment or buildings should be considered as unusual. Again, conversation with your OSEP state lead will be helpful in determining your future purchases.

Finally, in consideration of meeting MOE, it is important to note that IDEA Part B requirements are different than IDEA Part C. Local education agencies have more exceptions to Maintenance of Effort requirements than Part C. And requirements for Part B maintenance of State Financial Support only look at amounts budgeted for the program.

Part C requires a comparison of the current year's budget with expenditure data from the most recent year where that information is available.

Slide notes

The most important concept to understand related to "payor of last resort" is that Part C funds may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source. It is essential that any Part C Coordinator and lead agency fiscal staff understand that all other federal, state, and local payment sources must be accessed prior to utilizing federal Part C funding.
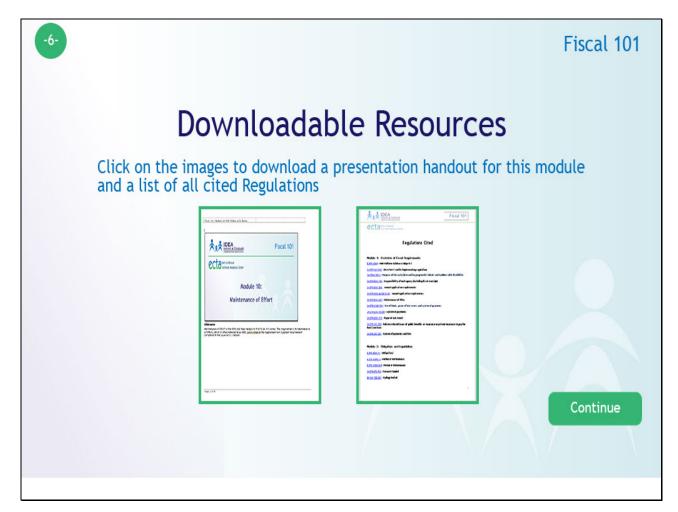
An easily understood state example of this principle follows: A state uses two fund sources to support its Part C system: state appropriated funds and Federal Part C funds. In this scenario state funds must be used first and Part C funds a secondary choice for payment priority.

In a more complex scenario, a state supports its early intervention system with State Appropriated funds, Medicaid, Private Insurance reimbursement, and federal Part C funds. Historically, in many circumstances, Medicaid programs would have asserted that their funding would be utilized as the payor of last resort.

However, Part C funding has priority over this assertion and is exempt from this requirement. Therefore, payment for early intervention services could be made from any of the above fund sources with Part C federal funds serving as payor of last resort. This assumes due diligence has been made to access the funding streams and were appropriately denied.

It is worth mentioning that decisions related to funding sources are typically made in local EI programs, and therefore reminding local programs of the importance of training staff on how to implement the System of Payments policy and consistently access available payer sources is critical.

Additionally, if necessary to prevent a delay in the timely provision of EI services, Part C funds may be used to pay the provider pending reimbursement from the agency/entity that has ultimate responsibility for the payment. It is important to note here that there may not be another entity that has payment responsibility.

Slide notes

Two handouts are available here for you to download and either save or print. The document on the left has the content that you just viewed, along with the annotated text that you heard. The document on the right is a complete list of all Code Regulations that are cited in the Fiscal 101 series. Clicking on the images will open the documents in a new window. Use the Continue button when you are finished.

Slide notes

Thanks for watching! You may use the "Return to List" button to go back to the list of modules, or you may exit by closing your browser window.