

281—41.154(256B,34CFR300) Methods of ensuring services.

41.154(1) *Interagency agreements.* An interagency agreement or other mechanism for interagency coordination shall be developed between each noneducational public agency described in subrule 41.154(2) and the SEA, in order to ensure that all services described in paragraph 41.154(2) “a” that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph “c” of this subrule. The agreement or mechanism must include the following:

a. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph 41.154(2) “a” to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in subrule 41.154(2), including the state Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the state agency responsible for developing the child’s IEP).

b. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

c. Procedures for resolving interagency disputes, including procedures under which LEAs may initiate proceedings, under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

d. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph 41.154(2) “a.”

41.154(2) *Obligation of noneducational public agencies.**a. General rule.*

(1) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subrule 41.154(1), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in rule 281—41.5(256B,34CFR300) relating to assistive technology devices, rule 281—41.6(256B,34CFR300) relating to assistive technology services, rule 281—41.34(256B,34CFR300) relating to related services, rule 281—41.42(256B,34CFR300) relating to supplementary aids and services, and rule 281—41.43(256B,34CFR300) relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the state, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subrule 41.154(1) or an agreement pursuant to subrule 41.154(3).

(2) A noneducational public agency described in subparagraph 41.154(2) “a”(1) may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

b. Failure to comply with general rule. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph 41.154(2) “a,” the LEA (or state agency responsible for developing the child’s IEP) must provide or pay for these services to the child in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency must reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in subrule 41.154(1).

41.154(3) *Special rule.* The requirements of subrule 41.154(1) may be met through the following:

a. State statute or regulation;

b. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

c. Other appropriate written methods as determined by the chief executive officer of the state or designee of that officer and approved by the Secretary.

41.154(4) *Children with disabilities who are covered by public benefits or insurance.*

a. General. A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter, as permitted under the public benefits or insurance program, except as provided in paragraphs 41.154(4) “b” through “d.”

b. Exceptions to ability to use public benefits or insurance. With regard to services required to provide FAPE to an eligible child under this chapter, the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this chapter but, pursuant to paragraph 41.154(6) “b,” may pay the cost that the parents otherwise would be required to pay; and

(3) May not use a child’s benefits under a public benefits or insurance program if that use would do any of the following:

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in the family’s paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
3. Increase premiums or lead to the discontinuation of benefits or insurance; or
4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

c. Consent requirements. Prior to accessing a child’s or parent’s public benefits or insurance for the first time, and after providing notification to the child’s parents consistent with paragraph 41.154(4) “d,” the public agency must obtain written parental consent that:

(1) Meets the requirements of 34 CFR Section 99.30 and rule 281—41.622(256B,34CFR300), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under this chapter), and the agency to which the disclosure may be made (e.g., the state’s public benefits or insurance program (e.g., Medicaid)); and

(2) Specifies that the parent understands and agrees that the public agency may access the parent’s or child’s public benefits or insurance to pay for services under this chapter.

d. Notification requirements. Prior to accessing a child’s or parent’s public benefits or insurance for the first time, and annually thereafter, the public agency must provide written notification, consistent with subrule 41.503(3), to the child’s parents, that includes:

(1) A statement of the parental consent provisions in paragraph 41.154(4) “c”;

(2) A statement of the “no cost” provisions in paragraph 41.154(4) “b”;

(3) A statement that the parents have the right under 34 CFR Part 99 and this chapter to withdraw their consent to disclosure of their child’s personally identifiable information to the agency responsible for the administration of the state’s public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and this chapter to disclose personally identifiable information to the agency responsible for the administration of the state’s public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(5) Children with disabilities who are covered by private insurance.

a. General. With regard to services required to provide FAPE to an eligible child under this chapter, a public agency may access the parents’ private insurance proceeds only if the parents provide consent consistent with rule 281—41.9(256B,34CFR300).

b. Obtaining access to private insurance proceeds. Each time the public agency proposes to access the parents’ private insurance proceeds, the agency must:

- (1) Obtain parental consent in accordance with paragraph 41.154(5) “a”; and
- (2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(6) Use of Part B funds.

a. Agency unable to obtain consent. If a public agency is unable to obtain parental consent to use the parents’ private insurance, or public benefits or insurance when the parents would incur a cost for a

specified service required under this chapter, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

b. Use of Part B funds to avoid cost to parents. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or copay amounts).

41.154(7) *Proceeds from public benefits or insurance or private insurance.* Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions in rules 281—41.163(256B,34CFR300) and 281—41.203(256B,34CFR300).

41.154(8) *Rule of construction.* Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX or Title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

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