

281—120.521 (34CFR303) System of payments and fees.

120.521(1) General. If a state elects to adopt a system of payments in subrule 120.500(2), the state's system of payments policies must be in writing and 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), and include:

a. The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this chapter;

b. The basis and amount of payments or fees;

c. 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;

d. An assurance that:

(1) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under this subrule and subrules 120.521(2) and 120.521(3));

(2) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this chapter 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;

(3) 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); and

(4) 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;

e. 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; and

f. Provisions that permit, but do not require, the department or other relevant agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or copayments.

120.521(2) Functions not subject to fees. The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

a. Implementing the child find requirements in rules 281—120.301(34CFR303) through 281—120.303(34CFR303).

b. Evaluation and assessment, in accordance with rule 281—120.320(34CFR303), and the functions related to evaluation and assessment in subrule 120.13(2).

c. Service coordination services, as defined in subrule 120.13(2) and rule 281—120.33(34CFR303).

d. Administrative and coordinative activities related to:

(1) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with rules 281—120.342(34CFR303) through 281—120.345(34CFR303); and

(2) Implementation of the procedural safeguards in Division VI of this chapter and the other components of the statewide system of early intervention services in Division V of this chapter and this division.

120.521(3) FAPE mandates or use of funds under Part B of the Act to serve children under age three. If the state has in effect a state law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the state may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this chapter that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the Act.

120.521(4) Family fees.

a. Fees or costs collected from a parent or the child's family to pay for early intervention services under the state's system of payments are program income under 34 CFR 80.25. The state may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the state's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

b. Fees collected under a system of payments are considered neither state nor local funds under subrule 120.225(2).

120.521(5) Procedural safeguards.

a. The state's 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:

(1) Participate in mediation in accordance with rule 281—120.431(34CFR303).

(2) Request a due process hearing under rule 281—120.436(34CFR303).

(3) File a state complaint under rule 281—120.434(34CFR303).

(4) 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 chapter, including the right to pursue, in a timely manner, the redress options described in this subrule.

b. The state must inform parents of these procedural safeguard options by either:

(1) Providing parents with a copy of the state's system of payments policies when obtaining consent for provision of early intervention services under subrule 120.420(1); or

(2) Including this information with the notice provided to parents under rule 281—120.421(34CFR303).