

**5123:2-10-01 Early intervention services - system of payment.**

(A) Purpose

This rule establishes a system to pay for activities and expenses that are reasonable and necessary for implementing the early intervention system for eligible children and their families.

(B) Definitions

- (1) "Assistive Technology Device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Eligible" means (reference our eligibility rule)
- (5) "Early intervention service coordinator" means a person that assists and enables an eligible child and the child's family to receive the services and rights, including procedural safeguards, required under Part C.
- (6) "Early intervention services" means developmental services selected in collaboration with the parents of a child birth through age two who is eligible for services under Part C and designed to meet the developmental needs of the child and the needs of the family to assist appropriately in the child's development as identified by the individualized family service planning team on the individualized family service plan.
- (7) "Early intervention system" means Ohio's statewide, coordinated, comprehensive, interagency system that promotes transdisciplinary, family-centered services and supports to eligible children birth through age two and their families. The system is directed by the department of developmental disabilities.
- (8) "Individualized family service plan (IFSP)" means the written plan for providing early intervention services to an eligible child under Part C.
- (9) "Parent" means a parent, guardian, person acting as a parent of a child, or surrogate parent.
- (10) "Part C" means the early intervention section of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this

rule, and 34 C.F.R. Part 303, as in effect on the effective date of this rule.

- (11) "Payor of last resort" means the use of federal Part C funds to pay for early intervention services only when all other funding sources have been exhausted. These 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.
- (12) "IFSP span" means the period between the date of the signing of the initial or annual individualized family service plan and the date of the signing of the next annual individualized family service plan, not to exceed one year, or 365 days.
- (13) "Unit" means one hour of early intervention service.

(C) Payment for early intervention

- (1) The department shall ensure that certain early intervention functions or services are provided at no cost to eligible children and their families, and are funded through local, state, and federal public funds:
  - (a) Child find;
  - (b) Evaluation and assessment;
  - (c) Service coordination;
  - (d) Administrative and coordinating activities related to the development, review, and evaluation of the individualized family service plan; and
  - (e) Implementation of procedural safeguards in accordance with (H).
- (2) Early Intervention services, not listed in (C)(1)(a)-(e), are financed through the following funding sources:
  - (a) County boards, based on the county board's strategic plan and written early intervention services policy in accordance with section 5126.04 of the Revised Code;
  - (b) Private insurance of the child or parent, with the consent of the parent of the eligible child;
  - (c) Public insurance of the child or parent (e.g., medicaid or children's health insurance program), with the consent of the parent of the eligible child for disclosure of the child's personally-identifiable information to medicaid;

- (d) Parent cost participation based on the determination of ability to pay; and
- (e) The department through a combination of state general revenue and federal Part C funds, with federal Part C funds being payor of last resort.

(3) Up to and including fifty-five units of early intervention services identified as needed in a child's individualized family service plan per IFSP span shall be provided at no cost to parents, including co-pays and deductibles required by private insurance. Assistive technology devices will be included in the fifty-five units, with each one to one hundred dollar cost per device equaling one unit.

(a) The fifty-five units of early intervention services per IFSP span is not a cost limit on the individualized family service planning team's recommendation of needed services.

(b) When the first fifty-five units of early intervention services per IFSP span are not available from or denied by the funding sources in (C)(2)(a)-(c), the department shall pay for early intervention services identified as needed in a child's individualized family service plan, regardless of the parent's ability to pay.

(c) When more than fifty-five units of early intervention services per IFSP span are recommended by the IFSP team, the determination of the parent's ability to pay determines the funding source.

(D) Determination of the parent's ability to pay for early intervention services

(1) The early intervention service coordinator shall determine the parent's ability to pay for early intervention services under (D)(2)(a)-(c) within forty-five calendar days of entry into the early intervention system and within forty-five calendar days of each scheduled IFSP annual review.

(2) Parents are assumed to be able to pay for early intervention services that exceed fifty-five units per IFSP span unless:

(a) Parent(s) are receiving services from the special supplemental food program for women, infants, and children, authorized by section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786, as in effect on the effective date of this rule;

(b) Parent(s) and/or child is receiving medicaid benefits;

(c) Family income is less than or equal to that required for SCHIP eligibility; and

(d) A family has unreimbursed extraordinary medical expenses as determined by the department.

(3) The inability of the parent of an eligible child to pay for early intervention services shall not result in a delay or denial of early intervention services.

(E) Parent Cost Participation

- (1) When the parent is determined unable to pay, the eligible child shall be provided all early intervention services at no cost, including those early intervention services beyond the fifty-five units per IFSP span.
- (2) When the parent is determined able to pay, the parent is responsible to pay the costs of early intervention services, including private insurance co-pays and deductibles, needed to meet the outcomes in the child's individualized family service plan, other than the no-cost services listed in (C)(1)(a)-(e), that exceed the fifty-five units of early intervention services per IFSP span. The parent will not be charged any more than the actual cost of the early intervention services (factoring in any amount received from other sources for payment for those services).
- (3) The service coordinator will inform the parent of the option to submit a request for redetermination of the parent's ability to pay if the parent or family meets a criterion in (D)(2)(a)-(d) after the initial determination.
- (4) A parent who chooses not to share financial information needed to determine the parent's ability to pay, shall assume the full cost of early intervention services that exceed the fifty-five units of early intervention services per IFSP span.

(F) Using the private insurance of a child to pay for early intervention services

- (1) The early intervention system shall obtain parental consent prior to the use of private insurance.
- (2) The early intervention system shall follow all requirements under (G) for children with both public and private insurance, as the use of private insurance is a prerequisite for the use of public insurance.
- (3) Early intervention services will not be delayed or denied due to the lack of parental consent to use the private insurance of a child to pay for early intervention services.
- (4) When using the private insurance of a child to pay for early intervention services, the early intervention system:
  - (a) Shall pay the cost of copayments and deductibles for the first fifty-five units of early intervention services per IFSP span;
  - (b) Shall not pay the cost of private insurance premiums; and

(c) Shall inform the parent of potential costs (e.g., copayments, deductibles, premiums, or long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps of the insurance policy) that the parent may incur when the private insurance of a child is used to pay for early intervention services.

(G) Using the public insurance of a child to pay for early intervention services

(1) The early intervention system shall not require a child or parent to enroll in public insurance programs as a condition of receiving early intervention services, but shall share information about the enrollment process for such programs.

(2) The early intervention system shall not enroll a child or parent in public insurance programs.

(3) When using the public insurance of a child to pay for early intervention services, the early intervention system:

(a) Shall obtain parental consent annually for disclosure of a child's personally-identifiable information to medicaid for billing purposes;

(b) Shall make available those early intervention services on the child's individualized family service plan to which the parent has provided consent;

(c) Shall provide written notification to the child's parent prior to using the public insurance of a child or parent to pay for early intervention services which shall include:

(i) A statement to medicaid-enrolled families to inform them that the child's personally-identifiable information will be disclosed to medicaid for billing early intervention services;

(ii) A statement that the parent has the right, at any time, to withdraw consent of disclosure of personally-identifiable information to medicaid;

(iii) A statement of the protection provisions in (G)(1), (2), and (4);

(iv) A statement that the parent will not incur costs such as lifetime caps, premiums, copayments, or deductibles or risk discontinuation of benefits or eligibility because of participating in a public insurance program; and

(v) A statement that there are no potential costs to the family because of the use of medicaid.

(4) Early intervention services will not be delayed or denied due to the lack of a child's or parent's enrollment in public insurance programs or lack of parental consent to share

the child's personally-identifiable information with medicaid.

(H) Contesting the imposition of a parent cost participation or determination of the parent's ability to pay

(1) A parent contesting the imposition of a parent cost participation or determination of the parent's ability to pay has all the procedural safeguards afforded under Part C, including mediation, state complaint procedures, and due process hearing procedures. In addition to these options, a parent may:

(a) Request a review by the department.

(i) A request to review must be filed with the department not more than 30 days from the imposition of a parent cost participation or of the department's determination of the parent's ability to pay in which the parent wishes to contest.

(ii) The request shall contain a statement of the reasons the parent believes the action or determination is incorrect or inappropriate and a proposed resolution.

(iii) Within 20 days from receipt of the request to review, the department shall issue a written decision to the parent who requested the review.