



## **IDEA Part C**

# **Procedural Safeguards Manual for Parents (Parental Rights in Early Intervention)**

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and Supports Grimes State Office Building  
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## INTRODUCTION

Early ACCESS is a partnership between families and their young children with special needs (birth to age three) and providers from the Iowa Departments of Education, Public Health, and Human Services and the University of Iowa Child Health Specialty Clinics. The purpose of this partnership is to work together to identify, coordinate and provide needed early intervention services and resources that will help families assist their infants or toddlers to develop and learn.

Parents have rights, known as procedural safeguards, which apply to every aspect of the early intervention process, such as evaluation, access to records, and Individualized Family Services Plan (IFSP) team participation. State and federal laws and regulations outline what needs to happen for eligible infants and toddlers with conditions or developmental delays to enhance their growth and development.

This document serves as **your** procedural safeguards notice and will help you understand the rights available to you and your child through a federal law, the *Individuals with Disabilities Education Act (IDEA) Part C*, as well as Iowa's *Administrative Rules for Early ACCESS Integrated System of Early Intervention Services*.

For more information on your rights, contact any of the following:

- Your Service Coordinator
- Your Regional Grantee (area education agency; ask for the Director of Special Education)
- The Iowa Department of Education  
Bureau of Learner Strategies and Supports  
Grimes State Office Building  
Des Moines, Iowa 50319-0146  
515-281-7143
- ASK Resource Center, Iowa's Parent Training and Information Center  
5665 Greendale Road, Suite D  
Johnston, IA 50131  
1-800-450-8667  
515-243-1713  
FAX 515-243-1902  
[info@askresource.org](mailto:info@askresource.org)  
<http://www.askresource.org>
- Disability Rights Iowa  
400 East Court Avenue Suite 300  
Des Moines, Iowa 50309  
515-278-2502  
515-278-0571 (TDD)  
800-779-2502  
515- 278-0539 FAX  
[info@disabilityrightsowa.org](mailto:info@disabilityrightsowa.org)  
<http://www.disabilityrightsowa.org>

### **When do I get a copy of the procedural safeguards/family rights?**

You will get a copy of the procedural safeguards/family rights at least once each year, and whenever you request it. You will also be offered a copy of it whenever you get a prior written notice. The prior written notice form will contain a web address for the procedural safeguards.

### **Are there other sources of information to find out more about IDEA 2004 Part C, the Iowa Administrative Rules for Early ACCESS, and other rules and regulations that are important for me to know?**

The following listings are internet addresses of sites you can visit:

Iowa Administrative Rules for Early ACCESS

<http://www.educateiowa.gov>

Individuals with Disabilities Education Act

<http://idea.ed.gov/part-c/search/new>

Family Educational Rights and Privacy Act (FERPA)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Health Insurance Portability and Accountability Act (HIPAA)

<http://www.hhs.gov/ocr/hipaa/>

Check with your service coordinator for other resources. You may refer to:

*Working Things Out When Things Go Wrong*

*Easy Does It! Working things out with a Resolution Facilitator*

*Preparing for Preappeal or Mediation*

*Special Education Mediation: A Guide for Parents*

## **IMPORTANT DEFINITIONS**

**Public Agency:** the Lead Agency (Iowa Department of Education) and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under IDEA and Early ACCESS rules. The Iowa Department of Education is responsible for the Early ACCESS complaint/due process system.

**Grantee/Regional Grantee:** a recipient of federal Part C funds or State funds that has the fiscal and legal obligation for ensuring the Early ACCESS system is carried out regionally.

**Early Intervention Services:** developmental services that are provided under public supervision; provided at no cost except where Federal or State law provides for a system of payments; and are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the Individualized Family Service Plan team. The services are in one or more of the following developmental areas: physical, cognitive, communication, social/emotional, or adaptive development.

**Infant or Toddler with a Disability:** an individual under 3 years of age who needs early intervention services because of developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of development including cognitive, physical, communication, social/emotional, and adaptive; or because of a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

## INFORMED CONSENT

### **What does “consent” mean?**

Consent happens when all three of these requirements have been met:

1. You have been fully informed of all information relevant (“important”) to the activity for which your consent is sought, in your native language.
2. You understand and agree, in writing, to the activity for which your consent is sought. (The consent form must describe the activity and list the early intervention records, if any, that will be released and to whom they will be released.)
3. You understand that granting consent is voluntary and you may revoke your consent at any time.

### **When is informed parental consent required?**

Your consent is required before:

1. The Regional Grantee or other Early ACCESS agency gives your child optional screening procedures to determine whether the agency suspects your child might have a disability;
2. All evaluations and assessments of your child and your family;
3. Your child and family receive Early ACCESS services;
4. Use of public or private insurance covering your child or your family (see pages 26 through 35), unless your consent is not required; and
5. Disclosing personally identifiable information from your child’s Early ACCESS records, unless your consent is not required.

If you refuse to give your consent under items 1, 2, or 3, the Regional Grantee or other Early ACCESS agency must take reasonable steps to ensure that you (a) are fully aware of the nature of the evaluation, assessment, or services that may be available to your child, and (b) understand that your child will not be able to receive the evaluation, assessment, or service until you give consent.

If you give your consent to an Early ACCESS service, it must start as soon as possible after you provide your consent.

### **What happens if I withdraw my consent for services?**

*Your consent is voluntary and can be withdrawn at any time; however, it does not affect an action that has occurred after the consent was given and before the consent was revoked. You may refuse or withdraw your consent for a particular early intervention service(s) without jeopardizing your child’s other Early ACCESS services.*

**If I refuse my consent, will the Regional Grantee or other Early ACCESS agency be able to use the IDEA’s due process procedures to challenge my refusal to provide consent?**

*No.*

**If I revoke my consent, can I make the Regional Grantee destroy my child’s Early ACCESS records?**

*No.*

## PRIOR WRITTEN NOTICE

Your participation in decisions for your child’s development is important. Laws require that you be involved during specific activities along the way since these affect your child’s early intervention services.

“Prior Written Notice” is a written communication to you from your service coordinator when a service provider is proposing or refusing to initiate or to change the identification, evaluation, or placement of your child or the provision of appropriate Early ACCESS services to your child and/or family.

That notice must be given to you within a reasonable time after the provider's decision on the proposal or refusal has been made but *before* the service provider implements that action.

### **What information is included in the notice?**

The notice must contain the following:

1. A description of the proposed or refused action;
2. An explanation of why an action is being proposed or refused;
3. The available procedural safeguards; and
4. How to file a state complaint or a due process complaint (and timelines) when you believe Early ACCESS requirements are violated.

### **What will the notice look like?**

It will be a form, written in language that is understandable to the general public. It will be in your native language. If your native language (or other mode of communication) is not a written language, the service coordinator will take steps to ensure that you understand the notice. If you are deaf or blind, or have no written language, the communication will be that which is normally used by you (such as sign language, Braille or oral communication).

### **What if I don’t agree with the proposed action or refusal?**

There are many informal and formal options available to you. They are explained in the “Options for Resolving Disagreements” section of this booklet. Your service coordinator is available to help you understand your options. Other resources are listed in the Introduction section found at the front of this manual.

Upon request, your service coordinator or public agency will inform you of any free or low-cost legal services and other supportive services in your area.

### **NOTES:**

## CONFIDENTIALITY OF INFORMATION/RECORDS

The IDEA and another federal law called the Family Educational Rights and Privacy Act (FERPA) give you several rights about your child's Early ACCESS records. You have a right to access those records and have a right to challenge things that you think are inaccurate in those records. The personally identifiable information in your child's Early ACCESS records are confidential, and must not be disclosed without your consent (unless an exception to consent applies). This section provides further information about those important protections.

### **May I have access to my child's Early ACCESS records?**

*Yes. A public agency must permit you to inspect and review your child's early intervention records relating to evaluations and assessments, eligibility determination, development and implementation of the IFSP, individual complaints dealing with your child, and any other area involving records about your child and your family. The public agency must, on your request, give you a list of the types and locations of Early ACCESS records collected, maintained, or used by the agency.*

### **When will the public agency give me access to my child's Early ACCESS records?**

*The public agency will comply with a request to review or inspect the records without unnecessary delay – no longer than 45 calendar days after requested and before any meeting regarding an IFSP or any hearing.*

### **What does the "right to inspect and review" include?**

*The right to inspect and review includes the following rights to:*

- 1. a response from the participating agency to reasonable requests for explanations and interpretations of the records;*
- 2. request that the agency provide copies of the records containing the information (if failure to provide the copies would effectively prevent you from exercising the right to inspect and review the records); and*
- 3. have your representative inspect and review the records.*

*The agency presumes that you have the authority to inspect and review your child's records unless the agency has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, or divorce.*

### **Will the agency keep a record of who has accessed my child's early intervention records?**

*Yes. With the exception of access by parents and authorized employees of the agency, the agency maintaining the records shall keep a record of parties obtaining access to early intervention records, including:*

- 1. The name of the party;*
- 2. The date access was given; and*
- 3. The purpose for which the party is authorized to use the records.*

### **What happens if the record has information about more than one child?**

*You have the right to inspect and review only the information relating to your child or to be informed of that specific information.*

**May the agency charge me a fee to inspect and review my child’s Early ACCESS records?**

*The participating agency may charge a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records. The agency may not charge a fee for the search or retrieval of the information.*

**Are there records that must be given to you for free?**

*Yes. The Early ACCESS agency must give you a copy of each evaluation, assessment of the child, assessment of the family, or Individualized Family Services Plan (IFSP) as soon as possible after each IFSP meeting.*

**What if I think the information in the record is not accurate?**

*If you believe that the information collected, maintained or used is inaccurate, misleading or violates the privacy or other rights of your child, you may ask the agency that maintains the record to amend the record. The agency will decide within a reasonable amount of time whether to amend the information in accordance with the request. If the agency decides to refuse to amend the information in accordance of the request, it will inform you of the refusal and advise you of the right to a hearing.*

*Upon your request, the agency will provide an opportunity for a hearing to challenge information in the early intervention record to ensure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child. As a result of the hearing:*

- 1. If the decision is that the information is misleading, inaccurate or otherwise in violation of the privacy or other rights of your child, the agency shall amend the information accordingly and inform you in writing.*
- 2. If the decision is that the information is **not** inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the agency will inform you of the decision. The agency will also inform you of your right to place in the records it maintains on your child a statement commenting on the information and setting forth your reasons for disagreeing with the decision of the agency.*
- 3. Any explanation placed in the records of your child must be maintained by the agency as part of the record as long as the record or contested portion is maintained by the agency. If the record or the contested portion of the record is disclosed by the agency to any party, your explanation must also be disclosed.*

**What will the hearing be like?**

*A hearing must comply with the requirements of FERPA. Those requirements are found at 34 C.F.R. Section 99.22. Contact your service coordinator if you would like information about those requirements.*

## **What does “personally identifiable information” mean?**

*“Personally identifiable” means that information includes, but is not limited to:*

- *Your child’s name*
- *Your name or the names of other family members*
- *Your child’s address or the address of you or other family members*
- *A personal identifier, such as your child’s social security number, student number, or biometric record*
- *Other indirect identifiers, such as your child’s date of birth, place of birth, or maiden name of the child’s mother*
- *Other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the community, who does not have personal knowledge of the circumstances, to identify a child with reasonable certainty*
- *Information requested by a person who the agency reasonably believes knows the identity of the child to whom the record relates.*

## **Does the agency that has my child’s Early ACCESS records need to ask me for permission to release the information?**

*Yes, as a general rule. Parental consent must be obtained before personally identifiable information is disclosed to anyone (other than officials, authorized representatives, or employees of participating agencies collecting, maintaining, or using the information) or used for any other purpose other than implementing Early ACCESS services.*

*There are exceptions, however, to the parental consent requirement. For example, education officials may disclose education records without prior consent when necessary to respond to a health or safety emergency. If you have any questions about FERPA’s exceptions, please contact your service coordinator.*

*One important FERPA exception allows education agencies to transfer records without parent consent to other education agencies where the child is or may be enrolled. For that reason, and to ensure a smooth transition from Early ACCESS to IDEA Part B (early childhood special education), if your child transitions to Part B preschool services at age three, your consent is not required under FERPA and the IDEA. Your child’s Early ACCESS records will be sent to the Area Education Agency responsible for special education services in your school district.*

*Once information is part of your child’s Early ACCESS record, it becomes protected by FERPA and can only be released in accordance with FERPA regulations. This includes any medical or outside evaluation information admitted to your child’s record.*

## **If I refuse to provide my consent when required to disclose information from my child’s Early ACCESS records, what will the agency do?**

*The agency will meet with you and explain how your refusal to provide consent affects your child’s ability to receive Early ACCESS services. The public agency cannot override your refusal to provide consent.*

**Are there other steps a public agency takes to protect and safeguard my child's confidentiality and privacy?**

1. *One official at each agency shall assume responsibility for ensuring the confidentiality of personally identifiable information;*
2. *All people collecting or using personally identifiable information must receive confidentiality and privacy training or instruction on confidentiality and privacy; and*
3. *Each participating agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.*

**What happens to my child's Early ACCESS records when they are no longer needed?**

*The public agency will inform you when personally identifiable information collected, maintained, or used is no longer needed to provide early intervention services to your child. The information must be destroyed at your request if the records are no longer needed.*

*The decision as to when records are no longer needed is one that largely falls to the discretion of the public agency. A record will be maintained until it is no longer relevant to providing Early ACCESS services and no longer needed for audit and accountability purposes. At a minimum, a record needed for audit and accountability purposes must be retained for five years after the activity for which Early ACCESS or other funds were used.*

**Are there some records that the Early ACCESS agency does not have to destroy?**

*Yes. The agency may keep a permanent record of your child's name, date of birth, parent contact information (including name and telephone number), names of service coordinators and Early ACCESS providers, and exit data (including year and age upon exit and any programs entered into upon exit). This information may be retained without time limitation.*

**NOTES:**

## MEETINGS

Many important decisions are made for your child at meetings. This section tells you what your meeting rights are.

### **When are meetings required or optional?**

*Required: Early ACCESS rules and IDEA's Part C law require a meeting to develop an initial IFSP if your child is determined eligible for Early ACCESS, an annual meeting to evaluate your child's IFSP and eligibility. The law also requires a meeting when your child is transitioning from Early ACCESS.*

*Optional: The law requires that your child's IFSP be reviewed periodically (at least every six months). That periodic review may be at a meeting, but a meeting is not required. Your child's IFSP team may also meet if it decides a meeting is helpful to your child.*

### **What are the requirements for where and when meetings happen?**

*Meetings for Early ACCESS must be conducted:*

- *In settings and at times that are convenient for you; and*
- *In your family's native language or other mode of communication that you use, unless it is clearly not feasible to do so.*

*You must be a part of making any meeting arrangements. You and other meeting participants must get written notice of the meeting early enough before the meeting date to ensure that they will be able to attend.*

### **Who must come to IFSP meetings?**

*Initial and annual IFSP meetings, as well as meetings to develop a transition plan for your child, must include the following participants:*

1. **You!** ("The parent or parents of the child");
2. *Other family members, as requested by the parent, if feasible to do so;*
3. *An advocate or person outside of the family, if the parent requests that the person participate;*
4. *The service coordinator responsible for implementing the IFSP;*
5. *A person or persons directly involved in conducting the evaluations of your child and the assessments of your child and your family; and*
6. *As appropriate, persons who will be providing Early ACCESS services to your child or your family.*

*If the person listed in item 5 is unable to attend, the Regional Grantee shall make arrangements to ensure the person's involvement through other ways, including one of the following: participating in a conference call, sending a knowledgeable authorized representative to the meeting, or making relevant records available at the meeting.*

## PARENTS AND SURROGATE PARENTS

Parents are essential partners in Early ACCESS services. It is important to determine who is a parent of an infant or toddler. The IDEA and Early ACCESS regulations define “parent.”

### **Who is a parent?**

*“Parent” means:*

- 1. A biological or adoptive parent of a child;*
- 2. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;*
- 3. A guardian generally authorized to act as the child’s parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the state if the child is a ward of the state);*
- 4. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or*
- 5. A surrogate parent who has been appointed in accordance with federal law and Early ACCESS rules.*

### **What happens when more than one person meets the definition of parent?**

*The following rules are to be used to determine whether a party qualifies as a “parent.”*

- 1. Except as provided in the next item, the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.*
- 2. If a judicial decree or order identifies a specific person or persons to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child (except as a surrogate parent), then the person or persons must be determined to be the “parent” for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.*

### **Why would a surrogate be needed?**

*Regional Grantees need to determine that each child has a parent to participate in the Early ACCESS process. If any of the following conditions exist, the Regional Grantee determines whether a surrogate is necessary for the child:*

- 1. No parent can be identified;*
- 2. With reasonable efforts, no parent can be located; or*
- 3. The child is a ward of the State and the judge overseeing the child’s case; or alternatively appoints a surrogate parent.*

*It is the responsibility of the Regional Grantee to determine which children need a surrogate and to assign a surrogate parent for a child.*

**What are the qualifications of a surrogate parent?**

*A surrogate parent must:*

- 1. Not have a personal or professional interest that conflicts with the interests of the child;*
- 2. Have knowledge and skills that ensure adequate representation of the child; and*
- 3. Not be an employee of the Iowa Department of Education, the Regional Grantee, or any other agency that is involved in the education or care of the child.*

*A person who otherwise qualifies to be a surrogate parent is not considered an employee of the agency solely because he/she is paid by the agency to serve as a surrogate parent.*

**Who appoints a surrogate parent?**

*A Regional Grantee may appoint a surrogate parent in any manner that the law allows. Alternatively, a court presiding over the juvenile case of a child who is a “ward of the state” (in foster care, in the custody of a public child welfare agency) may appoint a surrogate parent for a child. The court-appointed surrogate must meet the three qualifications listed above.*

**What are the responsibilities of a surrogate parent?**

*A surrogate parent may represent a child in all matters related to the evaluation and assessment of the child, development and implementation of the IFSP (including annual evaluations and periodic reviews), the ongoing provision of early intervention services, and any other rights under Early ACCESS and IDEA.*

**NOTES:**

## OPTIONS FOR RESOLVING DISAGREEMENTS

There are three options in Early ACCESS rules and IDEA's Part C for resolving disagreements. Those options are:

- mediation,
- state complaints, and
- due process complaints.

Those options will be explained in the next sections of this manual.

In addition to those three options, each Regional Grantee has a process called Resolution Facilitation that you can use. Resolution Facilitation is a way to resolve differences, instead of, or before using the three formal proceedings described in this Manual. A Resolution Facilitator assists in resolving differences over Early ACCESS services and issues between parents, public agencies, and private sector providers.

If differences come up, open discussion is a logical first step toward resolving those differences. A third party can give an objective review of both parties' concerns in support of a successful conclusion. The Resolution Facilitator is trained in mediation and is that objective third party. The Resolution Facilitator can be a neutral party from your Early ACCESS Region or, if necessary, someone from another Region or someone provided by the Department of Education. The Resolution Facilitator service is provided at no cost to you or to your child's service providers.

It is not necessary to use the Resolution Facilitator process before using the three formal processes described in this Manual.

### **NOTES:**

## MEDIATION

The Iowa Department of Education and Regional Grantees maintain procedures to allow parties to resolve disputes through mediation. Mediation is voluntary on the part of all parties and conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediation can occur at any time, even prior to the filing of a due process complaint. Mediation is not used to delay or deny your right to file a due process complaint, or deny you other rights under Early ACCESS.

A model form to request mediation is on page 20 of this manual.

### **Where can I find out about people who are mediators and who pays for a mediation?**

*The Iowa Department of Education:*

1. *Maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of Early ACCESS services;*
2. *Selects mediators on a random, rotational, or other impartial basis; and*
3. *Pays the cost of the mediation process, including the costs of meetings to encourage mediation when a party has chosen not to use mediation.*

### **How do I know that the mediator is impartial?**

*An individual who serves as a mediator:*

- *May not be an employee of the Iowa Department of Education or the public agency or private service provider that is providing direct services to your child; and*
- *Must not have a personal or professional conflict of interest.*

*The person who is otherwise qualified is not an employee of the Iowa Department of Education because he or she is being paid to be the mediator.*

### **What are some things I need to know about the mediation process?**

1. *Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.*
2. *If you and the public agency resolve a dispute through the mediation process, you and the public agency must execute a legally binding agreement.*
3. *Both you and a representative of the public agency who have the authority to bind such agencies must sign the legally binding agreement.*
4. *A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.*
5. *Discussions that occur during mediation are confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings of any federal or state court.*

### **What if I don't want to use a mediation process?**

*The Regional Grantee may offer to those not using the mediation process an opportunity to meet with a disinterested party at a time and location convenient to the parents.*

**Who is a disinterested party?**

1. *An appropriate alternative dispute resolution entity;*
2. *The Iowa Parent Training and Information Center (In Iowa, this is the Access for Special Kids (ASK) Resource Center); or*
3. *A community parent resource center.*

**What would the disinterested party do?**

*The disinterested party would explain the benefits of, and encourage the use of, the mediation process to you.*

**While my mediation request is pending, what services does my child receive?**

*While any mediation request is pending and for ten days after any such mediation conference at which no agreement is reached, unless the agency and the parents of the child agree otherwise, the child involved in any such mediation conference must continue to receive the appropriate early intervention services identified in the IFSP in the setting that is consented to by the parents.*

*If the mediation involves an application for initial services under Early ACCESS, the child must receive those services that are not in dispute.*

**NOTES:**

## IDEA STATE COMPLAINTS

The law requires the Iowa Department of Education to have a procedure to investigate complaints that an agency violated Part C of the IDEA or Iowa's Early ACCESS rules. A model form to file a state complaint is on page 22 of this manual.

### **Does the Iowa Department of Education provide a procedure to file a state complaint under Early ACCESS?**

*The Iowa Department of Education has written procedures for:*

- 1. Resolving any complaint, including a complaint filed by an organization or individual from another State, by providing for the filing of a complaint with the Iowa Department of Education, and*
- 2. Widely disseminating State procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.*

### **What will the Iowa Department of Education do if it finds a failure to provide appropriate Early ACCESS services?**

*In resolving a complaint in which the Iowa Department of Education has found a failure to provide appropriate services, the State must address:*

- 1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, and*
- 2. Appropriate future provision of services for all children with disabilities.*

### **What do the Department of Education's state complaint procedures include?**

*In its complaint procedures, the Iowa Department of Education includes a time limit of 60 calendar days after a complaint is filed to:*

- 1. Carry out an independent on-site investigation, if the Iowa Department of Education determines that an investigation is necessary;*
- 2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;*
- 3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:*
  - a. At the discretion of the public agency, a proposal to resolve the complaint and*
  - b. With the consent of the parent, an opportunity for the public agency to engage the parent in mediation, or alternative means of dispute resolution;*
- 4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of IDEA; and*
- 5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:*
  - a. Findings of fact and conclusion, and*
  - b. The reasons for the Iowa Department of Education's final decision.*

**Are extensions beyond 60 days allowed?**

*The Iowa Department of Education's procedures permit an extension of the time limit only if:*

- 1. Exceptional circumstances exist with respect to a particular complaint, or*
- 2. The parent and the public agency agree to extend the time to conduct the activities.*

**How are the complaint decisions implemented?**

*The Iowa Department of Education's procedures include steps for the effective implementation of its final decision, if needed, including:*

- 1. Technical assistance activities;*
- 2. Negotiations; and*
- 3. Corrective actions to achieve compliance.*

**Who can file a complaint and how is it done?**

*An organization or individual may file a signed written complaint. The complaint must include a statement that a public agency has violated a requirement of Part C of IDEA.*

*The complaint must also include:*

- 1. The facts on which the statement is based;*
- 2. The signature and contact information for the complainant; and*
- 3. The complaint must allege that the violation occurred not more than one year prior to the date that the complaint is received.*

*If the complaint alleges that violations occurred regarding a specific child, the complaint must include:*

- 1. The name and address of the residence of the child;*
- 2. The name of the Regional Grantee/agency/program in charge of the child's services;*
- 3. In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(2)), available contact information for the child, and the name of the Regional Grantee/agency/program in charge of the child's services;*
- 4. A description of the nature of the problem of the child, including facts relating to the problem; and*
- 5. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.*

*The party filing the complaint must forward a copy of the complaint to the Regional Grantee serving the child at the same time the party files the complaint with the Iowa Department of Education.*

## DUE PROCESS COMPLAINTS (DUE PROCESS HEARINGS)

Whenever a due process hearing request is filed, you or the Regional Grantee involved in the dispute must have an opportunity for an impartial due process hearing. A model form to file a due process complaint and request a hearing is on page 24 of this manual.

### **Who is responsible for conducting the due process hearing?**

*The Iowa Department of Education provides for the hearing.*

### **Who listens to the information and makes decisions at the due process hearing?**

*A person with the title of administrative law judge (ALJ) listens to evidence and legal argument at the due process hearing. The ALJ then makes a decision. The Iowa Department of Education keeps a list of the persons who serve as ALJs. The list must include a statement of the qualifications of each of those persons.*

### **What are the qualifications of an impartial ALJ?**

*At a minimum, an ALJ must not be:*

- 1. An employee of the Iowa Department of Education, the AEA or the district that is involved in the education or care of the child; or*
- 2. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.*

*An ALJ:*

- 1. Must possess knowledge of, and the ability to understand, the provisions of the IDEA 2004, Federal and State regulations pertaining to IDEA, and legal interpretations of the IDEA by Federal and State courts;*
- 2. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and*
- 3. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.*

*A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ.*

### **In the meantime, what services does my child receive?**

*During any administrative and judicial proceedings, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint involves an application for initial services under Early ACCESS, the child must receive those services that are not in dispute.*

## **What are my rights in a due process hearing under the law?**

*You have the right to:*

- 1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;*
- 2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;*
- 3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;*
- 4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and*
- 5. Obtain a written, or, at the option of the parents, electronic findings of fact and decisions.*

*Note that under the law, the public agencies have these rights, too.*

## **Where will a due process hearing happen?**

*A due process hearing must be carried out at a time and at a place that is reasonably convenient to the parents.*

## **What is the time line for due process hearings?**

*The Iowa Department of Education must ensure that not later than 30 days:*

- 1. A final decision is reached in the hearing; and*
- 2. A copy of the decision is mailed to each of the parties.*

*The ALJ may extend the thirty-day timeline at the request of a party.*

## **Is there a timeline that needs to be followed for requesting a due process hearing?**

*You or the Regional Grantee must request an impartial hearing within two years of the date that you or the Regional Grantee knew or should have known about the alleged action that forms the basis of the due process hearing request.*

## **Are there exceptions to that timeline rule?**

*The timeline does not apply if you were prevented from filing a due process hearing request due to:*

- 1. Specific misrepresentations by the Regional Grantee that it had resolved the problem forming the basis of the due process hearing request.*
- 2. The Regional Grantee withheld information from you that was required to be provided to you.*

## **Am I restricted from filing other due process hearing requests?**

*Nothing stops you from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.*

## **Is the decision of the ALJ final?**

*A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision.*

**If I am not happy with the ALJ decision, what can I do?**

*Any party shall have the right to bring civil action with respect to the due process hearing decision. Such action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.*

**Is there a timeline for filing a civil action about an ALJ decision?**

*If you disagree with the decision of the ALJ, you have 90 calendar days from the date of the decision to file a civil action.*

**Who else will know about the due process hearing decision?**

*The Iowa Department of Education, after deleting any personally identifiable information, must:*

- 1. Transmit the findings and decisions to the Iowa Council for Early ACCESS; and*
- 2. Make those findings and decisions available to the public.*

**NOTES:**

## Model Form: Request for Mediation Conference

Use this form if you want to request a mediation conference. That process is explained on pages 13 and 14 of the *Early ACCESS Procedural Safeguards Manual for Parents (Parental Rights in Early Intervention)*. After you complete this form, send copies to:

(1) the AEA(s) involved, and

(2) the Iowa Department of Education, Grimes State Office Building, 400 E. 14<sup>th</sup> St., Des Moines, IA 50319-0146.

Fill out this form completely. Use additional sheets of paper, if necessary.

Date: \_\_\_\_\_ I would like to request an Early ACCESS mediation conference about my child.

Child's Name: \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Does your child use another name? Yes/No If yes, what is it? \_\_\_\_\_

Child's Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Is the child homeless? Yes/No If yes, provide contact information for the child \_\_\_\_\_

AEA Where Child Lives: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

AEA Where Child Attends: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

My Name: \_\_\_\_\_

My Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

Other parent's name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

The nature of the problem:

The facts of the case relating to the problem:

Your proposed resolution to the problem:

Is this form completed by someone other than the parent? Yes/No If yes, please provide your name, your contact information, and your relationship to the parent: \_\_\_\_\_

Is there someone else not listed on this form who is the child's parent or guardian? Yes/No If yes, please provide that person's name, contact information, and relationship to the child:

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## Model Form: IDEA State Complaint

Use this form if you want to file an IDEA state complaint. That process is explained on pages 15 and 16 of the *Early ACCESS Procedural Safeguards Manual for Parents (Parental Rights in Early Intervention)*. After you complete this form, send copies to:

- (1) the AEA(s) involved, and
- (2) the Iowa Department of Education, Grimes State Office Building, 400 E. 14<sup>th</sup> St., Des Moines, IA 50319-0146.

Fill out this form completely. Use additional sheets of paper, if necessary.

Date: \_\_\_\_\_ I am filing an IDEA state complaint. I request an investigation by the Iowa Department of Education. I allege that the public agencies violated a requirement of the Part C of the Individuals with Disabilities Education Act and implementing state rules and federal regulations.

My Name: \_\_\_\_\_ **Signature:** \_\_\_\_\_

My Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

IS THIS COMPLAINT ABOUT A SPECIFIC CHILD? YES/NO IF "YES," PLEASE COMPLETE:

Child's Name: \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Does your child use another name? Yes/No If yes, what is it? \_\_\_\_\_

Child's Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Is the child homeless? Yes/No If yes, provide contact information for the child \_\_\_\_\_

AEA Where Child Lives: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

AEA Where Child Attends: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

**Note:** Questions 1-3 are required if the complaint concerns a specific child. If not, questions 1-3 are recommended.

1. The nature of the problem:
2. The facts of the case relating to the problem:
3. Your proposed resolution to the problem:

Did this alleged violation occur not more than one year prior to the date the Iowa Department of Education received this complaint? Yes/No

Is this form completed by someone other than a parent, such as an organization? Yes/No If yes, please provide your name, your contact information, and your relationship to a parent, if different from above:

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Is there someone else not listed on this form who is the child's parent or guardian? Yes/No If yes, please provide that person's name, contact information, and relationship to the child:

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## Model Form: Due Process Complaint (Request for Due Process Hearing)

Use this form if you want to file a due process complaint and request a due process hearing. That process is explained on pages 17 through 19 of the *Early ACCESS Procedural Safeguards Manual for Parents (Parental Rights in Early Intervention)*. After you complete this form, send copies to:

- (1) the AEA(s) involved, and
- (2) the Iowa Department of Education, Grimes State Office Building, 400 E. 14<sup>th</sup> St., Des Moines, IA 50319-0146.

Fill out this form completely. Use additional sheets of paper, if necessary.

Date: \_\_\_\_\_ I am filing a due process complaint about my child. I request a due process hearing before an administrative law judge appointed by the Iowa Department of Education.

Child's Name: \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Does your child use another name? Yes/No If yes, what is it? \_\_\_\_\_

Child's Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Is the child homeless? Yes/No If yes, provide contact information for the child \_\_\_\_\_

AEA Where Child Lives: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

AEA Where Child Attends: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

My Name: \_\_\_\_\_

My Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

Other parent's name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

The nature of the problem:

The facts of the case relating to the problem:

Your proposed resolution to the problem:

Is this form completed by someone other than the parent? Yes/No If yes, please provide your name, your contact information, and your relationship to the parent: \_\_\_\_\_

Is there someone else not listed on this form who is the child's parent or guardian? Yes/No If yes, please provide that person's name, contact information, and relationship to the child:

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**IMPORTANT NOTICE TO PARENTS:** Federal law requires that this information on how Early ACCESS is financed be provided to families whenever Early ACCESS seeks to use public or private insurance.

**Iowa Department of Education, Lead Agency  
Early ACCESS Integrated System of Early Intervention Services  
(Part C of the Individuals with Disabilities Education Act)**

**System of Payments Policies, As Revised  
As adopted March 29, 2012, and published April 28, 2012  
Technical Conforming Correction, June 2013**

The Iowa Department of Education has adopted the following system of payments policy, most recently modified by administrative rules noticed by the Iowa State Board of Education on January 26, 2012, and adopted March 29, 2012.

**I. Early ACCESS Services shall be "free."**

Iowa is a "birth mandate" (also known as a "FAPE mandate") state. See Iowa Code § 256B.2 (2011). Iowa offers a "free and appropriate public education" ("FAPE") to children with disabilities under twenty-one years of age who require special education. *Id.* § 256B.2(3).

For that reason, the Department assures that it does not charge parents for any services under this Part that are part of a child's FAPE under Iowa Code chapter 256B.

**II. The Department or its Regional Grantees may seek to use a family's public insurance or benefits under Title XIX of the Social Security Act ("Medicaid").**

Early ACCESS Regional Grantees and other providers may seek to access a family's Medicaid coverage. Early ACCESS providers shall not require a parent to enroll in or sign up for public benefits or insurance as a condition of receiving Early ACCESS services and must obtain consent before using a parent's or child's public insurance or benefits, if that child or parent is not already enrolled in such a program.

*Nature and Amount of Medicaid Reimbursement.* Coverage benefits reimburse the provider for the cost of specified Early ACCESS services. The Iowa Department of Human Services determines the amount of payments and covered services. Payment shall not exceed the provider's actual cost of providing the covered service.

*Functions or Services Subject to System of Payments.* According to the Department of Human Services, reimbursement under Medicaid "will be made for medically necessary audiology, developmental

services, health and nursing services, medical transportation services, nutrition services, occupational therapy services, physical therapy services, psychological evaluation and counseling, social work, speech-language services, vision services, and service coordination or case management services." To be covered by Medicaid and subject of reimbursement, a service must be listed in or linked to a service in a child's individualized family service plan ("IFSP").

To access public benefits or insurance, such as Medicaid, the provider must provide the parent with a notice substantially similar to the one attached as Appendix A and must meet the "no cost" provisions attached as Appendix B.

The Department does not require parents to pay any co-payments or deductibles under Medicaid. Consistent with its rules implementing Title XIX of the Social Security Act, the Department of Human Services will require the use of any available private insurance whenever it provides Medicaid reimbursement for a service. That policy is in the notice attached as Appendix A and in the next division.

If a parent does not provide consent to using Medicaid or to sharing of personally identifiable information with the Department of Human Services for purposes of Medicaid billing, the Department and Early ACCESS providers will not use available Medicaid benefits.

If a parent does not provide consent to using Medicaid or to sharing of personally identifiable information with the Department of Human Services for purposes of Medicaid billing, the Department and Early ACCESS providers will still provide all IFSP services to which the parent has consented.

**III. The Department of Human Services will seek reimbursement from available private health insurance coverage whenever it pays a claim under Title XIX of the Social Security Act ("Medicaid").**

Title XIX of the Social Security Act requires the Department of Human Services to seek reimbursement from available private insurance policies or coverage whenever the Department of Human Services pays a Medicaid claim.

Whenever the Department or an Early ACCESS provider seeks to use a child's or parent's Medicaid coverage and a parent or child has available private health insurance coverage, the Department or Early ACCESS service provider will seek parental consent to access private insurance, as described below.

*Nature and Amount of Private Insurance Coverage.* Coverage

benefits reimburse the Department of Human Services for Medicaid payments. The private insurance carrier determines the amount of payments and covered services. Payment shall not exceed the provider's actual cost of providing the covered service.

*Functions or Services Subject to System of Payments.* The functions or services subject to payment from private insurance must meet the "Functions or Services" criteria in Division II (above), and be a covered service under the applicable private insurance policy. The private insurance carrier determines whether a particular Early ACCESS service is a covered service under the policy it has written.

Parental consent to use private insurance coverage must be obtained in the following cases:

- When a public agency or Early ACCESS provider seeks to use a parent's or child's private insurance or benefits to pay for the initial provision of an EARLY ACCESS service in the IFSP; and
- Each time consent for services is required under Early ACCESS rule 281-120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in a child's IFSP.

The Department does not require a parent to pay any costs that a parent would incur as a result of the state's use of private insurance to pay for Early ACCESS services (such as copayments, premiums, premium increases, or deductibles). Upon parental request, the appropriate public agency reimburses parents for those expenses.

When obtaining consent required for use of private insurance or benefits or initially using benefits under a child's or a parent's private insurance policy to pay for an Early ACCESS service, the State provides the parent with a copy of the Department's system of payments policies. These are the potential costs a parent may incur when the parent's private insurance is used to pay for Early ACCESS services:

- Copayments, premium increases, or deductibles (all of which will be reimbursed), and
- Other long-term costs, such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy.

If a parent has questions about private insurance coverage, the parent contacts the private health insurance provider. The service coordinator may assist in facilitating that conversation.

If a parent withholds consent to use the parent's or the child's private insurance as part of a Medicaid claim, the Department and the Early ACCESS service provider will not file a claim for Medicaid reimbursement.

If a parent withholds consent to use the parent's or the child's private insurance as part of a Medicaid claim, the agency must still make available those Early ACCESS services on the IFSP for which the parent has provided consent.

**IV. The Department and its Regional Grantees do not seek access to private health insurance coverage when it is not associated with a claim under Title XIX of the Social Security Act ("Medicaid").**

Although the Department's administrative rules are written to allow public agencies to request access to private health insurance in all instances, it is not currently the policy or practice of the State of Iowa to seek access to private insurance coverage when that private insurance coverage is not associated with Medicaid claims to pay for Early ACCESS services. No change to that policy has been proposed.

While a rule incorporating 34 C.F.R. § 303.520(b)(2) has been adopted by the Department, the Department cannot exercise that option because no statute required by that rule has yet been passed.

**V. Other Elements: Iowa's Early ACCESS System of Payments**

The Department has adopted a "payor of last resort" policy by administrative rule. That rule is in Appendix C.

This policy and the administrative rules it implements are intended to comply with 34 C.F.R. § 303.521.

This policy describes the functions or services that are subject to Iowa's system of payments, in Divisions II and III, as well as the manner of calculating the amount of reimbursement (which shall not exceed the actual cost of providing such services).

Due to Division I of this policy, ability or inability to pay is not a part of Iowa's system of payments. To the extent that Medicaid eligibility is based on income or asset limits, the Iowa Department of Human Services sets those limits in accordance with Title XIX of the Social Security Act.

Iowa's Early ACCESS rules contain the following assurances.

- 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 in this Division and Division I).
- Early ACCESS providers will not seek reimbursement for an amount greater than the actual cost of providing Early ACCESS services.
- 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.

The required assurance on inability to pay is not relevant, based on Division I.

If a family fails to provide required income or asset information to the Department of Human Services, the family may not be eligible for Medicaid coverage.

The Department or an Early ACCESS service provider may use Part C or other funds to pay for costs such as premium increases, deductibles, or copayments.

The family fees rules and insurance proceeds rules in 34 C.F.R. § 303.520(d)-(e) and 303.521(d) are adopted by the Iowa Department of Education, in Iowa Administrative Code rule 281-120.520(4)-(5) and 281-120.521(4), respectively.

The following functions are not subject to fees.

- Implementing Early ACCESS's child find requirements
- Evaluation and assessment and the functions related to evaluation and assessment
- Service coordination services
- Administrative and coordinative activities related to:
  - The development, review, and evaluation of IFSPs and interim IFSPs; and
  - Implementation of Early ACCESS procedural safeguards and the other components of Early ACCESS in rules 281-120.300 through 281-120.346

*Procedural Safeguards.* 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 any of the following:

- Participate in mediation.
- Request a due process hearing.
- File a state complaint.
- Use any other procedure established by the state for speedy resolution of financial claims (such as the AEA's resolution facilitator process or an administrative appeal of Medicaid coverage with the Iowa Department of Human Services), provided that such use does not delay or deny the parent's procedural rights under Early ACCESS, including the right to use, in a timely manner, any of the first three bulleted items in this paragraph.

The Department must inform parents of these procedural safeguard options in either of the following ways:

- Providing parents with a copy of the state's system of payments policies when obtaining consent to provide Early ACCESS services under Early ACCESS rule 120.420(1); or
- Including this information with the notice provided to parents under Early ACCESS rule 281-120.421.

## **VI. Authorities**

Iowa Code ch. 256B (2011)

34 C.F.R. § 303.510 (2011)

34 C.F.R. § 303.520 (2011)

34 C.F.R. § 303.521 (2011)

Iowa Admin. Code r. 281-120.510 (2012)

Iowa Admin. Code r. 281-120.520 (2012)

Iowa Admin. Code r. 281-120.521 (2012)

**APPENDIX A**  
**WRITTEN NOTIFICATION REGARDING EARLY ACCESS USE OF MEDICAID**

Before the Department of Education ("Department") or Early ACCESS service provider uses your public benefits or insurance, or your child's public benefits or insurance, to pay for Early ACCESS service, the agency must provide written notification to you. Please carefully read the following statements.

Medicaid

- Parental consent must be obtained under Early ACCESS rule 281-120.414(34CFR303) (if that rule applies) before the Department or Early ACCESS provider discloses, for billing purposes, your child's personally identifiable information to the Department of Human Services, the state public agency responsible for the administration of the state's Medicaid program.
- Parents have the right under Early ACCESS rule 281-120.414(34CFR303) (if that rule applies) to withdraw their consent to disclosure of personally identifiable information to the Department of Human Services for Medicaid billing purposes, at any time.
- Neither the Department nor any Early ACCESS service provider may require you to sign up for or enroll in public benefits or insurance programs as a condition of receiving Early ACCESS services and must obtain your consent prior to using your public benefits or insurance or the public benefits or insurance of your child if you or your child is not already enrolled in such a program. The Department or Early ACCESS service provider must obtain your consent to use your child's or your public benefits or insurance to pay for Early ACCESS services if that use would:
  - Decrease available lifetime coverage or any other insured benefit for your child or you under that program;
  - Result in your paying for services that would otherwise be covered by the public benefits or insurance program;
  - Result in any increase in premiums or discontinuation of public benefits or insurance for you or your child; or
  - Risk loss of eligibility for you or your child for home- and community-based waivers based on aggregate health-related expenditures.

If you do not provide consent, the agency must still make available those Early ACCESS services on the IFSP for which you have provided consent.

- Neither the Department nor any Early ACCESS provider will charge you any copayments or deductibles for use of public benefits or insurance, such as Medicaid. If there is available private health insurance coverage, the Department of Human Services is required by the law governing Medicaid to seek access to it.

## Private Insurance Coverage When Medicaid-Eligible

- The Department may not use your private insurance to pay for Early ACCESS services unless you provide consent to use that private insurance to pay for Early ACCESS services for your child. This includes the use of private insurance when using available private insurance is required before using public benefits or insurance, such as Medicaid.
- Your consent to use private insurance coverage must be obtained:
  - When a public agency or Early ACCESS provider seeks to use your private insurance or benefits to pay for the initial provision of an EARLY ACCESS service in the IFSP; and
  - Each time consent for services is required under Early ACCESS rule 281-120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in your child's IFSP.
- The Department does not require you to pay any costs that you would incur as a result of the state's use of private insurance to pay for Early ACCESS services (such as copayments, premium increases, or deductibles). Upon your request, the appropriate public agency reimburses parents for those expenses.
- When obtaining your consent required for use of private insurance or benefits or initially using benefits under your child's or your private insurance policy to pay for an Early ACCESS service, the State provides the parent with a copy of the Department's system of payments policies. These are the potential costs you may incur when the parent's private insurance is used to pay for Early ACCESS services:
  - Copayments, premium increases, or deductibles (all of which will be reimbursed), and
  - Other long-term costs, such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy.

If you have any questions about private insurance coverage, you can contact your private health insurance provider. Your service coordinator may be able to assist you with this matter.

- If you withhold your consent to use your private insurance or your child's private insurance as part of a Medicaid claim, the Department and the Early ACCESS service provider will not file a claim for Medicaid reimbursement.
- If you do not provide consent to use your private insurance or your child's private insurance as part of a Medicaid claim, the agency must still make available those Early ACCESS services on the IFSP for which you have provided consent.

**APPENDIX B**  
**USE OF MEDICAID: "NO COST" PROVISIONS**

**281-120.520(34CFR303) Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services.**

**120.520(1)** *Use of public benefits or public insurance to pay for Early ACCESS services.*

\*\*\*\*

b. With regard to the state's using the public benefits or insurance of a child or parent to pay for Part C services, the state:

(1) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(2) Must obtain consent, consistent with rule 281-120.7(34CFR303) and subrule 120.420(1), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

2. Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

3. Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

4. Risk loss of eligibility for the child or that child's parents for home- and community-based waivers based on aggregate health-related expenditures.

(3) If the parent does not provide consent under paragraph 120.520(1)"b," the state must still make available those Part C services on the IFSP to which the parent has provided consent.

\*\*\*\*

**APPENDIX C**  
**"PAYOR OF LAST RESORT" PROVISIONS**

**281-120.510(34CFR303) Payor of last resort.**

**120.510(1) *Nonsubstitution of funds.*** Except as provided in subrule 120.510(2), funds under this chapter may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this chapter may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other federal, state, local, or private source (subject to rules 281-120.520(34CFR303) and 281-120.521(34CFR303)).

**120.510(2) *Interim payments-reimbursement.*** If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under Part C of the Act may be used to pay the provider of services (for services and functions authorized under this chapter, including health services, as defined in rule 281-120.16(34CFR303) (but not medical services); functions of the child find system described in rules 281-120.115(34CFR303) through 281-120.117(34CFR303) and rules 281-120.301(34CFR303) through 281-120.320(34CFR303); and evaluations and assessments in rule 281-120.321(34CFR303)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

**120.510(3) *Nonreduction of benefits.*** Nothing in this chapter may be construed to permit a state to reduce medical or other assistance available in the state or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701 et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including Section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.