

## Montana Milestones Part C of IDEA: System of Payments Policy, July 2022

### **Administering Entity**

The Montana Department of Health and Human Services, Early Childhood and Family Support Division, as the Governor appointed lead agency, is responsible for the development and implementation of Montana Milestones Part C Early Intervention Program, the early intervention system for infants and toddlers with a disability and their families. Montana Milestones, consistent with Part C of the Individuals with Disabilities Education Act (IDEA), established a system of payments for Part C early intervention services, including Federal, State, local or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled.

### **Part C of IDEA Program System of Payments for Early Intervention Services**

Part C early intervention services provided to eligible infants and toddlers and their families are financed through multiple funding sources. Montana Milestones Part C Program System of Payments does not include family fees or sliding fees. In Montana, early intervention services as defined under Part C of IDEA are provided at no cost to the families served.

Families have an option to allow the local Part C Program provider to use private insurance to pay for Part C early intervention services. It is important to note families are not charged family fees or required to pay co-payments, or deductibles associated with receipt of Part C early intervention services. This is the case whether or not a family allows the local Part C Program provider to use private insurance or public benefits to pay for Part C early intervention services. Families are responsible to pay any insurance premiums they incur, if applicable, per their insurance plan and/or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under their insurance policy

### **Permissive Use of Funds by Montana Milestones §303.501**

Consistent with §303.120 through 303.122 and §303.220 through 303.226, Montana Milestones utilizes Part C of IDEA funds for activities or expenses reasonable and necessary for implementing Montana Milestones Part C Early Intervention Program for infants and toddlers with disabilities. This includes funds for direct early intervention

services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §303.510 through §303.521):

- To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;
- Montana does not use Part C funds for the provision of FAPE to children with disabilities from their third birthday to the beginning of the following school year; and
- Montana did not exercise the option to continue services to children beyond the age of three years.

Montana does not provide services under §303.204 for at-risk infants and toddlers, as defined in §303.5, but funds are used to strengthen the Statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing links with appropriate public and private community-based organizations, services, and personnel for the purposes of:

- Identifying and evaluating at-risk infants and toddlers;
- Making referrals for the infants and toddlers identified and evaluated; and
- Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under Part C.

(Authority: 20 U.S.C. 1435(a)(10)–(12), 1437(b), 1438)

### **Payor of Last Resort §303.510**

Except as provided in §303.410, funds under Part C of IDEA will 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 Part C will be used only for Part C early intervention services 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 §303.520 and §303.521). This may include use of Part C funds to pay for costs such as private insurance deductibles or co-payments (subject to §303.521(a)(6)).

If necessary to prevent a delay in the timely provision of appropriate Part C early intervention services to a child or the child's family, funds under Part C may be used to pay the provider of services (for services and functions authorized under this part, including health services, as defined in §303.16 but not medical services); functions of the child find system described in §303.115 through §303.117 and §303.301 through §303.310; and evaluations and assessments in §303.321, pending reimbursement from the agency or entity with ultimate responsibility for the payment.

Montana Milestones will not 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.

(Authority: 20 U.S.C. 1435(a)(10)(B), 1437(a)(2), 1440(a), 1440(c))

### **Methods to Ensure the Provision of and Financial Responsibility for Part C Services §303.511**

Montana Milestones ensures it has in place methods for State interagency coordination. Under these methods, the Director of the DPHHS ensures the interagency agreement or other method for interagency coordination is in effect between each State public agency and the Early Childhood and Family Support Division, Montana Milestones Part C Early Intervention Program in order to ensure:

- The provision of, and establishing financial responsibility for, early intervention services provided under Part C; and
- Such services are consistent with the requirement in section 635 of the Act and the Montana's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.

The methods meet all requirements in this section and be set forth in one of the following:

Signed interagency and intra-agency agreements between respective agency officials clearly identify the financial and service provision responsibilities of each agency (or entity within the agency).

## Procedures for Resolving Disputes

Montana Milestones assures it has entered into formal interagency agreements with other State level agencies involved in early intervention. The Agreement defines the financial responsibility of each agency for paying for early intervention services. The Agreement includes procedures for timely resolution of intra- and interagency disputes about early intervention services and/or payments. The Agreement permits agencies to resolve internal disputes in a timely manner, based on the agency procedures included in the Agreement and include the process which Montana Milestones will follow in achieving resolution of intra-agency disputes if the agency is unable to resolve its own disputes.

The Agreement includes additional components necessary to ensure effective cooperation and coordination among all agencies involved in early intervention services:

- (a) Montana Milestones is responsible for resolving individual disputes about services and/or payments for a given service or disputes about other matters related to the State's early intervention program, in accordance with the procedures in §303.511(c) of the Part C regulations.
- (b) In the case of intra-agency disputes, the matter shall be resolved using the agency's internal procedures, so long as the agency acts within 10 working days to resolve the matter.
- (c) In the case a given agency is unable to resolve its own internal disputes in a timely manner, Montana Milestones shall, within 5 working days, refer the matter to the Early Intervention Oversight Committee (EIOC) made up of the Director of the Department of Public Health and Human Services and the Superintendent of Public Instruction (OPI) for administrative review.\* The EIOC shall, within 10 working days from the receipt of the dispute, render a determination to Montana Milestones. Montana Milestones will render the determination to the agency and implement the decision. If an agency rejects the determination of the EIOC, that agency may pursue resolution of the dispute through the Montana Uniform Arbitration Act, codified as Title 27, Chapter 5 of the Montana Codes Annotated. An arbitration judge will render a final, binding decision on the agencies involved.  
*\* To the extent necessary to ensure compliance with the action taken, Montana Milestones will refer any dispute to the EIOC for a determination.*
- (d) In the case where two or more agencies are unable to resolve disputes within 10 working days, the lead agency shall, within 5 working days, refer the matter to the EIOC for administrative review. The EIOC shall, within 10 working days, render a

determination to Montana Milestones. Montana Milestones will render the determination to the appropriate agencies and, as lead agency for Part C, implement the decision. If any of the agencies reject the determination of the EIOC, that agency may pursue resolution of the dispute through the Montana Uniform Arbitration Act, codified at Title 27, Chapter 5, Montana Codes Annotated. An arbitration judge will render a final, binding decision on the agencies involved.

- (e) During the pendency of disputes regarding the payment or costs for services, Montana Milestones, as the agency assigned to designation of financial responsibility, will, depending on the nature of the dispute, assign financial responsibility to an agency subject to the provisions of §303.511 (c) or pay for the services using Part C funds, in accordance with the payor of last resort provisions in §303.510 through §303.521.
- (f) If, in resolving the dispute, Montana Milestones determines the assignment of financial responsibility under §303.511(a)(1) was inappropriately made, Montana Milestones will reassign the responsibility to the appropriate agency and make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility as provided in §303.511(a)(1).
- (g) To the extent necessary to ensure compliance with the action, Montana Milestones will:
  - Refer the dispute to the Early Intervention Oversight Committee (EIOC) for a determination; and
  - Implement the procedures to ensure services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers (§303.511 (d)).
  - In circumstances where Part C funds are used for interim payments to a provider of services pending the resolution of a dispute, the agency or entity found to have ultimate responsibility for the payment will have 30 days from the date of the final resolution of the dispute to reimburse Part C funds to the lead agency.

### **Procedures for Dispute Resolution §303.430**

Parents receive **Montana Milestones Part C System of Payments**, which contains the **Montana Milestones Dispute Resolution** options when they are provided written notice. Prior written notice is provided by the local Part C Program provider whenever a proposal or refusal to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or

toddler and their family occurs.

Montana Milestones' system includes written procedures for the timely administrative resolution of complaints through **Mediation**, **State Complaint** procedures, and **Due Process Hearing** procedures. Montana Milestones encourages and allows parents and local Part C Program providers to resolve informal complaints at the local level; however, the local Part C Program provider must (1) review with the parents all dispute resolution options they can exercise and (2) review with the parents they can choose another dispute resolution option at any time.

### Mediation

Montana Milestones makes available to parties to disputes involving any matter under this part the opportunity for mediation meeting the requirements (§303.431).

### State Complaint Procedures

Montana Milestones adopted written State Complaint Procedures to resolve any complaints filed by any party regarding any violation of this part meeting the requirements (§303.432 through §303.434).

### Due Process Hearing Procedures

Montana Milestones established written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by adopting the Part C due process hearing procedures under section 639 of the Act that:

- Meet the requirements in §303.435 through §303.438; and
- Provide a means of filing a due process complaint regarding any matter listed (§303.421(a))

### Status of a Child During the Pendency of a Due Process Complaint

During the pendency of any proceeding involving a Due Process Complaint unless the local Part C Program provider and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the settings identified in the IFSP consented to by the parents.

If the Due Process Complaint involves an application for initial services under Part C of the Act, the child must receive those services not in dispute.

(Approved by Office of Management and Budget under control number 1820-0678 and 1820-NEW)

Montana Milestones provides the following Part C services at public expense and at no cost to parents:

- Implementing the Child Find requirements (§303.301 through §303.303).
- Evaluations and assessments in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b).
- Service coordination services (as defined in §§303.13(b) (11) and 303.33) provided by the Family Support Specialist/Service Coordinator.
- Administrative and coordinative activities related to:
  - The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and
  - Implementation of the procedural safeguards and other components of the statewide system of early intervention services §303.300 through §303.346 and §303.500 through §303.521.
- Early intervention services authorized on the IFSP, including any co-payments or deductibles related to these services.

### **Montana Milestones Part C System of Payments Policy**

Montana Milestones does not charge any fees to parents including sliding fees scale or co-payments in order to receive early intervention services.

Part C services are supported by a variety of funding sources when appropriate. State General Funds, IDEA Federal Funds, Medicaid, and possibly other Federal, State, local or private sources may be used as appropriate for an individual child. These sources may include voluntary use of public benefits or public insurance and/or private insurance.

State General Funds and IDEA Federal Funds are administered by the Early Childhood and Family Support Division, Montana Milestones and granted to local Part C Program providers to fund Part C services. Funds from Medicaid and other Federal, State, local or private sources typically flow directly to the local Part C Program provider or directly to the child and family.

### **Montana Milestones Part C System of Payments** allows:

- Families to voluntarily use private insurance to pay for early intervention services at no cost for parents; and

- Permits the use of Part C funds or other funds to pay for costs such as the deductibles or co-payments associated with the provision of early intervention services.

The IFSP team (including the parents) is responsible for determining the child's and family's needs which result in development of outcomes on the IFSP. The IFSP team reviews various means to achieve the outcomes on the IFSP including early intervention services and funding sources for the services in accordance with the Part C of IDEA payor of last resort requirements.

### Monitoring of Payor of Last Resort and System of Payments

Monitoring of payor of last resort and the System of Payments occurs through Montana Milestones General Supervision System for monitoring.

### **Use of Public Benefits or Public Insurance to Pay for Part C Services §303.520(a)**

Parents are requested to provide consent prior to billing public insurance.

Federal Part C Regulations:

(1) A State may not use the public benefits or insurance of a child or parent to pay for part C services unless the State provides written notification, consistent with [§ 303.520\(a\)\(3\)](#), to the child's parents, and the State meets the no-cost protections identified in [paragraph \(a\)\(2\)](#) of this section.

(2) With regard to using the public benefits or insurance of a child or parent to pay for part C services, the State—

- 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;
- Must obtain consent, consistent with [§§ 303.7](#) and [303.420\(a\)\(4\)](#), to use a child's or parent's public benefits or insurance to pay for part C services if that use would—
  - Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;
  - Result in the child's parents 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 that child or that child's parents; or



- Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.
- If the parent does not provide consent under [paragraphs \(a\)\(2\)\(i\)](#) or [\(a\)\(2\)\(ii\)](#) of this section, the State must still make available those part C services on the IFSP to which the parent has provided consent
- Prior to using a child's or parent's public benefits or insurance to pay for part C services, the State must provide written notification to the child's parents. The notification must include—
  - A statement that parental consent must be obtained under [§ 303.414](#), if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (*e.g.*, Medicaid);
  - A statement of the no-cost protection provisions in [§ 303.520\(a\)\(2\)](#) and that if the parent does not provide the consent under [§ 303.520\(a\)\(2\)](#), the State lead agency must still make available those part C services on the IFSP for which the parent has provided consent;
  - A statement that the parents have the right under [§ 303.414](#), if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (*e.g.*, Medicaid) at any time; and
  - A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).
- If a State requires a parent to pay any costs that the parent would incur as a result of the State's using a child's or parent's public benefits or insurance to pay for part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the State's system of payments policies under [§ 303.521](#) and included in the notification provided to the parent under [paragraph \(a\)\(3\)](#) of this section; otherwise, the State cannot charge those costs to the parent.

With regard to using the public benefits or insurance of a child or parent to pay for Part C early intervention services, local Part C Program providers:

- Will not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Montana Milestones.

Prior to using a child's or parent's public benefits or insurance to pay for Part C early intervention services, the local Part C Program provider provides **Montana Milestones Written Notification for the Use of Private Insurance and Public Benefits** and **Montana Milestones Part C System of Payments Policy** to the child's parents. The notification includes:

- Parents have the right under §303.414 to withdraw their consent to disclosure of personally identifiable information to the local Part C Program provider and/or the Department of Public Health and Human Services, agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time through un-enrollment with the State's program; and
- Montana Milestones does not require parents to incur any costs as a result of participating in a public benefits or insurance program (specifically, co-payments or deductibles). State Medicaid regulations require the use of private insurance as the primary insurance.

#### **Use of Private Insurance to Pay for Part C Services §303.520 (b-c)**

Parents are requested to sign **Montana Milestones Informed Consent for the Use of Private Insurance** form. This allows the local Part C Program provider to use the family's private insurance to pay for Part C early intervention services. A copy of **Montana Milestones Part C System of Payments Policy** is provided to the parent when their consent to bill private insurance is requested.

**Montana Milestones Part C System of Payments Policy** specifies the following:

- Private insurance conditions:
  - The local Part C Program provider will not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C early intervention services unless the parent provides parental consent, consistent with §303.420(a)(4); to use private insurance to pay for Part C services for his or her child or the State meets one of the exceptions. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained:

- ✓ When the local Part C Program provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and
- ✓ Each time consent for services is required §303.420(a)(3) due to a change in frequency, length, duration, or intensity in the provision of early intervention services in the child's IFSP.
- Montana Milestones does not require parents to incur any costs as a result of participating in a public benefits or private insurance program (specifically, co-payments or deductibles).
- Parents will be responsible for the cost of any private insurance premiums or any other potential long-term costs, such as the loss of benefits, because of annual or lifetime health insurance coverage caps under the insurance policy.
- The lack of consent to access private insurance will not be used to delay or deny any services under this part to the child or family (§303,520(c)).