

5123-10-03

Early intervention program - system of payments.**(A) Purpose**

This rule establishes a structure to pay for activities and expenses that are reasonable and necessary for implementing Ohio's early intervention program for eligible children and their families.

(B) Definitions

For the purposes of this rule, the following definitions shall apply:

- (1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a developmental delay or disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Early intervention program" means Ohio's statewide system that provides coordinated services to parents of infants and toddlers with delays or disabilities in accordance with part C.
- (5) "Early intervention service coordinator" means a person who holds an early intervention service coordinator credential or an early intervention service coordination supervisor credential issued in accordance with rule 5123-10-04 of the Administrative Code and assists and enables an infant or toddler with a developmental delay or disability and the child's family to receive the services and rights, including procedural safeguards, required under part C.
- (6) "Early intervention services" means developmental services described in appendix A to rule 5123-10-02 of the Administrative Code, selected in collaboration with a parent of a child birth through age two who is eligible for services under part C, and designed to meet the developmental needs of the child and the needs of the child's family to assist appropriately in the child's development as identified in the individualized family service plan.
- (7) "Extraordinary medical expenses" means non-reimbursable costs paid during the individualized family service plan year by the family of the eligible child for medically necessary care, health insurance premiums/co-payments/

deductibles, and modifications to the child's home to make the home accessible when such costs constitute:

- (a) At least one per cent of the family's gross income when the family's gross income is less than or equal to two hundred ten per cent of the federal poverty level;
 - (b) At least two per cent of the family's gross income when the family's gross income is greater than two hundred ten per cent of the federal poverty level and less than or equal to two hundred twenty per cent of the federal poverty level;
 - (c) At least three per cent of the family's gross income when the family's gross income is greater than two hundred twenty per cent of the federal poverty level and less than or equal to two hundred thirty per cent of the federal poverty level;
 - (d) At least four per cent of the family's gross income when the family's gross income is greater than two hundred thirty per cent of the federal poverty level and less than or equal to two hundred forty per cent of the federal poverty level;
 - (e) At least five per cent of the family's gross income when the family's gross income is greater than two hundred forty per cent of the federal poverty level and less than or equal to two hundred seventy per cent of the federal poverty level;
 - (f) At least six per cent of the family's gross income when the family's gross income is greater than two hundred seventy per cent of the federal poverty level and less than or equal to three hundred per cent of the federal poverty level;
 - (g) At least seven per cent of the family's gross income when the family's gross income is greater than three hundred per cent of the federal poverty level and less than or equal to four hundred per cent of the federal poverty level; or
 - (h) At least eight per cent of the family's gross income when the family's gross income is greater than four hundred per cent of the federal poverty level.
- (8) "Home and community-based services medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.

- (9) "Individualized family service plan" means the written plan for providing early intervention services to an eligible child and the child's family. The fifty-five units of early intervention services per individualized family service plan year provided at no cost to an eligible child and his or her family in accordance with paragraph (C)(1)(f) of this rule shall not serve to limit the team's recommendation of needed early intervention services in the individualized family service plan.
- (10) "Individualized family service plan year" means the period, not to exceed three hundred sixty-six calendar days or extend beyond the child's third birthday, beginning on the day signatures are secured on an initial or annual individualized family service plan and ending when signatures are secured on a subsequent annual individualized family service plan.
- (11) "Medically necessary care" means a procedure, item, or service that prevents, diagnoses, evaluates, corrects, ameliorates, or treats an adverse health condition such as an illness, injury, disease or its symptoms, emotional or behavioral dysfunction, intellectual deficit, cognitive impairment, developmental delay, or disability and that:
- (a) Meets generally accepted standards of medical practice;
 - (b) Is clinically appropriate in its type, frequency, extent, duration, and delivery setting;
 - (c) Is appropriate to the adverse health condition for which it is provided and is expected to produce the desired outcome;
 - (d) Is the lowest cost alternative that effectively addresses and treats the medical problem;
 - (e) Provides unique, essential, and appropriate information if it is used for diagnostic purposes; and
 - (f) Is not provided primarily for the economic benefit of the provider nor for the convenience of the provider or anyone else other than the recipient.
- (12) "Parent" means a biological or adoptive parent of a child, a guardian, a foster parent or person acting in place of a biological or adoptive parent with whom the child lives, or an appointed surrogate parent, consistent with 34 C.F.R. 303.27, as in effect on the effective date of this rule.

- (13) "Part C" means part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, and 34 C.F.R. part 303, as in effect on the effective date of this rule.
- (14) "Payor of last resort" means the use of federal part C funds to pay for early intervention services only when all other funding sources have been exhausted. These funds may be used to prevent a delay in the timely provision of early intervention services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.
- (15) "Qualified personnel" means the persons described in appendix B to rule 5123-10-02 of the Administrative Code.
- (16) "Team" means the group of persons who develop the individualized family service plan and includes, at a minimum, the parent of the eligible child, other family members when requested by the parent, an advocate or other person outside of the family when requested by the parent, the early intervention service coordinator, and a person who conducted the evaluation or assessment of the child.
- (17) "Unit" means either:
- (a) Sixty minutes of early intervention services; or
 - (b) One hundred dollars expended for an assistive technology device.

(C) Provision of and payment for early intervention services

- (1) The department shall ensure that the following early intervention services and functions are funded through local, state, and federal public funds and are provided at no cost to eligible children and their families:
- (a) Child find;
 - (b) Evaluation and assessment;
 - (c) Service coordination;
 - (d) Administrative and coordinating activities related to the development, review, and evaluation of the individualized family service plan and interim individualized family service plan;

- (e) Implementation of procedural safeguards in accordance with rule 5123-10-01 of the Administrative Code and paragraph (H) of this rule; and
 - (f) Fifty-five units of early intervention services per individualized family service plan year identified as needed in the individualized family service plan.
- (2) Early intervention services, other than those listed in paragraphs (C)(1)(a) to (C)(1)(f) of this rule, may be financed through:
- (a) County boards, based on a county board's strategic plan and written policy regarding early intervention services in accordance with rule 5123-4-01 of the Administrative Code;
 - (b) Private insurance of the child or parent, with the consent of the parent of the eligible child obtained using form EI-05 ("Consent to Use Insurance for Early Intervention Services," July 2019);
 - (c) Public insurance of the child or parent (e.g., medicaid or children's health insurance program), with the consent of the parent of the eligible child for disclosure of the child's personally-identifiable information to the public insurance program for billing purposes obtained using form EI-05 ("Consent to Use Insurance for Early Intervention Services," July 2019);
 - (d) Parent cost participation based on the determination of the parent's ability to pay using form EI-15 ("Determination of Parent Ability to Pay for Early Intervention Services," July 2019); and
 - (e) The department through a combination of state general revenue funds and federal part C funds, with federal part C funds being payor of last resort and approved through submission of form EI-16 ("Payment for Early Intervention Services," July 2019).
- (3) When the first fifty-five units of early intervention services per individualized family service plan year are not available from or are denied by the funding sources set forth in paragraphs (C)(2)(a) to (C)(2)(c) of this rule, the department shall pay qualified personnel for early intervention services identified as needed in an individualized family service plan, regardless of the parent's ability to pay as determined in accordance with paragraph (D)(2) of this rule.
- (4) When more than fifty-five units of early intervention services per individualized family service plan year are identified as needed in an individualized family service plan:

(a) A parent determined able to pay for early intervention services in accordance with paragraph (D)(2) of this rule shall be responsible for paying the cost of early intervention services.

(b) The child of a parent determined unable to pay for early intervention services in accordance with paragraph (D)(2) of this rule shall continue to receive early intervention services at public expense.

(5) Providers of early intervention services, other than county boards, shall enter into a contractual relationship with the department for provision of the services.

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

(1) The early intervention service coordinator shall explain this rule and determine a parent's ability to pay for early intervention services using form EI-15 ("Determination of Parent Ability to Pay for Early Intervention Services," July 2019) in accordance with paragraph (D)(2) of this rule within forty-five calendar days of the referral to the early intervention program and within forty-five calendar days of each scheduled annual review of the individualized family service plan.

(2) A parent shall be determined able to pay for early intervention services unless:

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

(b) The parent or the child is receiving medicaid benefits; or

(c) The family's income is less than or equal to that required for Ohio healthy start eligibility for uninsured children (<https://ohioearlyintervention.org/system-of-payments>); or

(d) The family has extraordinary medical expenses as determined by the department using form EI-17 ("Extraordinary Medical Expenses Worksheet," July 2019) and form EI-18 ("Family Out of Pocket Medical Expense Tracking Sheet," July 2019) within thirty calendar days of the department's receipt of necessary supporting documentation.

(3) A parent who chooses not to share financial information needed by the early intervention service coordinator or the department to determine the parent's ability to pay shall be responsible for paying the cost of early intervention

services other than the early intervention services listed in paragraphs (C)(1)(a) to (C)(1)(f) of this rule.

- (4) The early intervention service coordinator shall inform the parent of the option to submit a request for redetermination of the parent's ability to pay if, after the initial determination, the parent or family meets a criterion set forth in paragraphs (D)(2)(a) to (D)(2)(d) of this rule.

(E) Parent cost participation

- (1) When a parent is determined unable to pay in accordance with paragraph (D)(2) of this rule, the eligible child shall be provided all early intervention services identified as needed in the individualized family service plan, including those early intervention services that exceed fifty-five units per individualized family service plan year, at no cost to the child or family.
- (2) When a parent is determined able to pay in accordance with paragraph (D)(2) of this rule, the parent shall be responsible for paying the cost of early intervention services, including private insurance co-payments and deductibles, needed to meet the outcomes in the individualized family service plan, other than the early intervention services listed in paragraphs (C)(1)(a) to (C)(1)(f) of this rule.
- (3) A parent shall not be charged more than the actual cost of the early intervention services (factoring in any amount received from other sources for payment for those services).
- (4) A child or parent with private insurance or public insurance shall not be charged disproportionately more than a child or parent without private insurance or public insurance.

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

- (1) The early intervention program shall not use the private insurance of a child or parent to pay for early intervention services without written consent of the parent obtained using form EI-05 ("Consent to Use Insurance for Early Intervention Services," July 2019). Prior to asking a parent if he or she consents to use of private insurance, the early intervention service coordinator shall:
- (a) Provide the parent with a description of Ohio's system of payments for early intervention services;
- (b) Explain this rule;

(3) When using the public insurance of a child or parent to pay for early intervention services, the early intervention program shall:

(a) Obtain initial, one-time parental consent for disclosure of the child's personally-identifiable information to the public insurance program for billing purposes using form EI-05 ("Consent to Use Insurance for Early Intervention Services," July 2019).

(b) Make available those early intervention services in the individualized family service plan for which the parent has provided consent.

(c) Provide written notification to the parent prior to using the public insurance of the child or parent to pay for early intervention services. The written notification shall include a statement:

(i) That after obtaining parental consent, the child's personally-identifiable information will be disclosed to the public insurance program for billing purposes.

(ii) That the parent has the right, at any time, to withdraw consent of disclosure of the child's personally-identifiable information to the public insurance program.

(iii) That the parent will not be charged co-payments, deductibles, or premiums for using public insurance.

(iv) That for children covered by both private insurance and public insurance, the use of private insurance to pay for early intervention services is required prior to the use of public insurance to pay for early intervention services. When the parent does not consent to use of private insurance, however, neither private insurance nor public insurance will be used to pay for early intervention services and the early intervention program shall make available those early intervention services in the individualized family service plan for which the parent has provided consent.

(v) That the parent will not, as a result of using public insurance for early intervention services:

(a) Have to pay for services that would otherwise be covered by the public insurance program;

(b) Incur any premiums or discontinuation of public insurance for the child or the parent;

(c) Risk loss of eligibility for the child or the parent for a home and community-based services medicaid waiver component based on aggregate health-related expenditures; or

(d) Risk decrease in available lifetime coverage or any other insured benefits.

(vi) Of the procedural safeguards set forth in paragraphs (G)(1), (G)(2), and (H) of this rule.

(H) Procedural safeguards

(1) A parent contesting the determination of the parent's ability to pay or imposition of parent cost participation shall be afforded the procedural safeguards set forth in part C and rule 5123-10-01 of the Administrative Code, including mediation, state complaint procedures, and due process hearing procedures. In addition, a parent contesting the determination of the parent's ability to pay or the imposition of parent cost participation may request an informal review by the department.

(a) The parent must submit a request for review to the department within thirty calendar days from receipt of notification of the determination of the parent's ability to pay or imposition of parent cost participation. The request must contain a statement of the reasons the parent believes the determination or imposition is incorrect or inappropriate and a proposed resolution.

(b) The department shall issue a written decision to the parent within twenty calendar days from receipt of the request for review.

(2) Early intervention services shall not be delayed or denied to an eligible child of a parent determined unable to pay for early intervention services in accordance with paragraph (D)(2) of this rule.

(3) Early intervention services shall not be delayed or denied to an eligible child due to lack of:

(a) Parental consent to use the private insurance of the child or parent to pay for early intervention services;

(b) The child's or parent's enrollment in public insurance programs; or

(c) Parental consent to share the child's personally-identifiable information with public insurance programs.

(4) Parents shall be notified of the procedural safeguards set forth in paragraphs (H)(1) to (H)(3) of this rule at the time of the determination of the parent's ability to pay in accordance with paragraph (D)(2) of this rule and prior to finalization and securing of signatures on the individualized family service plan.

Replaces: 5123:2-10-01

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5123.04, 5123.0421
Rule Amplifies: 5123.04, 5123.0421
Prior Effective Dates: 08/01/2017