

COMMONWEALTH OF VIRGINIA



**Notice of Child and Family  
Rights and Safeguards  
Including  
Facts About Family Cost Share**



**Infant & Toddler  
Connection of Virginia**

Virginia's Part C Early Intervention System

July 2015

# **NOTICE OF CHILD AND FAMILY RIGHTS AND SAFEGUARDS**

## **Introduction**

The Individuals with Disabilities Education Act (IDEA) is a federal law which includes provisions for early intervention services for eligible infants and toddlers (ages 0-36 months) with disabilities and their families. These provisions form Part C of IDEA and are articulated in federal regulations (34 CFR Part 303) and in State law (Virginia Code § 2.2-5300 et seq.).

In Virginia, the Part C system is called the Infant & Toddler Connection of Virginia. The system is designed to maximize family involvement and ensure parental consent in each step of the early intervention process, beginning with determination of eligibility and continuing through service delivery and transition.

The Infant & Toddler Connection of Virginia includes rights and safeguards to protect parents and children. Parents must be informed about these rights and safeguards in the Infant & Toddler Connection of Virginia so that they can have a leadership role in the services provided to their family. Notice of Child and Family Rights and Safeguards is an official notice of the rights and safeguards of children and families as defined under federal Part C regulations.

Information about child and family rights and safeguards are provided to families through local lead agencies, which are responsible for Part C early intervention services at the community level. Specifically, this information is provided by local agencies and providers that participate in Infant & Toddler Connection of Virginia, (referenced herein as "local participating agencies/providers").

☞ Service coordinators working with families can suggest additional materials to help families understand their rights and safeguards under Part C. They can also suggest ways that you and other family members can be partners with professionals to help meet the developmental needs of your child.

## **Within the Infant & Toddler Connection of Virginia Part C Early Intervention System, you, as a parent, have the following rights and safeguards:**

- The opportunity for a multidisciplinary evaluation for eligibility determination and, if eligible, assessment and the development of an Individualized Family Service Plan (IFSP) within forty-five (45) calendar days from referral;
- If eligible under Part C, the opportunity to receive appropriate early intervention services<sup>1</sup> for your child and family as addressed in an IFSP;
- The opportunity to receive evaluation for eligibility determination, assessment, IFSP development, service coordination, and procedural safeguards at no cost. You may, however, be charged for other early intervention services based on your ability to pay as determined using ability to pay mechanisms outlined in the Facts About Family Cost Share section of this document. Inability to pay will not prevent your child or your family from receiving early intervention services;

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<sup>1</sup> In Virginia, "appropriate early intervention services" are determined through the IFSP process. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in the IFSP. Federal regulations define early intervention services as services that "are designed to meet the developmental needs of an infant or toddler eligible under Part C and the needs of the family to assist appropriately in the infant's or toddler's development."

- The right to accept or refuse evaluations for eligibility determination, assessments, and services;
- The right to be invited to and participate in all meetings in which a decision is expected to be made regarding a proposal to change the identification, evaluation, or placement of your child, or the provision of services to your child or family;
- The right to receive written timely notice before a change is proposed or refused in the identification, evaluation, or placement of your child, or in the provision of services to your child or family;
- The opportunity to receive each early intervention service in natural environments to the extent appropriate to meet your child’s developmental needs;
- The right to maintenance of the confidentiality of personally-identifiable information;
- The right to obtain an initial copy of your child’s early intervention record at no cost;
- The right to receive a copy of each evaluation for eligibility determination, assessment, and IFSP as soon as possible after each IFSP meeting and at no cost;
- The right to review and, if appropriate, correct records;
- The right to request mediation and/or impartial due process procedures to resolve parent/provider disagreements; and
- The opportunity to file an administrative complaint.

In addition to the rights and safeguards noted above, you are entitled to be notified of specific procedural safeguards under Part C. These rights are described below.

## **A. Written Prior Notice**

Written prior notice must be given to you within a reasonable time (five [5] calendar days) before a local participating agency/provider proposes or refuses to initiate or change the identification, evaluation, or placement of your child, or the provision of appropriate early intervention services to your child and your family. The notice must be sufficiently detailed to inform you about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available under Part C; and
4. The state’s mediation, complaint and due process hearing procedures, including a description of how to file a complaint and the timelines for those procedures.

The notice must be:

1. Written in language understandable to the general public and provided in your native language unless clearly not feasible to do so;
2. If your native language or other mode of communication is not a written language, the local participating agency/provider shall take steps to insure that:
  - The notice is translated orally or by other means to you in your native language or other mode of communication;
  - You understand the notice;
  - There is written evidence that the requirements of this section have been met; and
  - If you are deaf, blind, unable to read, or have no written language, the mode of communication must be that normally used by you (such as sign language, Braille, or oral communication).

## B. Parental Consent

Consent means that:

1. You are fully informed of all information about the activity(s) for which consent is sought. This information is provided in your native language or other appropriate mode of communication, unless clearly not feasible to do so;

☞ Native Language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of the child. When conducting evaluations and assessments, native language means the language normally used by your child if that is developmentally appropriate for your child.

2. You understand and agree in writing to the carrying out of the activity(s) for which your consent is sought, and the consent describes the activity(s) and lists the early intervention records (if any) that will be released and to whom; and
3. You understand that the granting of consent is voluntary on your part and may be revoked at any time. If you revoke consent, that revocation does not apply to an action that took place before consent was revoked.

Your written consent must be obtained before the all evaluations to determine eligibility and assessments of your child and family are conducted and before early intervention services are provided. If you do not give consent, no action will be taken to coerce (force) you. The local participating agency/provider will make reasonable efforts to ensure you:

1. Are fully aware of the nature of the evaluation to determine eligibility and assessments, or early intervention services that would be available; and
2. Understand that your child will not be able to receive the evaluation to determine

eligibility, assessment, or early intervention service unless consent is given.

In addition, as the parent of a child eligible under Part C, you may determine whether your child or other family members will accept or decline any early intervention service(s) under this program. You may also decline such a service after first accepting it without jeopardizing other early intervention services under this program.

Your written consent is required before your private insurance, if you have that, can be used to pay for services. More specific information about your rights and responsibilities regarding payment for early intervention services are provided in the Facts About Family Cost Share section of this document.

Finally, you have the right to written notice of and written consent to the exchange of any personally-identifiable information collected, used, or maintained under Part C, consistent with Federal and State law.

## C. Records

☞ The following definitions are used in this section: (1) "Destruction/destroy" means physical destruction or removal of personal identifiers from information so the record is no longer personally identifiable; (2) "Early intervention record(s)" or "record(s)" means all records that are required to be collected, maintained or used under Part C; and (3) "Participating agency" means any individual, agency, entity or institution that collects, maintains, or uses personally-identifiable information to implement the requirements in Part C.

### 1. Examination of Records

In accordance with the Confidentiality of Information procedures outlined in the next section of this pamphlet, you must be given the opportunity to inspect and review records relating to evaluations for eligibility

determination, assessments, development and implementation of IFSPs, provision of early intervention services, individual complaints concerning your child, and any other portion of the Part C program involving records about your child and your family.

Each local participating agency/provider must give you the opportunity to inspect and review any records relating to your child, which are collected, maintained or used by the agency or provider under Part C from the point in time when your child is referred for early intervention services until the later of when the participating agency is no longer required to maintain or no longer maintains the information under applicable Federal and State laws. The local participating agency/provider must comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, placement, or provision of services for your child and family and, in no case, more than ten (10) calendar days after the request has been made.

The opportunity to inspect and review records includes:

- a. A response from the local participating agency/provider to reasonable requests for explanations and interpretations of the record;
- b. The right to request that the local participating agency/ provider provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records; and
- c. Having someone who is representing you inspect and review the record.

A local participating agency/provider may presume that you have the authority to inspect and review records relating to your child unless the agency or provider has been provided documentation that you do not have the authority under applicable Virginia law.

Each local participating agency/provider shall keep a written record of parties obtaining access to records collected, obtained, or used under Part C (except access by parents and authorized representatives and employees of such agency or provider), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the child's record.

If any record includes information on more than one child, you may inspect and review only the information relating to your child, or to be informed of that specific information.

Each local participating agency/provider shall provide you, upon request, a list of the types and locations of records collected, maintained, or used by the agency or provider. A local participating agency/ provider may charge a fee for copies of records which are made for parents under Part C if the fee does not effectively prevent you from exercising your right to inspect and review those records. However, an initial copy of the record must be made available at no cost to you and the local participating agency/provider may not charge a fee to search for or to retrieve information under Part C. You also must be provided, at no cost to you, a copy of each evaluation, assessment of your child, family assessment and IFSP as soon as possible after each IFSP meeting.

If you believe that information in records collected, maintained, or used under Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the local participating agency/provider that maintains the information to amend the information.

- a. Such agency or provider must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request.
- b. If such agency or provider refuses to amend the information as you request, you

must be informed of the refusal and be advised of the right to a hearing.

The local participating agency/provider, on request, must provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or family. You may request a due process hearing under Part C procedures or hearing procedures that are consistent with the Family Educational Rights and Privacy Act (FERPA) regulations at 34 CFR 99.22.

- a. If, as a result of the hearing, such agency or provider decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and must inform you in writing.
- b. If, as a result of the hearing, such agency or provider decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you must be informed of your right to place in the records of your child, a statement commenting on the information, and setting forth any reasons for disagreeing with the decision of the agency or provider.

Any explanation placed in the records of your child under this section must:

- a. Be maintained by the local participating agency/provider as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained by such agency or provider; and
- b. If the records of your child or the contested portion are disclosed by such agency or provider to any party, the explanation must also be disclosed to the party.

## 2. Confidentiality of Information

Parental consent must be obtained before personally-identifiable information is:

- a. Disclosed to anyone other than officials of the agency/provider collecting, maintaining or using information under Part C, unless authorized to do so under Part C (34 CFR 303.414) and FERPA (34 CFR 99.30); or
- b. Used for any purpose other than meeting a requirement under Part C.

Information from your child's early intervention record cannot be released to any party except local participating agencies/providers\* without your consent unless the agency or provider is authorized to do so under FERPA. If you refuse to provide consent, the local participating agency/provider may implement procedures, like explaining to you how your failure to consent affects the ability of your child to receive services under Part C, as long as those procedures do not override your right to refuse to consent.

\*Participating agencies/providers that may access your child's early intervention record include the Department of Behavioral Health and Developmental Services, the State Lead Agency for early intervention in Virginia; local lead agencies; and service providers involved in early intervention services for your child and family.

The following safeguards must be in place to ensure confidentiality of records:

- Each local participating agency/provider must protect the confidentiality of personally-identifiable information at collection, maintenance, storage, disclosure, and destruction stages;
- One official of each local participating agency/provider is responsible for ensuring the confidentiality of any personally-identifiable information;
- All persons collecting or using personally-identifiable information must receive training or instruction regarding Virginia's

Part C policies, procedures and practices which comply with IDEA and FERPA;

- Each local participating agency/provider must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally-identifiable information;
- The local participating agency/provider must inform parents when personally-identifiable information collected, maintained, or used under Part C is no longer needed to provide services to the child; and the information must be destroyed, at the request of the parents. (Permanent records of your child's name, date of birth, your address and phone number, names of service coordinator(s) and other early intervention service providers, the year and age of your child's exit from the program, and any programs your child entered upon exit from the early intervention program may be maintained.)

#### D. Resolving Disputes

If you disagree with a local participating agency/provider on the identification, evaluation, placement of your child, or provision of appropriate early intervention services to your child or family, you may request a timely administrative resolution of your concerns.

Virginia offers three (3) methods for resolving disputes, all of which are available at no cost to families: mediation, impartial due process hearings, and administrative complaints. The following is an overview of these three options. For information on how to file a request for mediation and/or an impartial due process hearing or to file an administrative complaint, see Contact Information on page 10.

##### 1. Mediation

Mediation is voluntary and must be freely agreed to by both parties. Any party may request mediation although neither parents nor

providers are required to use it. Mediation provides an opportunity for parents and providers to resolve their disagreements (e.g., individual child complaints) in a non-adversarial, informal manner. Mediation must be completed in fifteen (15) calendar days following receipt by the State Lead Agency of a request for mediation and may not be used to deny or delay your rights to an impartial due process hearing or to deny any of your other rights under Part C.

#### ***About Mediators and Hearing Officers...***

*Mediators used in mediation (and hearing officers used in due process hearings, as described in the next section), must be "impartial." Impartial means that the person appointed to serve as a mediator (or hearing officer of the due process proceeding)—*

*(1) Is not an employee of any agency or program involved in providing early intervention services, other services, or care of the child; and*

*(2) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.*

*A person who otherwise qualifies under this section is not an employee of an agency or program solely because the person is paid by the agency or program to implement the disagreement resolution process.*

The State Lead Agency will contact both parties (i.e., you and the provider) to review the complaint and the mediation process, and to schedule a time and location for the mediation. The mediation will be scheduled in a timely manner and held in a location that is convenient to both parties. A qualified and impartial mediator who is trained in effective mediation techniques will meet with both parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere. The State Lead Agency maintains a list of qualified mediators who are

knowledgeable of the laws and regulations relating to the provision of early intervention services for infants and toddlers with disabilities and their families.

If the disagreement is resolved through mediation, the parties must complete a legally binding agreement that describes the resolution and that states that all discussions that occurred during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The agreement must be signed by you and a representative of the state lead agency who has the authority to bind the agency. Mediation does not preclude you from requesting an impartial due process hearing at any time. If mediation is unsuccessful, you may want to request a due process hearing.

## 2. Impartial Due Process Hearings

An impartial due process hearing is a formal procedure conducted by an impartial hearing officer and is the second alternative for families seeking to resolve a dispute. Parents seeking an impartial due process hearing must submit their request in writing directly to the State Lead Agency. The impartial due process hearing must be completed, and a written decision made, within thirty (30) calendar days of the receipt of the request. (Mediation, if attempted, must occur within the same 30 days.)

Hearing officers are appointed to conduct due process hearings. Hearing officers must:

- a. Have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families; and
- b. Perform the following duties:
  - Listen to the presentation of relevant views about the complaint/ disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement;

- Provide a record of the proceedings at the cost of the state, including a written decision (hearing only).

Under Part C, you are given the rights listed below in any impartial due process hearing carried out under this section.

- a. To be accompanied and advised by a lawyer (at your expense) and by individuals with special knowledge or training about early intervention services for children eligible under Part C (at your expense);
- b. To present evidence and confront, cross examine, and to compel the attendance of witnesses;
- c. To prohibit the introduction of any evidence at the hearing that has not been disclosed to you at least five calendar days before the proceeding;
- d. To obtain a written or electronic verbatim (word by word) transcription of the hearing at no cost to you; and
- e. To obtain written findings of fact and decisions at no cost to you.

The impartial due process hearing described in this section must be carried out at a time and place that is reasonably convenient to you.

No later than thirty (30) calendar days after the State Lead Agency receives your disagreement (complaint), the impartial due process hearing required under this section must be completed and a written decision must be mailed to each of the parties. The hearing officer may grant specific extensions of time beyond the 30 days at the request of either party. Any party not satisfied with the findings and decision of the impartial due process hearing has the right to bring a civil action in state or federal court. During the pendency (time period) of any proceeding involving a due process complaint, unless the local participating agency/provider and you otherwise agree, your child and family will continue to receive the appropriate early intervention services in the setting identified in the IFSP for which you provided consent.



If the disagreement (complaint) between you and the provider involves an application for initial services, your child and family must be provided those services that are not in dispute.

### 3. Administrative Complaints

An individual or organization including those from another state may file a written signed complaint that any local participating agency/provider is violating a requirement of the Part C program. Infant & Toddler Connection of Virginia widely disseminates the State's complaint procedures to parents and other interested individuals, including parent training centers, protection and advocacy agencies, and other appropriate entities. The complaint must include:

- a. A statement that a requirement of Part C has been violated;
- b. A statement of the facts on which the complaint is based;
- c. The signature and contact information of the person filing the complaint; and
- d. If the complaint alleges violations with respect to a specific child, then the name and address of the residence of the child; the name of the provider serving the child; a description of the nature of the problem, including facts related to the problem; and a proposed resolution of the problem to the extent known and available at the time the complaint is filed.

Administrative complaints must be filed and received by the State Lead Agency within one (1) year of the alleged violation. The individual or organization filing an administrative complaint must forward a copy of the complaint to the local participating agency/provider serving the child at the same time the complaint is filed with the State Lead Agency.

Once the State Lead Agency has received the complaint, it has sixty (60) calendar days (unless exceptional circumstances exist) to:

- a. Investigate the complaint, including conducting an independent, on-site investigation, if necessary;
- b. Provide the individual or organization filing the complaint the opportunity to submit additional information, either orally or in writing, about the complaint;
- c. Provide the local participating agency/provider an opportunity to respond to the complaint, including the opportunity to propose a resolution to the complaint and the opportunity to engage in mediation;
- d. Make an independent determination as to whether or not a violation has occurred after reviewing all relevant information; and
- e. Issue a written decision to the complainant that addresses each allegation in the complaint and that contains the facts and conclusions as well as the reasons for the final decision.

If the final decision indicates that appropriate services were/are not being provided, the State Lead Agency must address:

- a. The failure to provide appropriate services, including corrective actions appropriate to address the needs of your child who is the subject of the complaint and your family (such as compensatory services or monetary reimbursement); and
- b. Appropriate future provision of services for all infants and toddlers with disabilities and their families.

The State Lead Agency must include procedures for effective implementation of the decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

No part of any complaint that is also currently being addressed in an impartial due process hearing can be dealt with as an administrative complaint within this process until the conclusion of the hearing. Complaints that

have already been decided in an impartial due process hearing involving the same parties cannot be considered under this procedure. The State must notify the complainant that the hearing decision is binding. However, the State Lead Agency must address complaints that are filed related to implementation of an impartial due process hearing decision.

### **Individual Right to Appeal** (For Medicaid Recipients Only)

State and Federal laws require that written notification be provided to individuals when the Department of Medical Assistance or any of its contractors takes an action that affects the individual's receipt of services. Appeals must be requested in writing and postmarked within 30 days of receipt of the notice of the adverse action. Please see section G of this document for detailed information about the Individual Right to Appeal.

Medicaid appeals do not affect a parent's right to request any of the Part C dispute resolution options. A Medicaid appeal is separate from the Part C dispute resolution process.

### **E. Surrogate Parents**

The rights of children eligible under Part C are protected even if:

1. No parent can be identified;
2. The local participating agency/provider, after reasonable efforts, cannot locate a parent; or
3. The child is a ward of Virginia under the laws of the Commonwealth. Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by Court order or permanent entrustment agreement pursuant to applicable law.

An individual is assigned to act as a "surrogate" for the parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and making a

reasonable effort to assign a surrogate to the child within 30 calendar days after determining that the child needs a surrogate parent. The following criteria are employed when selecting surrogates:

1. Surrogate parents are selected at the local level in the manner allowable under Virginia law; and
2. A person selected as a surrogate parent:
  - Has no personal or professional interest that conflicts with the interest of the child he or she represents;
  - Has knowledge and skills that ensure adequate representation of the child; and
  - Is not an employee of any state agency or a person or an employee of any other public agency or provider that provides early intervention services, education, care or other services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid by a local participating agency/ provider to serve as a surrogate parent.

The public agency that has been assigned care of the child must be consulted when determining the need for and, if needed, selecting a surrogate parent for a child who is a ward of Virginia or in foster care. In the case of a child who is a ward of Virginia, the judge overseeing the child's case may appoint a surrogate parent who meets requirements listed above.

A surrogate parent may represent the child in all matters relating to:

1. The evaluation for eligibility determination and assessment of the child;
2. Development and implementation of the child's IFSP, including annual evaluations and periodic reviews;

3. The ongoing provision of early intervention services to the child; and
4. Any other rights established under Part C.

**F. Contact Information**

The State Lead Agency for the Infant & Toddler Connection of Virginia Part C Early Intervention System is the Department of Behavioral Health and Developmental Services (DBHDS). To file an individual child complaint, or to file an administrative complaint, or to find out more about complaint procedures in Virginia, including resolution of disputes through mediation and/or impartial due process hearings contact the State Lead Agency at:

DBHDS  
 Infant & Toddler Connection of Virginia  
 1220 Bank Street, 9th Floor  
 P.O. Box 1797  
 Richmond, VA 23218-1797

**Direct phone # - (804) 786-3710**  
 Fax - (804) 371-7959 or  
 (804) 771-5877 (TDD/TTY)  
 or

If you prefer to make a toll free call, you may call 1-800-234-1448 to reach the Central Directory. Your name and contact information will be shared with the Infant & Toddler Connection of Virginia Office and a staff member will contact you.

**G. Individual Right to Appeal (For Medicaid Recipients Only)**

The Code of Federal Regulations at 42 CFR §431 *et seq.*, and the Virginia Administrative Code at 12VAC30-110-10 through 370, require that written notification be provided to individuals when DMAS or any of its contractors takes an action that adversely affects the individual's receipt of services. Most adverse actions may be appealed by the Medicaid client or by an authorized

representative on behalf of the client. Adverse actions include partial approvals, denials, reductions in service, suspensions, and terminations. Also, failure to act on a request for services within required timeframes may be appealed.

Appealable actions include disagreement about:

- your child's eligibility for Part C services;
- the development of an Individualized Family Service Plan within 45-calendar days from the date of referral to the Part C early intervention system,
- the provision of early intervention services including the services listed on an Individualized Family Service Plan (IFSP); and
- the frequency and length of these services.

For individuals who do not understand English, a translation of appeal rights that can be understood by the individual will be provided upon request.

If an appeal is filed before the effective date of a suspension, reduction, or termination, the level and scope of services previously received may continue during the appeal process. However, if the agency's action is upheld by the hearing officer, the client will be expected to repay DMAS for all services received during the appeal period. For this reason, the client may choose not to receive continued services. The provider will be notified by DMAS to reinstate services if continuation of services is applicable. If coverage is continued or reinstated due to an appeal, the provider may not suspend, reduce or terminate services until a decision is rendered by the hearing officer.

Appeals must be requested in writing and postmarked within 30 days of receipt of the notice of adverse action. The client or his authorized representative may write a letter or complete an Appeal Request Form. Forms are available from your Service Coordinator, on the internet at [www.dmas.virginia.gov](http://www.dmas.virginia.gov), at the Infant & Toddler Connection of Virginia's website at [www.infantva.org](http://www.infantva.org), from the Part C Procedural Safeguard Specialist at (804)786-3710, or by calling (804) 371-8488.

When completing the request for an appeal, be specific about what you want reviewed, and include a copy of the notice about the action that you disagree with.

Medicaid appeals do not affect a parent's right to request any of the Part C dispute resolution options. A Medicaid appeal is separate from the Part C dispute resolution process.

The appeal request must be signed and mailed or faxed to the:

Appeals Division  
Department of Medical Assistance  
Services  
600 E. Broad Street, 11<sup>th</sup> floor  
Richmond, Virginia 23219  
FAX: (804) 371-8491

More information about the appeals process is available on the internet at [www.dmas.virginia.gov](http://www.dmas.virginia.gov), at [www.infantva.org](http://www.infantva.org), or from your Part C Procedural Safeguard Specialist at (804)786-3710.

## H. Glossary

**Assessment** – The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under Part C to identify—

- (1) The child's unique strengths and needs and the services appropriate to meet those needs; and
- (2) The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

**Disclosure** – To permit access to or the release, transfer, or other communication of personally-identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

**Evaluation** – The procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under Part C, consistent with the definition of "infants

and toddlers with disabilities" in 34 CFR 303.21.

**Family** – Defined according to each family's definition of itself.

**Family Assessment** – Family assessments must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

**IFSP** – Individualized Family Service Plan (IFSP), a written plan for providing early intervention services to eligible children/families that:

- (1) Is developed jointly by the family and appropriate, qualified personnel providing early intervention services;
- (2) Is based on the multidisciplinary evaluation for eligibility determination and assessment of the child and the assessment of the strengths and needs of the child's family, as determined by the family and as required in 34 CFR 303.321; and
- (3) Includes services necessary to meet the unique needs of the child and family, and the other components listed under 34 CFR 303.344.

**Mediation** – A voluntary process freely agreed to by parents and providers to attempt to resolve Part C disagreements. Neither party is required to participate in the mediation process, and both parties must approve any agreement reached. Mediation may not be used to deny or delay your right to an impartial hearing or any of your other rights under Part C.

**Multidisciplinary** – The involvement of two or more disciplines or professions. With respect to evaluation for eligibility determination and assessment activities in 34 CFR 303.321, the term "multidisciplinary" may include one individual who is qualified in more than one discipline or profession. With respect to the IFSP Team in 34 CFR 303.340, the multidisciplinary team must include the parent, the service coordinator and at least one other individual from a discipline or profession other than service coordinator.

**Natural Environment** – Settings that are natural or typical for your child's same-aged peers who do not have a disability.

**Parent** – Includes:

- (1) a biological, adoptive or foster parent of a child;
- (2) a guardian (but not the State if the child is a ward of the State);

- (3) a person acting in the place of a biological or adoptive parent (such as a grandparent or stepparent) with whom the child lives, or a person who is legally responsible for the child's welfare;
- (4) a surrogate parent who has been assigned in accordance with Part C regulations 34 CFR 303.422

## **FACTS ABOUT FAMILY COST SHARE**

This document outlines family and provider responsibilities regarding payment for early intervention services through the Infant & Toddler Connection of Virginia.

The cost of early intervention services:

- **Services at no cost:** Some early intervention services are at no cost to the family. These services include:
  - Activities to identify children who may be eligible for Part C services (Child Find);
  - Eligibility determination and assessment to determine if a child is eligible for services and to identify strengths and needs in order to plan appropriate supports and services;
  - Activities and communication by the service coordinator assigned to the child/family (service coordination);
  - Development, review and evaluation of the Individualized Family Service Plan; and
  - All activities related to child/family rights including the administrative complaint process and mediation (e.g., implementation of procedural safeguards).
 All other early intervention services are subject to family fees.
- **Charges for services:** Charges are assessed to families whose children receive early intervention services in Virginia. Charges are generally established as the unit cost of providing the service and are made in accordance with federal Part C regulations and the Virginia Code.
- **Early Intervention rate:** The amount paid for services depends on the type of service provider. The following rates reflect the maximum amount of the charge that will be covered by Medicaid, other public funding, and/or family fees.

|                                 | <b>Category 1:</b><br>Physical therapist or assistant, Occupational therapist or assistant, Speech-language pathologist, Nurse | <b>Category 2:</b><br>Educators, Counselors, EI Assistants, Social workers, Psychologists, Music therapists, etc.* |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| Individual, natural environment | \$37.50 per 15 minutes                                                                                                         | \$27.50 per 15 minutes                                                                                             |
| Group, natural environment      | \$25.13 per 15 minutes                                                                                                         | \$18.43 per 15 minutes                                                                                             |

\* Category 2 also includes Orientation and Mobility Specialists, Certified Therapeutic Recreation Specialists, Family and Consumer Science Professionals, Family Therapists, Certified Nursing Aides, and Licensed Practical Nurses

Family Fees:

- **Ability to pay:** Amount the family is able to contribute toward the full cost of early intervention services, based on family size, income and expenses, and as documented on the Family Cost Share Agreement Form and/or the Fee Appeal Form.
- **Inability to Pay:** Family's inability to pay any dollar amount at all toward the cost of early intervention services. An inability to pay is determined and documented through the policies (including the fee appeal process) described in this booklet and results in the family receiving all early intervention services at no cost to the family.
- **Sliding Fee Scale:** A fee scale based upon taxable income and family size used to determine a maximum monthly cap that the family is responsible for paying. There is a copy of the sliding fee scale on the last page of this document.
  - A family may pay a fee that is less than or equal to the monthly cap, as determined by the sliding fee scale, based upon accrued charges, co-pays,

co-insurance and/or deductibles that result from services received.

- The maximum monthly payment established for the family will be the same regardless of
  - whether one or more children receive services;
  - the number of services received; and
  - the number of agencies from which services are received.
- **Appeal Procedures:** A fee appeal procedure is available if the amount of the maximum monthly cap determined by the sliding fee scale creates a financial hardship for families. In addition, families may file an administrative complaint, request mediation and/or initiate an impartial hearing if they are unable to resolve their differences regarding family fees locally.
- **Not Disclosing Financial Information:** Families may choose not to provide financial information and pay the full charge for services.

#### Assurances:

- Families will not be charged fees for services that their child is otherwise entitled to receive at no cost.
- Services will not be delayed or denied because of an inability to pay for the services. If the family meets the definition of inability to pay, their child must receive early intervention services at no cost.
- Families will not be charged any more than the actual cost of the service and amounts received from other payment sources, like insurance, will be factored in.
- Families with public or private insurance will not be charged more than families who do not have insurance.

#### Using Private Insurance or TRICARE to pay for early intervention services:

Many private insurance plans and TRICARE cover some early intervention services for which fees are charged. Such services include

Physical therapy, Occupational therapy, Speech - language pathology, and Assistive technology services and devices.

- Families may choose to use their insurance to cover early intervention services or they may choose not to use their insurance.
- Possible costs associated with using private insurance to pay for services include co-payments, co-insurance, premiums, deductibles, or long-term costs such as loss of benefits because of annual or lifetime coverage caps.
- Virginia has built in several safeguards to reduce the financial loss for families using their private insurance to pay for early intervention services. The Virginia General Assembly mandated that private insurance companies (which are not self-funded) provide up to \$5,000 of coverage for early intervention services each year without affecting the lifetime insurance coverage or risking loss of coverage.
- Families may use the sliding fee scale to establish a monthly cap on the amount they must pay toward their co-pays, co-insurance and deductible (though the cap does not apply to co-pays, co-insurance and deductibles if the family has a flexible spending account that automatically pays).

#### For families with a health care flexible spending account:

- Families are responsible for the full amount of any insurance co-pays, co-insurance and deductibles for early intervention services if the family has a health care flexible spending account *that automatically pays the family or the provider for these costs*. This is necessary due to tax implications for families and potential insurance reimbursement rate reductions.
- When there is a flexible spending account that automatically pays the family or the provider for out-of-pocket expenses (e.g., co-payments, co-insurance, deductibles, etc.), then the monthly cap documented on the Family Cost Share Agreement Form will apply only to those services not covered by

the health insurance plan, until all of the money in the flexible spending account has been used. Once all of the money in the flexible spending account has been used, the monthly cap will cover all services listed on the child's IFSP.

- The above policies do not apply if the flexible spending account works on a reimbursement basis (for example, the family has to submit paperwork to get money from their flexible spending account) or if the family has a flexible spending account debit card to pay for expenses like co-pays, co-insurance and deductibles.
- Families may want to see if they have a choice in how they set up their flexible spending account. Some flexible spending accounts give the option to automatically pay certain expenses but not others or the option to seek reimbursement for medical expenses or use a debit card to pay providers from the account rather than having the payment made automatically to the family or the provider.

#### Using Medicaid/FAMIS to pay for early intervention services:

- Families cannot be required to apply for or enroll in Medicaid/FAMIS in order to access early intervention services through the Infant & Toddler Connection of Virginia.
- Parent consent is required in order to bill Medicaid/FAMIS if the child is not already enrolled in Medicaid/FAMIS. If the parent does not provide consent for use of Medicaid in this situation, then all IFSP services must still be made available to the child and family.
- Parent consent is required in order for the local system to release a child's personally identifiable information to the Department of Medical Assistance Services for billing purposes. Parents may withdraw this consent at any time.
- In Virginia, using Medicaid/FAMIS to pay for early intervention services will not:

- Decrease available lifetime coverage or other insured benefit for the child or parent under the Medicaid/FAMIS program;
- Result in parents paying for services that would otherwise be paid for by Medicaid/FAMIS;
- Result in any increase in premiums or cancellation of public benefits or insurance for the child or parents; or
- Risk the loss of eligibility for the child or the child's parents for home and community-based waivers based on total health-related costs.
- The only potential cost to parents from using their Medicaid/FAMIS for early intervention services would be the required use of their private insurance, if they have that and if they have consented to use of that private insurance, prior to billing Medicaid for services other than those that must be provided at no cost.

#### Provider Responsibilities:

Providers have responsibilities concerning payment for early intervention services in Virginia. Providers shall:

- Inform families about their responsibility for payments for early intervention services;
- Inform families about the payment policies and procedures of the agency that is providing services for which they are financially responsible;
- Not deny families Early Intervention Services due to an inability to pay;
- Inform families what services must be provided at no cost to them;
- Inform families of the charges for each service their child receives;
- Inform families that a family may choose to pay full charges if they do not wish to provide financial information;
- Inform families that they may choose whether or not to use their private insurance or TRICARE to pay for early intervention services;



- Inform families that choose to use their insurance to cover early intervention services about the family's responsibilities related to co-pay, co-insurance and/or deductible amounts (including the availability of a sliding fee scale to determine a monthly cap for these costs as discussed below);
  - Inform families that they may access Virginia's Sliding Fee Scale regardless of whether or not they use their insurance to pay for services to determine a monthly cap, which is the maximum amount they will be required to pay each month (otherwise referred to as their ability to pay). The monthly cap does not apply to co-pays, co-insurance or deductibles if the family has a flexible spending account that automatically pays the family or provider for these costs;
  - Notify families prior to any change in fees they will be charged;
  - Inform families that a family may appeal if the amount of their financial responsibility based on the sliding fee scale creates a financial hardship for them; and
  - Inform families that they may file an administrative complaint, request mediation and/or initiate an impartial hearing at any time.
- Their co-pays, co-insurance and deductibles if they use insurance to help pay for services. If the co-pays, co-insurance and deductibles create a financial hardship, the family can provide financial information to determine a monthly cap (though the cap does not apply to co-pays, co-insurance and deductibles if the family has a flexible spending account that automatically pays for these costs);
  - Providing financial information in order for a monthly cap to be determined by the sliding fee scale;
  - Initiating the fee appeal process if the sliding fee scale creates a financial hardship for them;
  - Informing their service coordinator when there are changes in their financial situation; and
  - Participating in an annual financial agreement re-evaluation to determine family fee responsibility.

If you have questions about your fees and services, please contact:

Family Responsibilities:

Families have responsibilities concerning payment for early intervention services in Virginia. Families are responsible for:

- Requesting assistance from their service coordinator in answering questions or providing explanations of any information they do not understand regarding charges and fees;
- Paying full charges if they choose not to provide financial information in order to access the sliding fee scale;

If you have questions about fees and would like to contact the state office, please call:

1-(804) 786-3710

If you would like to speak with the state family representative, please call:

1-(888) 604-2677 ext 3



# Infant & Toddler Connection of Virginia

## Family Cost Share Fee Scale

| Taxable Income |           | Monthly Family Cost Participation by Family Size |         |         |           |
|----------------|-----------|--------------------------------------------------|---------|---------|-----------|
|                |           | 3 or fewer                                       | 4       | 5       | 6 or more |
| \$0            | \$45,000  | \$0                                              | \$0     | \$0     | \$0       |
| \$45,001       | \$55,000  | \$0                                              | \$0     | \$0     | \$0       |
| \$55,001       | \$65,000  | \$66                                             | \$50    | \$40    | \$26      |
| \$65,001       | \$75,000  | \$90                                             | \$68    | \$54    | \$36      |
| \$75,001       | \$85,000  | \$120                                            | \$90    | \$72    | \$48      |
| \$85,001       | \$95,000  | \$152                                            | \$114   | \$91    | \$61      |
| \$95,001       | \$105,000 | \$190                                            | \$143   | \$114   | \$76      |
| \$105,001      | \$125,000 | \$276                                            | \$207   | \$166   | \$110     |
| \$125,001      | \$145,000 | \$378                                            | \$284   | \$227   | \$151     |
| \$145,001      | \$165,000 | \$496                                            | \$372   | \$298   | \$198     |
| \$165,001      | \$185,000 | \$630                                            | \$473   | \$378   | \$252     |
| \$185,001      | \$215,000 | \$818                                            | \$614   | \$491   | \$327     |
| \$215,001      | \$245,000 | \$1,030                                          | \$773   | \$618   | \$412     |
| \$245,001      | \$285,000 | \$1,312                                          | \$984   | \$787   | \$525     |
| \$285,001      | \$325,000 | \$1,756                                          | \$1,317 | \$1,054 | \$702     |
| \$325,001      | \$365,000 | \$2,118                                          | \$1,589 | \$1,271 | \$847     |
| \$365,001      | or more   | \$2,430                                          | \$1,823 | \$1,458 | \$972     |

Note: The family cost share fee scale establishes a monthly cap, which is the maximum amount that a family will be required to pay per month for early intervention services regardless of charge(s), number of different types of services, or frequency or length of services. If accrued charges, co-pays, co-insurance or deductibles are less than the monthly cap, the family would be required to pay the lesser amount for that month.