

Frequently Asked Questions Revised 5-8-17

Who do these rules apply to?

Any individual early intervention provider, provider agency, or governmental agency (non-profit, school district, ESD, tribal entity, etc.) that is providing services through the ESIT (IDEA Part C) program regardless of whether they receive designated state or federal funding.

When do these rules impact contracts?

The rules were finalized on January 2, 2017. All contracts with providers must reflect implementation of these rules.

How do these rules relate to SB 5879 that was passed during the 2016 legislative session (chapter 57, laws of 2016 §5)? The legislation required DEL “to develop and adopt rules that establish minimum requirements for services offered through Part C programs, including allowable allocations and expenditures for transition into Part B of the federal individuals with disabilities education act (IDEA).” See Chapter 57, laws of 2016 §5 (RCW 43.215.020(2)(f)).

WAC 170-400-0050(2) – Early intervention services (EIS) providers.

Under WAC 170-400-0050(2) Early intervention service providers must deliver services at a consistent level of frequency and intensity for a continuous twelve-month period based on child and family need, and not on the availability of providers.

- Does this mean that services for low incidence specialized services like those provided by teachers of the visually impaired must be offered and provided during the summer months? Yes. Services must continue based on the needs of the child as outlined on the IFSP.

WAC 170-400-0050(3) – Early intervention services (EIS) providers.

Under WAC 170-400-0050(3) Early intervention service providers must provide or otherwise arrange for all EIS included in the individualized family service plan.

- Does WAC 170-400-0050(3) require that providers must have all of the EIS provider types, as defined in the WAC, on staff? No. They must demonstrate that they have a plan and capacity to provide all of the EIS that might be on a child’s plan. This may involve employed providers, contract providers or a combination of both. An agency may NOT be a provider and *only* provide family resources coordination (FRC) or special instruction as the only service for all children. The agency must arrange for (e.g. contract for) the other services a child may have on the Individualized Family Service Plan (IFSP)
- Does WAC 170-400-0050(3) require that any entity that a provider agency contracts with must also be an EIS provider?

No. EIS provider agencies may contract with hospitals, mental health agencies or other specialized service provider agencies for some services. They may also choose to contract with individual providers such as private practice therapists.

- Does WAC 170-400-0050(3) mean that school districts can no longer be service providers?
No. We encourage districts to continue to provide services. They must meet the same requirements as any other early intervention provider agency.

WAC 170-400-0140(3) – Use of funds.

Under WAC 170-400-0140(3) Administrative indirect expenses are limited to no more than ten percent of the total public moneys received by an entity providing Part C required components or direct services.

- In our current system what entities are considered to be providing Part C components?
Local lead agencies that support critical required components of Part C would be one example.
- What entities are considered to be providing direct services?
Agencies that are able to meet ESIT requirements and are approved through DEL to serve as early intervention provider agencies will qualify as direct service providers.
- Does WAC 170-400-0140(3) or the ESIT Contract determine the limits for administrative indirect expenses? Contracts will establish indirect rates, which may be lower, but cannot be higher than the caps established in the WAC.

WAC 170-400-0140(4) – Use of funds.

Under WAC 170-400-0140(4) administrative indirect costs are limited to no more than five percent of the total public moneys received by an entity acting as a pass through for state or federal funding.

- In our current system what entities are considered pass through entities for purposes of state or federal funding? School districts that arrange for (subcontract), but do not provide early intervention services.

WAC 170-400-0140(6) – Use of funds.

WAC 170-400-0140(6) requires that “EIS providers must bill all applicable funding sources including public and private insurance and families, prior to using state and federal funds for early intervention services”.

- Does WAC 170-400-0140(6) require that billings directed at Part C funding cannot be issued until reimbursement from public and private insurance has been received? No. You must have billed other sources, but this reimbursement does not have to have been received.
- What does this mean for our agency if we are not currently billing?

Your agency will need to become a qualified provider and either bill directly or contract with a practice management group for billing support. Some agencies may use private providers who are able to do their own billing.

WAC 170-400-0140(7) – Use of funds.

WAC 170-400-0140(7) requires that “Public funds for the ESIT program may not be used for transition activities required under Part B of the Individuals with Disabilities Education Act.”

- Does WAC 170-400-0140(7) prohibit the use of ESIT (IDEA Part C) public funds for IDEA Part B eligibility evaluations? Yes. Eligibility evaluations for Part B are a Part B required transition activity.
- Can these funds still cover the costs of district special education staff such as transition coordinators or similar positions?
No.

WAC 170-400-0140(8, a) – Use of funds.

WAC 170-400-0140(8,a) requires that under Part C, these allowable transition activities may be paid for with early intervention funds. EIS provider participation in: (a) The decision of potential eligibility for Part B prior to referral to Part B.

- Does this mean that early intervention providers must send a report or summary to school districts verifying the child’s potential eligibility? No. The Department of Early Learning is required to notify the state education agency (OSPI) and local education agencies (school districts). Provider agencies are not required to complete a summary. It is best practice to share, with parent consent, information that is relevant to the child’s potential eligibility such as the most recent IFSP. The Department of Early Learning, as the state lead agency is responsible for determining written requirements and they should not be included in contracts.

Under WAC 170-400-0140(4) administrative indirect costs are limited to no more than five percent of the total public moneys received by an entity acting as a pass through for state or federal funding. What type of organizations are considered to be receiving ‘pass through’ funding?

- Provider agencies that receive funding for early intervention services from School districts. Such funding is received pursuant to contract between the provider agencies and school districts. For purposes of administrative indirect costs, the pass through funding must be limited to 5% of the total public moneys received by the entity.
- School districts will be considered pass through organizations unless they employ staff who carry a caseload and provide comprehensive services based on each child’s Individualized Family Service Plan (IFSP).

If a district provides pass through funding does the 5% limit on administrative indirect expenses apply after the state recovery rate?

- There is a 5% limit of the total public moneys received by the entity for administrative indirect expenses. All other early intervention funding must be distributed to contractor agencies providing the direct early intervention services. The state recovery rate does not apply and may not be withheld.

WAC 170-400-0140(3) requires that entities providing direct early intervention services are held to a 10% limit on administrative indirect expenses. What type of organization would be determined to be a provider agency?

- Provider agencies employ direct service staff (e.g. OTs, PTs, SLP's and educators) that carry caseloads and are responsible for fully implementing the Individualized Family Service Plans (IFSPs) of enrolled children.

What if our district is passing through some funding and using some for direct services?

- In some cases districts may provide low incidence direct services such as specialized services for children who are blind or visually impaired, or special instruction services, and contract with provider agencies for most other services. In these situations the 10% administrative indirect expense limit must be applied based on the percentage of funding supporting the direct service for those individual children receiving the service. This must be calculated on a per child basis. For the remaining pass through funding, the 5% administrative indirect expense limit applies.

Under WAC 170-400-0030 "EIS providers" is defined as "any ESIT-approved organization, public, private, tribal or nonprofit entity, school district, or an individual that provides EIS, whether or not the entity or individual receives funding from the ESIT program." What is required in order to be approved as an EIS provider?

- The ESIT program is currently developing a set of criteria and materials that will outline a solicitation process and minimum provider requirements. Because the ESIT program is looking at the next two years as transitional, ESIT does not intend to seek additional providers prior to SFY 2019. However, this expectation may change if an urgent need for EIS providers develops.

If you have further questions please email the Early Support for Infants and Toddler's Program Administrator at: laurie.thomas@del.wa.gov