

public education, in accordance with this subchapter, with funds received under this section.

(i) State defined

In this section, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary.

(Pub. L. 91-230, title VI, § 619, as added Pub. L. 108-446, title I, § 101, Dec. 3, 2004, 118 Stat. 2740.)

PRIOR PROVISIONS

A prior section 1419, Pub. L. 91-230, title VI, § 619, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 102, related to preschool grants, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1419, Pub. L. 91-230, title VI, § 619, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793; amended Pub. L. 98-199, §§ 3(b), 9, Dec. 2, 1983, 97 Stat. 1358, 1363; Pub. L. 99-457, title II, § 201(a), Oct. 8, 1986, 100 Stat. 1155; Pub. L. 100-630, title I, § 102(i), Nov. 7, 1988, 102 Stat. 3296; Pub. L. 101-476, title IX, § 901(b)(79)–(93), Oct. 30, 1990, 104 Stat. 1145, 1146; Pub. L. 102-119, §§ 7, 25(b), Oct. 7, 1991, 105 Stat. 591, 607, related to preschool grants, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

A prior section 1420, Pub. L. 91-230, title VI, § 620, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793; amended Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358, which related to payments to States and distribution by States to local educational agencies and intermediate educational units, was omitted in the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

Prior sections 1421 to 1427, which comprised former subchapter III of this chapter, were repealed by Pub. L. 105-17, title II, § 203(c), June 4, 1997, 111 Stat. 157, effective Oct. 1, 1997.

Section 1421, Pub. L. 91-230, title VI, § 621, Apr. 13, 1970, 84 Stat. 181; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1363; Pub. L. 99-457, title III, § 301, Oct. 8, 1986, 100 Stat. 1159; Pub. L. 100-630, title I, § 103(b), Nov. 7, 1988, 102 Stat. 3296; Pub. L. 101-476, title III, § 301, title IX, § 901(b)(95)–(99), Oct. 30, 1990, 104 Stat. 1117, 1146; Pub. L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607, related to establishment and operation of regional and Federal resource centers.

Section 1422, Pub. L. 91-230, title VI, § 622, Apr. 13, 1970, 84 Stat. 182; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1364; Pub. L. 99-457, title III, § 302, Oct. 8, 1986, 100 Stat. 1160; Pub. L. 100-630, title I, § 103(c), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 302, Oct. 30, 1990, 104 Stat. 1118; Pub. L. 102-119, § 25(a)(8), Oct. 7, 1991, 105 Stat. 606; Pub. L. 103-382, title III, § 391(f)(3), Oct. 20, 1994, 108 Stat. 4023, related to services for deaf-blind children and youth.

Section 1423, Pub. L. 91-230, title VI, § 623, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1365; Pub. L. 99-457, title III, § 303, Oct. 8, 1986, 100 Stat. 1161; Pub. L. 100-630, title I, § 103(d), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 303, title IX, § 901(b)(100)–(106), Oct. 30, 1990, 104 Stat. 1121, 1146, 1147; Pub. L. 102-119, §§ 8, 25(a)(9), (b), Oct. 7, 1991, 105 Stat. 592, 606, 607, related to early education for children with disabilities.

Section 1424, Pub. L. 91-230, title VI, § 624, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1366; Pub. L. 99-457, title III, § 304, Oct. 8, 1986, 100 Stat. 1162; Pub. L. 100-630, title I, § 103(e), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 304, title IX, § 901(b)(107)–(110), Oct. 30, 1990, 104 Stat. 1122, 1147; Pub. L. 102-119, § 25(a)(10), (b), Oct. 7, 1991, 105 Stat. 606, 607, related to programs for children with severe disabilities.

Section 1424a, Pub. L. 91-230, title VI, § 625, as added Pub. L. 93-380, title VI, § 616, Aug. 21, 1974, 88 Stat. 584; amended Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367; Pub. L. 99-457, title III, § 305, Oct. 8, 1986, 100 Stat. 1162; Pub. L. 100-630, title I, § 103(f), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 305, title IX, § 901(b)(111)–(118), Oct. 30, 1990, 104 Stat. 1123, 1147; Pub. L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102-421, title II, § 201(a), Oct. 16, 1992, 106 Stat. 2164, related to programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Section 1425, Pub. L. 91-230, title VI, § 626, formerly § 625, Apr. 13, 1970, 84 Stat. 183, renumbered § 626, Pub. L. 93-380, title VI, § 616, Aug. 21, 1974, 88 Stat. 584; amended Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367; Pub. L. 99-457, title III, § 306, Oct. 8, 1986, 100 Stat. 1163; Pub. L. 100-630, title I, § 103(g), Nov. 7, 1988, 102 Stat. 3298; Pub. L. 101-476, title III, § 306, title IX, § 901(b)(119)–(127), Oct. 30, 1990, 104 Stat. 1124, 1147, 1148; Pub. L. 102-119, § 25(a)(11), (b), Oct. 7, 1991, 105 Stat. 606, 607, related to secondary education and transitional services for youth with disabilities.

Section 1426, Pub. L. 91-230, title VI, § 627, formerly § 626, Apr. 13, 1970, 84 Stat. 184, renumbered § 627 and amended Pub. L. 93-380, title VI, §§ 616, 617, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, § 2, June 17, 1977, 91 Stat. 230; Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368; Pub. L. 101-476, title III, § 307, Oct. 30, 1990, 104 Stat. 1127, related to programs for children and youth with serious emotional disturbance.

Section 1427, Pub. L. 91-230, title VI, § 628, as added Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368; amended Pub. L. 99-457, title III, § 307, Oct. 8, 1986, 100 Stat. 1165; Pub. L. 101-476, title III, § 308, Oct. 30, 1990, 104 Stat. 1128, authorized appropriations.

PRESCHOOL GRANTS

Pub. L. 100-630, title I, § 110, Nov. 7, 1988, 102 Stat. 3303, as amended by Pub. L. 101-476, title IX, § 901(a)(3), Oct. 30, 1990, 104 Stat. 1142, provided that: “The provisions of section 300.300(b)(3) of title 34, Code of Federal Regulations, shall not apply with respect to children aged 3 through 5, inclusive, in any State for any fiscal year for which the State receives a grant under section 619(a)(1) of the Individuals with Disabilities Education Act [20 U.S.C. 1419(a)(1)].”

SUBCHAPTER III—INFANTS AND TODDLERS WITH DISABILITIES

§ 1431. Findings and policy

(a) Findings

Congress finds that there is an urgent and substantial need—

(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child’s first 3 years of life;

(2) to reduce the educational costs to our society, including our Nation’s schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(3) to maximize the potential for individuals with disabilities to live independently in society;

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner

city, and rural children, and infants and toddlers in foster care.

(b) Policy

It is the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

(Pub. L. 91-230, title VI, §631, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2744.)

PRIOR PROVISIONS

A prior section 1431, Pub. L. 91-230, title VI, §631, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 106, set out findings and policy, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1431, Pub. L. 91-230, title VI, §631, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, §§3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1369; Pub. L. 99-457, title III, §308, Oct. 8, 1986, 100 Stat. 1165; Pub. L. 100-630, title I, §104(b), Nov. 7, 1988, 102 Stat. 3298; Pub. L. 101-476, title IV, §401, title IX, §901(b)(129)-(142), Oct. 30, 1990, 104 Stat. 1129, 1148; Pub. L. 102-119, §§9(a), (b), 25(a)(12), (b), Oct. 7, 1991, 105 Stat. 593, 594, 606, 607; Pub. L. 102-421, title II, §202, Oct. 16, 1992, 106 Stat. 2165; Pub. L. 102-569, title IX, §912(a), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103-73, title III, §302, Aug. 11, 1993, 107 Stat. 736; Pub. L. 103-218, title IV, §401, Mar. 9, 1994, 108 Stat. 95, related to grants for personnel training, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

EFFECTIVE DATE

Subchapter effective July 1, 2005, see section 302(a) of Pub. L. 108-446, set out as a note under section 1400 of this title.

§ 1432. Definitions

In this subchapter:

(1) At-risk infant or toddler

The term “at-risk infant or toddler” means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

(2) Council

The term “council” means a State interagency coordinating council established under section 1441 of this title.

(3) Developmental delay

The term “developmental delay”, when used with respect to an individual residing in a State, has the meaning given such term by the State under section 1435(a)(1) of this title.

(4) Early intervention services

The term “early intervention services” means developmental services that—

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

(i) physical development;

(ii) cognitive development;

(iii) communication development;

(iv) social or emotional development; or

(v) adaptive development;

(D) meet the standards of the State in which the services are provided, including the requirements of this subchapter;

(E) include—

(i) family training, counseling, and home visits;

(ii) special instruction;

(iii) speech-language pathology and audiology services, and sign language and cued language services;

(iv) occupational therapy;

(v) physical therapy;

(vi) psychological services;

(vii) service coordination services;

(viii) medical services only for diagnostic or evaluation purposes;

(ix) early identification, screening, and assessment services;

(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

(xi) social work services;

(xii) vision services;

(xiii) assistive technology devices and assistive technology services; and

(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant’s or toddler’s family to receive another service described in this paragraph;

(F) are provided by qualified personnel, including—

(i) special educators;

(ii) speech-language pathologists and audiologists;

(iii) occupational therapists;

(iv) physical therapists;

(v) psychologists;

(vi) social workers;

(vii) nurses;

(viii) registered dietitians;

(ix) family therapists;

(x) vision specialists, including ophthalmologists and optometrists;

(xi) orientation and mobility specialists; and

(xii) pediatricians and other physicians;

(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

(H) are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.

(5) Infant or toddler with a disability

The term “infant or toddler with a disability” —

(A) means an individual under 3 years of age who needs early intervention services because the individual—

(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(B) may also include, at a State’s discretion—

(i) at-risk infants and toddlers; and

(ii) children with disabilities who are eligible for services under section 1419 of this title and who previously received services under this subchapter until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this subchapter serving such children shall include—

(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this subchapter or participate in preschool programs under section 1419 of this title.

(Pub. L. 91-230, title VI, § 632, as added Pub. L. 108-446, title I, § 101, Dec. 3, 2004, 118 Stat. 2744.)

PRIOR PROVISIONS

A prior section 1432, Pub. L. 91-230, title VI, § 632, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 106, set out definitions for this subchapter, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1432, Pub. L. 91-230, title VI, § 632, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1371; Pub. L. 99-457, title III, § 309, Oct. 8, 1986, 100 Stat. 1168; Pub. L. 100-630, title I, § 104(c), Nov. 7, 1988, 102 Stat. 3298; Pub. L. 101-476, title IV, § 402, title IX, § 901(b)(143), Oct. 30, 1990, 104 Stat. 1132, 1148; Pub. L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607, related to grants to State educational agencies and institutions for traineeships, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

§ 1433. General authority

The Secretary shall, in accordance with this subchapter, make grants to States (from their allotments under section 1443 of this title) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

(Pub. L. 91-230, title VI, § 633, as added Pub. L. 108-446, title I, § 101, Dec. 3, 2004, 118 Stat. 2746.)

PRIOR PROVISIONS

A prior section 1433, Pub. L. 91-230, title VI, § 633, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 108, related to the general authority of the Secretary, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1433, Pub. L. 91-230, title VI, § 633, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1371; Pub. L. 99-457, title III, § 310, Oct. 8, 1986, 100 Stat. 1168; Pub. L. 100-630, title I, § 104(e), Nov. 7, 1988, 102 Stat. 3299; Pub. L. 101-476, title IV, § 403, title IX, § 901(b)(144), Oct. 30, 1990, 104 Stat. 1133, 1149; Pub. L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607, related to establishment of national clearinghouses, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

§ 1434. Eligibility

In order to be eligible for a grant under section 1433 of this title, a State shall provide assurances to the Secretary that the State—

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

(2) has in effect a statewide system that meets the requirements of section 1435 of this title.

(Pub. L. 91-230, title VI, § 634, as added Pub. L. 108-446, title I, § 101, Dec. 3, 2004, 118 Stat. 2746.)

PRIOR PROVISIONS

A prior section 1434, Pub. L. 91-230, title VI, § 634, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 108, related to grant eligibility, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1434, Pub. L. 91-230, title VI, § 634, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1372; Pub. L. 101-476, title IV, § 404, Oct. 30, 1990, 104 Stat. 1135; Pub. L. 102-119, § 9(c)(1), Oct. 7, 1991, 105 Stat. 595, related to reports to Secretary by recipients of grants and contracts, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

§ 1435. Requirements for statewide system

(a) In general

A statewide system described in section 1433 of this title shall include, at a minimum, the following components:

(1) A rigorous definition of the term “developmental delay” that will be used by the State in carrying out programs under this subchapter in order to appropriately identify infants and toddlers with disabilities that are in need of services under this subchapter.

(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers

with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 1436 of this title, including service coordination services in accordance with such service plan.

(5) A comprehensive child find system, consistent with subchapter II, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this subchapter that will reduce the need for future services.

(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this subchapter and of services under section 1419 of this title, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that—

(A) shall include—

(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this subchapter; and

(iii) training personnel to coordinate transition services for infants and toddlers served under this subchapter from a program providing early intervention services under this subchapter and under subchapter II (other than section 1419 of this title), to a preschool program receiving

funds under section 1419 of this title, or another appropriate program; and

(B) may include—

(i) training personnel to work in rural and inner-city areas; and

(ii) training personnel in the emotional and social development of young children.

(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this subchapter (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this subchapter to infants and toddlers with disabilities.

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration and supervision of programs and activities receiving assistance under section 1433 of this title, and the monitoring of programs and activities used by the State to carry out this subchapter, whether or not such programs or activities are receiving assistance made available under section 1433 of this title, to ensure that the State complies with this subchapter;

(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

(C) the assignment of financial responsibility in accordance with section 1437(a)(2) of this title to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this subchapter in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and inter-agency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this subchapter, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this sub-

chapter in accordance with section 1440(a) of this title.

(13) Procedural safeguards with respect to programs under this subchapter, as required by section 1439 of this title.

(14) A system for compiling data requested by the Secretary under section 1418 of this title that relates to this subchapter.

(15) A State interagency coordinating council that meets the requirements of section 1441 of this title.

(16) Policies and procedures to ensure that, consistent with section 1436(d)(5) of this title—

(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

(b) Policy

In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

(c) Flexibility to serve children 3 years of age until entrance into elementary school

(1) In general

A statewide system described in section 1433 of this title may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 1419 of this title and previously received services under this subchapter, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this subchapter until such children enter, or are eligible under State law to enter, kindergarten.

(2) Requirements

If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—

(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—

(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under subchapter II; and

(ii) an explanation of the differences between services provided pursuant to this

subsection and services provided under subchapter II, including—

(I) types of services and the locations at which the services are provided;

(II) applicable procedural safeguards; and

(III) possible costs (including any fees to be charged to families as described in section 1432(4)(B) of this title), if any, to parents of infants or toddlers with disabilities;

(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under subchapter II;

(D) all early intervention services outlined in the child's individualized family service plan under section 1436 of this title are continued while any eligibility determination is being made for services under this subsection;

(E) the parents of infants or toddlers with disabilities (as defined in section 1432(5)(A) of this title) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

(F) the requirements under section 1437(a)(9) of this title shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 10402 of title 42).

(3) Reporting requirement

If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 1437(b)(4)(A) of this title, a report on the number and percentage of children with disabilities who are eligible for services under section 1419 of this title but whose parents choose for such children to continue to receive early intervention services under this subchapter.

(4) Available funds

If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 1432(4)(B) of this title.

(5) Rules of construction**(A) Services under subchapter II**

If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 1419 of this title shall not be required to provide the child with a free appropriate public education under subchapter II for the period of time in which the child is receiving services under this subchapter.

(B) Services under this subchapter

Nothing in this subsection shall be construed to require a provider of services under this subchapter to provide a child served under this subchapter with a free appropriate public education.

(Pub. L. 91-230, title VI, §635, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2747; amended Pub. L. 111-320, title II, §202(b), Dec. 20, 2010, 124 Stat. 3509.)

PRIOR PROVISIONS

A prior section 1435, Pub. L. 91-230, title VI, §635, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 108, related to requirements for statewide system, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1435, Pub. L. 91-230, title VI, §635, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1372; Pub. L. 99-457, title III, §311, Oct. 8, 1986, 100 Stat. 1169; Pub. L. 101-476, title IV, §405, Oct. 30, 1990, 104 Stat. 1135; Pub. L. 102-119, §§9(c)(2), 10, 25(a)(13), Oct. 7, 1991, 105 Stat. 595, 606, authorized appropriations, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

AMENDMENTS

2010—Subsec. (c)(2)(G). Pub. L. 111-320 substituted “section 10402 of title 42” for “section 10421 of title 42”.

§ 1436. Individualized family service plan**(a) Assessment and program development**

A statewide system described in section 1433 of this title shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

(2) a family-directed assessment of 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 infant or toddler; and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

(b) Periodic review

The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) Promptness after assessment

The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) Content of plan

The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including preliteracy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this subchapter) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

(e) Parental consent

The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

(Pub. L. 91-230, title VI, §636, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2751.)

PRIOR PROVISIONS

A prior section 1436, Pub. L. 91-230, title VI, § 636, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 111, related to individualized family service plans, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1436, Pub. L. 91-230, title VI, § 636, Apr. 13, 1970, 84 Stat. 185; Pub. L. 93-380, title VI, § 618, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, § 3, June 17, 1977, 91 Stat. 230, authorized appropriations, prior to the general amendment of this subchapter by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1369.

§ 1437. State application and assurances**(a) Application**

A State desiring to receive a grant under section 1433 of this title shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1433 of this title;

(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this subchapter pursuant to section 1440(b) of this title are current as of the date of submission of the certification;

(3) information demonstrating eligibility of the State under section 1434 of this title, including—

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 1433 of this title; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this subchapter;

(6) a description of the State policies and procedures that require the referral for early intervention services under this subchapter of a child under the age of 3 who—

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

(7) a description of the procedure used to ensure that resources are made available under this subchapter for all geographic areas within the State;

(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this subchapter, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(9) a description of the policies and procedures to be used—

(A) to ensure a smooth transition for toddlers receiving early intervention services under this subchapter (and children receiving those services under section 1435(c) of this title) to preschool, school, other appropriate services, or exiting the program, including a description of how—

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 1435(a)(10) of this title will—

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under subchapter II, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under subchapter II, to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

(10) a description of State efforts to promote collaboration among Early Head Start programs under section 9840a of title 42, early education and child care programs, and services under this subchapter; and

(11) such other information and assurances as the Secretary may reasonably require.

(b) Assurances

The application described in subsection (a)—

(1) shall provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State will be expended in accordance with this subchapter;

(2) shall contain an assurance that the State will comply with the requirements of section 1440 of this title;

(3) shall provide satisfactory assurance that the control of funds provided under section 1443 of this title, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this subchapter and that a public agency will administer such funds and property;

(4) shall provide for—

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this subchapter; and

(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this subchapter;

(5) provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State—

(A) will not be commingled with State funds; and

(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 1443 of this title to the State;

(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this subchapter; and

(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

(c) Standard for disapproval of application

The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

(d) Subsequent State application

If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this subchapter (as in effect before December 3, 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this subchapter.

(e) Modification of application

An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

(f) Modifications required by the Secretary

The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this subchapter, if—

(1) an amendment is made to this chapter, or a Federal regulation issued under this chapter;

(2) a new interpretation of this chapter is made by a Federal court or the State's highest court; or

(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

(Pub. L. 91-230, title VI, §637, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2752.)

PRIOR PROVISIONS

A prior section 1437, Pub. L. 91-230, title VI, §637, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 112, related to State application and assurances, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

§ 1438. Uses of funds

In addition to using funds provided under section 1433 of this title to maintain and implement the statewide system required by such section, a State may use such funds—

(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this subchapter that are not otherwise funded through other public or private sources;

(2) to expand and improve on services for infants and toddlers and their families under this subchapter that are otherwise available;

(3) to provide a free appropriate public education, in accordance with subchapter II, to children with disabilities from their third birthday to the beginning of the following school year;

(4) with the written consent of the parents, to continue to provide early intervention services under this subchapter to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with subchapter II; and

(5) in any State that does not provide services for at-risk infants and toddlers under section 1437(a)(4) of this title, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

(A) identifying and evaluating at-risk infants and toddlers;

(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

(C) conducting periodic follow-up on each such 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 this subchapter.

(Pub. L. 91-230, title VI, §638, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2755.)

PRIOR PROVISIONS

A prior section 1438, Pub. L. 91-230, title VI, §638, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 114, related to uses of funds, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

§ 1439. Procedural safeguards

(a) Minimum procedures

The procedural safeguards required to be included in a statewide system under section 1435(a)(13) of this title shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this subchapter in accordance with State law without jeopardizing other early intervention services under this subchapter.

(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to use mediation in accordance with section 1415 of this title, except that—

(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency estab-

lished or designated under section 1435(a)(10) of this title;

(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this subchapter, as the case may be; and

(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(b) Services during pendency of proceedings

During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

(Pub. L. 91-230, title VI, § 639, as added Pub. L. 108-446, title I, § 101, Dec. 3, 2004, 118 Stat. 2755.)

PRIOR PROVISIONS

A prior section 1439, Pub. L. 91-230, title VI, § 639, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 115, set out procedural safeguards, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

§ 1440. Payor of last resort

(a) Nonsubstitution

Funds provided under section 1443 of this title may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this subchapter, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 1443 of this title may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

(b) Obligations related to and methods of ensuring services

(1) Establishing financial responsibility for services

(A) In general

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

(i) the provision of, and financial responsibility for, services provided under this subchapter; and

(ii) such services are consistent with the requirements of section 1435 of this title and the State's application pursuant to section 1437 of this title, including the provision of such services during the pendency of any such dispute.

(B) Consistency between agreements or mechanisms under subchapter II

The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 1412(a)(12) of this title, where appropriate.

(2) Reimbursement for services by public agency

(A) In general

If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

(B) Reimbursement

Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

(3) Special rule

The requirements of paragraph (1) may be met through—

- (A) State statute or regulation;
- (B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
- (C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 1437 of this title.

(c) Reduction of other benefits

Nothing in this subchapter shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act [42 U.S.C. 701 et seq.] (relating to maternal and child health) or title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (relating to medicaid for infants or toddlers with disabilities) within the State.

(Pub. L. 91-230, title VI, §640, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2757.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§701 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1440, Pub. L. 91-230, title VI, §640, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat.

116, related to the payor of last resort, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

§ 1441. State interagency coordinating council

(a) Establishment

(1) In general

A State that desires to receive financial assistance under this subchapter shall establish a State interagency coordinating council.

(2) Appointment

The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

(3) Chairperson

The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 1435(a)(10) of this title may not serve as the chairperson of the council.

(b) Composition

(1) In general

The council shall be composed as follows:

(A) Parents

Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

(B) Service providers

Not less than 20 percent of the members shall be public or private providers of early intervention services.

(C) State legislature

Not less than 1 member shall be from the State legislature.

(D) Personnel preparation

Not less than 1 member shall be involved in personnel preparation.

(E) Agency for early intervention services

Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

(F) Agency for preschool services

Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

(G) State medicaid agency

Not less than 1 member shall be from the agency responsible for the State medicaid program.

(H) Head Start agency

Not less than 1 member shall be a representative from a Head Start agency or program in the State.

(I) Child care agency

Not less than 1 member shall be a representative from a State agency responsible for child care.

(J) Agency for health insurance

Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

(K) Office of the Coordinator of Education of Homeless Children and Youth

Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

(L) State foster care representative

Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.

(M) Mental health agency

Not less than 1 member shall be a representative from the State agency responsible for children's mental health.

(2) Other members

The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

(c) Meetings

The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) Management authority

Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this subchapter to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this subchapter.

(e) Functions of council**(1) Duties**

The council shall—

(A) advise and assist the lead agency designated or established under section

1435(a)(10) of this title in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the inter-agency agreements;

(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(2) Authorized activity

The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

(f) Conflict of interest

No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

(Pub. L. 91-230, title VI, §641, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2758.)

PRIOR PROVISIONS

A prior section 1441, Pub. L. 91-230, title VI, §641, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 116, related to State interagency coordinating councils, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1441, Pub. L. 91-230, title VI, §641, Apr. 13, 1970, 84 Stat. 185; Pub. L. 95-49, §4, June 17, 1977, 91 Stat. 230; Pub. L. 98-199, §§3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1372; Pub. L. 99-457, title III, §312, Oct. 8, 1986, 100 Stat. 1169; Pub. L. 100-630, title I, §105(b), Nov. 7, 1988, 102 Stat. 3299; Pub. L. 101-476, title V, §501, Oct. 30, 1990, 104 Stat. 1135; Pub. L. 102-421, title II, §203, Oct. 16, 1992, 106 Stat. 2165, related to grants, contracts, and cooperative agreements for research and related activities, attention deficit disorder centers, and model demonstration programs, prior to repeal by Pub. L. 105-17, title II, §203(c), June 4, 1997, 111 Stat. 157, effective Oct. 1, 1997.

§ 1442. Federal administration

Sections 1416, 1417, and 1418 of this title shall, to the extent not inconsistent with this subchapter, apply to the program authorized by this subchapter, except that—

(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 1435(a)(10) of this title;

(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this subchapter; and

(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(Pub. L. 91-230, title VI, §642, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2760.)

PRIOR PROVISIONS

A prior section 1442, Pub. L. 91-230, title VI, §642, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 118, related to Federal administration, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1442, Pub. L. 91-230, title VI, §642, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1373; Pub. L. 101-476, title V, §502, Oct. 30, 1990, 104 Stat. 1138; Pub. L. 102-119, §25(a)(14), Oct. 7, 1991, 105 Stat. 606, related to research and demonstration projects in physical education and recreation for children with disabilities, prior to repeal by Pub. L. 105-17, title II, §203(c), June 4, 1997, 111 Stat. 157, effective Oct. 1, 1997.

§ 1443. Allocation of funds

(a) Reservation of funds for outlying areas

(1) In general

From the sums appropriated to carry out this subchapter for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this subchapter.

(2) Consolidation of funds

The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this subchapter.

(b) Payments to Indians

(1) In general

The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 450b of title 25), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this subchapter for such fiscal year.

(2) Allocation

For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and

toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) Information

To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

(4) Use of funds

The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this subchapter. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) Reports

To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 1411(h)(3)(E) of this title. The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) Prohibited uses of funds

None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) State allotments

(1) In general

Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(2) Minimum allotments

Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

- (A) $\frac{1}{2}$ of 1 percent of the remaining amount described in paragraph (1); or
- (B) \$500,000.

(3) Ratable reduction**(A) In general**

If the sums made available under this subchapter for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

(B) Additional funds

If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

(4) Definitions

In this subsection—

- (A) the terms “infants” and “toddlers” mean children under 3 years of age; and
- (B) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) Reallotment of funds

If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

(e) Reservation for State incentive grants**(1) In general**

For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 1444 of this title exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 1435(c) of this title in order to facilitate the implementation of such policy.

(2) Amount of grant**(A) In general**

Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

(B) Maximum amount

No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

(3) Carryover of amounts**(A) First succeeding fiscal year**

Pursuant to section 1225(b) of this title, amounts under a grant provided under para-

graph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

(B) Second succeeding fiscal year

Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 1433 of this title (from their allotments under this section) during such second succeeding fiscal year.

(Pub. L. 91-230, title VI, §643, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2760.)

REFERENCES IN TEXT

Public Law 95-134, referred to in subsec. (a)(2), is Pub. L. 95-134, Oct. 15, 1977, 91 Stat. 1159, as amended. Provisions relating to consolidation of grants are contained in section 501 of Pub. L. 95-134 which is classified to section 1469a of Title 48, Territories and Insular Possessions.

PRIOR PROVISIONS

A prior section 1443, Pub. L. 91-230, title VI, §643, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 118, related to allocation of funds, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1443, Pub. L. 91-230, title VI, §643, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1373; Pub. L. 99-457, title III, §313, Oct. 8, 1986, 100 Stat. 1170; Pub. L. 100-630, title I, §105(c), Nov. 7, 1988, 102 Stat. 3299; Pub. L. 101-476, title IX, §901(b)(145), (146), Oct. 30, 1990, 104 Stat. 1149; Pub. L. 102-119, §25(b), Oct. 7, 1991, 105 Stat. 607, related to requirement of the Secretary to convene panels of experts to evaluate proposals for projects, prior to repeal by Pub. L. 101-476, title V, §§503, 1001, Oct. 30, 1990, 104 Stat. 1138, 1151, effective Oct. 1, 1990.

§ 1444. Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.

(Pub. L. 91-230, title VI, §644, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2763.)

PRIOR PROVISIONS

A prior section 1444, Pub. L. 91-230, title VI, §644, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 121; amended Pub. L. 106-402, title IV, §401(b)(1), Oct. 30, 2000, 114 Stat. 1737; Pub. L. 108-173, title IX, §900(e)(6)(C), Dec. 8, 2003, 117 Stat. 2373, which related to the Federal Interagency Coordinating Council, was repealed, as such section was in effect on the day before Dec. 3, 2004, by Pub. L. 108-446, title III, §304, Dec. 3, 2004, 118 Stat. 2804.

Another prior section 1444, Pub. L. 91-230, title VI, §643, formerly §644, Apr. 13, 1970, 84 Stat. 186; Pub. L. 93-380, title VI, §619, Aug. 21, 1974, 88 Stat. 585; Pub. L. 95-49, §5, June 17, 1977, 91 Stat. 231; Pub. L. 98-199, §12, Dec. 2, 1983, 97 Stat. 1374; Pub. L. 99-457, title III, §314, Oct. 8, 1986, 100 Stat. 1171; renumbered §643 and amended Pub. L. 101-476, title V, §§503, 504, title IX, §901(b)(147), (148), Oct. 30, 1990, 104 Stat. 1138, 1149; Pub. L. 102-119, §25(b), Oct. 7, 1991, 105 Stat. 607, authorized appropriations, prior to repeal by Pub. L. 105-17, title

II, § 203(c), June 4, 1997, 111 Stat. 157, effective Oct. 1, 1997.

A prior section 1445, Pub. L. 91-230, title VI, § 645, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 123, which authorized appropriations, was omitted in the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

SUBCHAPTER IV—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

§ 1450. Findings

Congress finds the following:

(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling those children to lead productive and independent adult lives.

(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

(4) An effective educational system serving students with disabilities should—

(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

(5) The availability of an adequate number of qualified personnel is critical—

(A) to serve effectively children with disabilities;

(B) to assume leadership positions in administration and direct services;

(C) to provide teacher training; and

(D) to conduct high quality research to improve special education.

(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to ad-

dress the educational and related needs of those children.

(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

(9) Training, technical assistance, support, and dissemination activities are necessary to ensure that subchapters II and III are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

(10) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

(11) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

(D) providing such parents information on their rights, protections, and responsibilities under this chapter to ensure improved early intervention, educational, and transitional results for children with disabilities;

(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 1473(b)(6) of this title;

(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

(12) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school per-