

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