

## Advocates for Children of New York

Protecting every child's right to learn

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### Testimony submitted for the Joint Legislative Public Hearing on 2013-2014 Executive Budget Proposal: Health

#### Re: Early Intervention

January 30, 2013

Advocates for Children of New York (AFC) appreciates the opportunity to provide written testimony concerning the changes to the New York State Early Intervention (EI) program proposed in the 2013-2014 Executive Budget. Since 1971, AFC has worked to promote access to the best education New York can provide for all students, especially students of color and students from low-income backgrounds. Every year, we help thousands of New York City parents navigate the Early Intervention, preschool, and school-aged special education programs. As a result, we are well-positioned to comment on these proposed changes.

When it comes to the Early Intervention program, Advocates for Children's primary concern is ensuring that infants and toddlers with delays or disabilities and their families get services to meet their unique needs at the time when those services can have the greatest impact. We have grave concerns about certain proposed changes to the Early Intervention program included in the New York Health and Mental Hygiene Article VII Budget Bill (S. 2606/ A. 3006). **We urge you to protect access to high-quality Early Intervention services and ensure that EI services are driven by children's needs, not by their health insurance coverage.**

Twenty-five years ago, in recognition of the significant brain development that occurs during the first three years of life, Congress added the Early Intervention program to the Individuals with Disabilities Education Act (IDEA)—the federal special education law. Although New York has chosen to designate the Department of Health as the state's lead agency for Early Intervention, Congress made clear that EI is a comprehensive program with purposes that extend well beyond the medical well-being of a young child. Under the IDEA, the purposes of EI include enhancing the development of infants and toddlers with disabilities, reducing educational costs to society by minimizing the need for special education services for school-aged students, maximizing the potential for individuals with disabilities to live independently, and enhancing the capacity of families to meet the special needs of infants and toddlers.

We support the goal of requiring health insurance companies to contribute their fair share to the cost of EI. We believe that the state should remove impediments to obtaining reimbursement from commercial insurance. For example, we supported the proposal in the 2011-2012 Executive Budget to prohibit insurance companies from denying claims for EI services covered

under the terms of a policy based on prior authorization requirements, the location where services are provided, the duration of the condition, the likelihood of significant improvement, or the network status of the provider. However, the goal of maximizing reimbursement from commercial insurance cannot come at the expense of comprehensive, high-quality, home- and community-based services that meet the unique developmental needs of infants and toddlers and their families.

Last year, the New York State Legislature wisely rejected the Executive Budget proposal to link a child's EI services with the child's health insurance. We are disappointed that the proposal has resurfaced in this year's Executive Budget and hope that the Legislature will reject it again this year. We have significant concerns about the following provisions:

***Participation by Health Insurance Representative at IFSP Meeting***

We are deeply concerned that the budget proposal would add a health insurance representative to the team that develops and reviews a young child's Individualized Family Services Plan (IFSP). This provision would give health insurance companies an unprecedented role in determining what constitutes appropriate services for a young child. When a doctor meets with a patient to discuss treatment options, a health insurance representative does not sit in the room. Rather, the doctor and patient discuss treatment options and then determine which parts of that treatment plan are covered by the patient's health insurance. Likewise, a health insurance representative has no business being in the room to discuss what services are appropriate to address the developmental delays of an infant or toddler and his or her family. Without requiring parental consent, this proposal also raises concerns regarding the confidentiality of educational records. The role of the health insurance company must be limited to *paying* for services otherwise available under the health insurance plan.

Given that the budget proposal would require health insurers to provide information about their benefits within 15 days of request, there is no legitimate purpose for a health insurance representative at the IFSP meeting. Indeed, in its budget briefing for stakeholders last year, when asked about the purpose of having a health insurance representative on the IFSP team, the Department of Health acknowledged that this proposal was included to avoid opposition from the health insurance lobby. We are disappointed that Governor Cuomo, who has pledged to be the lobbyist for students, unveiled a budget for a second time that gives health insurance companies a voice in dictating the services we provide, or do not provide, to New York's youngest learners in order to appease the health insurance lobby.

**We urge you to reject the proposal to include a health insurance representative at IFSP meetings.**

### ***Restructuring of the Early Intervention Program***

The budget proposal attempts to take a comprehensive, educational, family-centered program and superimpose a medical model onto it. It would require EI providers to enter into contracts with health insurers, negotiate rates with health insurers and accept that rate as payment in full, and exhaust all appeals of denied claims before being paid by EI.

We are very concerned that this proposal would lead to a significant reduction in the number of EI providers available to serve children and families. Three years ago, the state reduced the reimbursement rate for home- and community-based EI services by ten percent, and, two years ago, the state reduced the reimbursement rate for all EI services by an additional five percent. Over the past several years, New York City has lost dozens of contracted EI providers due to the decreasing EI reimbursement rate and the increasing administrative burdens. The budget proposal would likely lead to a further decreased reimbursement rate for EI providers and would increase the administrative burdens, driving more EI agencies out of business and making it more challenging for infants and toddlers to get the services they need.

We are particularly concerned that the legislation does not include a provision allowing the Commissioner of Health to establish a threshold reimbursement rate for EI providers to ensure that they can continue providing high-quality, family-centered home- and community-based services. Without such a threshold rate, we fear that health insurance companies will pay a rate that will not make it viable for most EI agencies to continue to operate and provide high-quality services. Smaller, community-based agencies that tend to serve low-income, immigrant communities may be the most vulnerable.

We are also concerned about the burdensome requirement that EI providers exhaust all appeals of denials by health insurers before being paid by EI. While we understand that the budget proposal aims to decrease the percentage of denials by commercial insurers, there is no question that commercial insurers will continue denying a percentage of claims. It is not viable for EI providers, with no experience or expertise in appealing denials, to pursue these appeals while going unpaid for the services they provided until the appeals are exhausted. Rather, the state's EI fiscal agent should pursue these appeals and should ensure that providers get paid in a timely manner.

The state should address impediments to seeking insurance reimbursement, but this goal does not require an overhaul of EI that would jeopardize access to services. **We urge you to reject the proposed restructuring of EI unless these concerns are addressed.**

### ***Requirement to Use In-Network Evaluators and Providers***

The Executive Budget would require parents to choose an evaluator within their child's health insurance network and would require service coordinators to select service providers within the child's health insurance network with limited exceptions. This requirement would restrict access to appropriate evaluators and service providers. Service coordinators are often not merely looking for a service provider in a particular discipline (e.g., a speech therapist), but are looking for a service provider in a particular discipline who can work with a child with particular needs (e.g., a speech therapist with experience working with children diagnosed with autism or a therapist who specializes in feeding therapy). The exceptions to the in-network requirement are

vague and give too much power to health insurers. Under the listed exceptions, the health insurance company would get to decide if a child demonstrates the need for an evaluator or service provider from outside the health insurance network. The budget proposal also fails to outline the process for seeking an exemption under the listed exceptions.

The challenge of this proposal is only exacerbated by the recent promulgation of regulations prohibiting a child's evaluating agency and the evaluator's business associates and relatives from providing EI services to a child. The budget proposals that would require providers to negotiate their rates with health insurers and get paid only after exhausting the health insurance appeals process will likely lead to a significant reduction in small EI agencies and independent EI providers and leave the EI program with large agencies that have the capacity and capitalization to function with a lag time in payment. The restrictions on service providers from the recent regulatory changes and the in-network restriction on service providers proposed in the budget would narrow the pool of providers available to serve a particular child. Once a parent chooses a large in-network agency to provide an EI evaluation, that agency would be prohibited from providing EI services to the child. Thus, the child's service coordinator would need to find service providers from a different agency that is in the child's health insurance network, has available EI providers, and is appropriate to serve the child.

Data show that one out of six children in New York State does not receive mandated services within 30 days from the date authorizing the Individualized Family Services Plan (IFSP). Additional restrictions on the service providers that can be used will only increase New York's non-compliance and result in additional delays in young children getting the services they need.

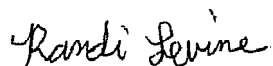
We urge you to address these concerns and ensure that the budget protects access to the specialized services that address children's and family's individualized needs.

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**We look forward to working with you to ensure that the budget protects access to appropriate, individualized EI services that are driven by children's needs, and not by children's health insurance coverage.**

Thank you for the opportunity to submit testimony. Please do not hesitate to contact me at (212) 822-9532 or [rlevine@advocatesforchildren.org](mailto:rlevine@advocatesforchildren.org) with any questions.

Respectfully submitted,



Randi Levine  
Project Director, Early Childhood Education Project