



# Advocates for Children of New York

Protecting every child's right to learn

February 14, 2012

The Honorable Richard Gottfried  
Chair, Committee on Health  
New York State Assembly  
Legislative Office Building 822  
Albany, NY 12248

Dear Assembly Member Gottfried:

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On behalf of Advocates for Children of New York, Inc., an organization located in your district that helps thousands of parents in New York City navigate the special education system, we are writing to express our grave concerns about certain proposed changes to the Early Intervention (EI) program included in the New York Health and Mental Hygiene Budget Bill (S. 6256/ A. 9056). **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 (EI) 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 last year's Executive Budget to prohibit insurance companies from denying claims for medical 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, home- and community-based services that meet the unique developmental needs of infants and



toddlers and their families.

We support some provisions of the EI budget proposal, such as the requirement to refer potentially eligible children to the Office for People with Developmental Disabilities (OPWDD). However, 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, 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, just days after Governor Cuomo pledged to be the lobbyist for students, he unveiled a budget 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, bill health insurers via the state fiscal agent, 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. Two years ago, the state reduced the reimbursement rate for home- and community-based EI services by ten percent, and, last year, the state reduced the reimbursement rate for all EI services by an additional five percent. Over the past several years, New York City lost more than 20 contracted EI providers, and, in the spring of 2011, at least five additional New York City agencies shut the doors to their EI programs 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. In 2008, the most recent year for which data is publicly available, commercial insurers denied 89.1% of EI claims submitted in New York City and 84.8% of EI claims in New York State. While we understand that the budget proposal aims to decrease in the percentage of denials, 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.

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 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.

**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.**

### ***Requirement of Arms-Length Relationship between Evaluator, Service Coordinator, and Provider***

The Executive Budget would prohibit the child's evaluator, service coordinator, and provider from having a less-than-arms-length relationship unless approval is obtained from the Department of Health. This proposal fails to recognize that there are often important reasons for young children to receive services from the agency that evaluated the child. For example, some agencies specialize in serving children with particular needs (e.g., children who are blind, deaf, or diagnosed with autism). A parent of a child who is deaf will likely choose an evaluation agency that has evaluators with expertise in *evaluating* children who are deaf. This agency may be the only available agency in the geographic area that has interventionists with expertise in providing *services* to children who are deaf. The same is true for children requiring evaluations, service coordination, and services in a language other than English. Finally, in some parts of the state, there are very few agencies, and a child may need to receive services from the same agency that evaluated the child because the next agency is located hours away. Furthermore, there are benefits to having a child's service coordinator work for the same agency as the child's service providers. When the service coordinator and service providers work for the same agency, they can better communicate, coordinate, monitor a child's progress, and achieve administrative efficiencies.



Presumably, this provision is intended to prevent an evaluation agency from recommending increased services in order for that agency to reap financial benefit. However, there are already safeguards in place. The evaluator does not unilaterally decide what services are appropriate for the child. Rather, the IFSP team, including an Early Intervention official, decides on children's authorizations. While nearly 50% of the state's evaluation agencies provide services to some of the children they evaluated, the state has failed to identify any agencies that have taken advantage of the EI system for their financial benefit. If the state does identify a bad actor, we believe the state should stop contracting with that agency. However, it is unclear how the state will be able to provide appropriate services to children in a timely manner while placing such a broad restriction on the service providers available.

The challenge of this proposal is only exacerbated by the proposed linking of EI services with health insurance. The proposals that providers 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 agencies and independent providers and leave the Early Intervention program with large agencies that have the capacity and capitalization to function with a lag time in payment. With a smaller number of agencies and the requirement that the evaluators and providers be part of the child's health insurance network, there will be fewer providers who have a less-than-arms-length relationship. Once a parent chooses a large in-network agency to provide an evaluation and a separate large agency to provide service coordination, the service coordinator will need to find service providers from a third agency that is in the child's network, has available EI providers, and is appropriate to serve the child. The budget proposes a steep hurdle to getting an exemption—obtaining approval from the Department of Health.

Data show that one out of four children in New York State does not receive services within 30 days from the date authorizing the Individualized Family Services Plan (IFSP). Instead of focusing on the possible problem of a small group of bad actors, we believe the state should be focusing on the significant problem of a large group of children not receiving their services. 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 reject the arms-length requirement proposal.**



***Requirement to Implement Services within 30 Days after the Projected Dates for Initiation***

The Executive Budget would require the service coordinator to implement the IFSP “in a timely manner but not later than thirty days after the projected dates for initiation of the services as set forth in the plan.” First, as currently worded, this requirement is meaningless. There is no deadline for the projected date for initiation, so imposing a deadline of 30 days after the projected date of initiation does not impose any uniform deadline. The commentary to the federal regulations suggests that deadlines for implementation of a service should run from the date that the parent consents to the service (i.e., usually, the date of the IFSP meeting), not from the projected date of initiation. Second, federal regulations require each early intervention service to be provided “*as soon as possible* after the parent provides consent for that service.” 34 CFR 303.342(e) (emphasis added). We do not believe that the proposal for providing services “in a timely manner” meets this requirement. Third, 30 days is a long time in the life of an infant who has a developmental delay and needs services. These 30 days are on top of the 45 days between referral and IFSP meeting. We would recommend changing this provision to set a requirement that each service be implemented: “as soon as possible but no later than two weeks after the parent provides consent for that service.”

**We urge you to amend the deadline for implementation of services.**

We appreciate your longtime leadership in strengthening Early Intervention. We look forward to working with you to ensure that the budget protects access to appropriate, individualized EI services.

Respectfully,

A handwritten signature in cursive script that reads 'Kim Sweet'.

Kim Sweet  
Executive Director