

Early Intervention Program

Marketing Standards for Early Intervention Service Providers



**New York State Department of Health
Bureau of Early Intervention
December 2006**

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Division of Family Health**

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I. New York State Early Intervention Program (EIP) – Basis for Marketing Standards

Section 2542 of the New York State Public Health Law (NYS PHL) requires the New York State Department of Health (Department) to develop a comprehensive child find system that ensures that eligible children in the State are identified, located, and referred to the Early Intervention Official and evaluated. Section 2542(3) of the NYS PHL requires certain persons and entities, as primary referral sources, to refer any infant or toddler identified as suspected of having a disability, or at risk of having a disability, to the designated municipal official of the county in which the child resides, unless the parent objects to the referral. Primary referral sources are defined at 10 NYCRR 69-4.3 as all individuals who are qualified personnel under the Early Intervention Program (EIP) and all State-approved evaluators, service coordinators, and providers of Early Intervention services. Section 2542(3) of the NYS PHL further requires the Department to establish procedures, including regulations, to ensure that these primary referral sources *adequately inform parents or guardians of children potentially eligible for the EIP about such program, including through brochures and written materials created or approved by the Department.*

In addition, pursuant to Section 2550 of the NYS PHL, the Department, as lead agency for the EIP, is responsible for approval and periodic reapproval of agency and individual providers of EIP services. Regulations at 10 NYCRR Section 69-4.5 set forth the requirements for approval of early intervention service coordinators, evaluators, and service providers, including review and determination of provider character and competence, fiscal viability, capacity, availability of qualified personnel, adherence to all applicable federal and state law and regulation, compliance with confidentiality requirements, review of organizational documents, and any additional pertinent information or documents necessary for the provider's approval, as requested by the Department.

Section 2550 of the NYS PHL further provides that the Department is responsible for the monitoring of agencies, institutions, and organizations under Title II-A of Article 25 of the NYS PHL, and agencies, institutions, and organizations providing early intervention services which are under the jurisdiction of any State early intervention service agency; enforcing Federal law and regulations under Part C of the Individuals with Disabilities Education Act (IDEA); correcting any deficiencies identified through monitoring; and, providing the results of State monitoring to municipalities. The Department has established a comprehensive statewide monitoring program to ensure all State-approved EIP providers receive period review for compliance with applicable State and Federal

laws and regulations pertaining to the provision of early intervention services to eligible children and their families.

Under Section 2552 of NYS PHL, municipalities are responsible for ensuring that early intervention services contained in children's Individual Family Service Plans (IFSP) are provided to eligible children and their families. Municipalities contract with State-approved EIP providers for this purpose. Regulations at 10 NYCRR 69-4.12 allow municipalities to monitor approved EIP providers with which they have entered into contracts to deliver service coordination services, evaluations, and/or early intervention services in accordance with EIP regulations and/or terms of the municipal contract.

Municipalities have established contract provisions ensuring that State-approved and contracted EIP providers adhere to State and Federal laws and regulations, and local requirements, when delivering EIP services to eligible children and their families. These State and local requirements are intended to assure the highest degree of professionalism, expertise, and experience among all providers of early intervention services to infants and toddlers with disabilities and their families.

The conduct of marketing (including advertising) practices, if any, of State-approved and contracted EIP providers are germane to the provider's character and competence. In addition to complying with local contracting requirements, marketing and advertising materials produced and distributed by State-approved EIP providers, and those agencies and individuals seeking approval, must be available for review at any time and upon request by the Department. The accuracy and quality of marketing and advertising materials will be reviewed under the Department's comprehensive monitoring program, and will be considered by the Department in its review of provider applications for State approval and reapproval to provide EIP services.

As part of its provider approval and reapproval process, monitoring activities, and child find and public awareness program, the Department may review marketing and advertising materials developed, produced, issued, and/or disseminated by municipalities and State-approved EIP providers to ensure that all materials are accurate, truthful, unambiguous, nondiscriminatory, and restricted to facts that can be substantiated in accordance with the marketing standards delineated in Section III of this document. These marketing standards are being issued, pursuant to the Department's authority under Section 2542(3) of the NYS PHL, to ensure that primary referral sources adequately inform parents or guardians of children suspected of having a disability or at risk for disability about the EIP. The Department may also review marketing and advertising materials to ensure that outreach activities do not exclude underserved populations and or any socioeconomic, cultural, racial, and ethnic groups residing within New York State.

II. Purpose of Marketing Standards

These marketing standards are being issued to ensure that State-approved EIP providers, including evaluators, providers of general services, and service coordinators adequately inform parents or guardians about the EIP through accurate and truthful marketing

materials, including but not limited to the EIP eligibility requirements, funding and financing of EIP services, or services to be provided to eligible infants and toddlers and their families under the EIP.

All marketing and advertising materials developed, issued, and disseminated by State-approved providers must be available for inspection upon monitoring by the Department and/or its agent. The Department may review and consider the appropriateness and accuracy of, marketing and advertising materials at any time, including upon a provider’s submission of an application to the Department for reapproval as an EIP provider.

Please be advised that Section 349 of New York State General Business Law (NYS GBL) declares deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in New York State unlawful. Section 350 of NYS GBL declares false advertising in the conduct of any business, trade, or commerce or in the furnishing of any service in New York State unlawful. The Department may refer a provider whose marketing and advertising materials are viewed to be false or deceptive to the New York State Office of the Attorney General.

III. Marketing Standards

Definitions

Marketing materials include any advertising, public service announcements, printed publications, signage, or other broadcast or electronic messages designed either to increase awareness and interest in the EIP or to inform parents or guardians of children potentially eligible for early intervention services about the EIP.

This includes marketing and advertising materials targeted *to parents or guardians, primary referral sources, and the general public about the EIP, and to service coordinators and other employees and contractors of EIP providers or municipalities.*

Marketing materials include but are not limited to:

- printed material
- video or film
- electronic material
- multimedia
- billboards
- newspapers
- telephone book yellow page ads
- posters
- internet/intranet Web site formats
- promotional materials (pens, calendars, clipboards, etc.)

Printed formats include but are not limited to:

- brochures
- pamphlets
- booklets
- leaflets
- letters
- other literature
- signage
- magazines

State-approved EIP providers are neither required nor expected to engage in any commercial advertising. However, Department standards must be adhered to by any State-approved EIP provider that elects to engage in marketing and/or advertising related to EIP services as described above.

Standards

Marketing and advertising materials developed, produced, issued, and/or disseminated in any of the formats included in the definition of marketing by State-approved EIP providers must adhere to the following Department standards:

1. The following statements and/or information, or their equivalent must be contained in marketing and advertising materials related to the EIP to be deemed sufficient to adequately inform parents or guardians of children less than three years of age who are suspected of having a disability or are at risk of disability about the EIP:
 - 1.1. Clear identification that the EIP and early intervention services available through the EIP are for children less than three years of age who have or are suspected of having a developmental delay and/or disability.
 - 1.2. A statement that the EIP is a public program funded by New York State and county governments.
 - 1.3. A statement that all children must be referred to the municipality to access EIP services, including the municipal agency's telephone number.
 - 1.4. Clear identification of the provider referenced in the marketing and advertising materials, and an accurate statement that the provider is approved as a provider of EIP services and under contract with the municipality to deliver EIP services.
 - 1.5. A statement that all services provided under the EIP are provided at no out-of-pocket cost to parents, but that health insurance may be accessed for reimbursement for early intervention services provided to eligible children and their families.
 - 1.6. A statement that eligibility for the EIP can be determined only by State-approved evaluators under contract with the municipality.
 - 1.7. A statement that if a child is found eligible for the EIP, all needed early intervention services are identified in collaboration with the parent and must be authorized by the municipality.
 - 1.8. A statement that the municipality will arrange for service providers, considering the individual needs of the child and family, to deliver services authorized by the municipality.
 - 1.9. A statement that when early intervention services are delivered in child care settings or community locations that require a fee, the parent is responsible for paying any associated costs with such access to child care or community locations.

The suggested language or its equivalent, as provided in the sample advertisement in Appendix A, would be considered to meet Department standards for providing sufficient information to adequately inform parents or guardians of children less than three years of age who are suspected of having a disability or are at risk of disability about the EIP.

2. The following types of additional information are *appropriate but not necessary contents* of marketing and advertising materials:
 - 2.1. An accurate and clear description of the early intervention services available under the EIP, including service coordination, evaluation, and therapeutic and support services.
 - 2.2. An accurate and clear description of the appropriate licensure and/or certification of qualified personnel employed or under contract to deliver EIP services.
 - 2.3. An accurate and clear description of the services offered by the State-approved provider, including, where appropriate, intervention modalities and techniques in which the provider specializes.
 - 2.4. An accurate and clear description of the languages in which the State-approved EIP provider can deliver services.
 - 2.5. An accurate and clear description of the settings and/or provider-owned facility(ies) in which the State-approved EIP provider is available to deliver EIP services.

The following are additional principles that should be considered in developing marketing materials:

3. Statements and representation in all forms of advertising and promotion must be presented in a fair, accurate, and clear manner, and restricted to facts that can be substantiated. All forms of advertising and promotion by, or on behalf of the State-approved provider, shall identify the State-approved provider for which the advertising or promotion was undertaken, and must adhere to these standards. These forms of advertising and promotion shall be available for inspection at any time when requested by the Department.
4. Endorsements, commendations, or recommendations from any person(s), firm, corporation, or other organization should be used only with the identification and qualifications of such person(s), firm, corporation, or other organization and with their written consent. Such consent should be on file with the service provider and should be available for examination. No remuneration for any such endorsement, commendation, or recommendation should be offered or paid by a service provider. The date of any such endorsement, commendation, or recommendation should be included in advertising materials.
5. Marketing and advertising materials and activities should be presented without bias that would exclude any population or socioeconomic group, and should be made available throughout the entire area in which the State-approved provider has received State approval and has contract with one or more municipalities to deliver EIP services. Materials should be customized in a manner that will reach underserved populations (for example, translation into languages other than English) within the State-approved provider's service area.

6. Marketing materials should be written in prose that is understood at a fourth-to-sixth-grade reading level, and **all** written prose must be printed in the same point size and must be readable (at least 10-point type).
7. State-approved EIP providers that offer free developmental screenings to children who are potentially eligible for the EIP, either on-site at their facility or office locations, or in any community setting, cannot refuse to perform screenings on any population or socioeconomic group. EIP providers conducting free developmental screenings must clearly inform the parents or guardians *in writing* of the purpose of such screenings and the requirement upon the State-approved EIP provider to refer any infant or toddler under three years of age for whom a developmental delay or disability is suspected to the public official designated by the municipality within two working days of identification, unless the parent objects to the referral. State-approved EIP providers conducting such screenings must also clearly inform parents *in writing* of the following:
 - 7.1. eligibility for the EIP can be determined only through a multidisciplinary evaluation conducted by a State-approved EIP evaluator under contract with the municipality, and that such evaluation must be obtained through a referral to the appropriate municipal agency responsible for local administration of the NYS EIP;
 - 7.2. if the parent objects to referral of the child to such municipal agency, the provider is obligated to maintain written documentation of the parent's objection to the referral and actions taken to follow-up with the parent, provide the parent with the name and telephone number of the early intervention official, and within two months, follow-up with the parent and if appropriate, refer the child unless the parent objects (10 NYCRR §69-4.3(a)(3)); and,
 - 7.3. the municipality is responsible for arranging for delivery of services listed in an IFSP with an appropriate provider, in accordance with the individualized needs of the child and family.
8. State-approved EIP providers and any individual or entity who performs paid or unpaid marketing activities related to EIP services on behalf of the EIP provider should not engage in any marketing and advertising practices that offer incentives, or could be construed or appear to offer incentives of any kind *for the parents or relatives of an eligible child or potentially eligible child or the service coordinator, evaluator, or other EIP provider associated with the parent or relatives of a child or potentially eligible child, or the Early Intervention Official and/or municipal staff of the EIP in the child's county of residence*, that would appear to influence any of the following:
 - selection of an evaluator to conduct the multidisciplinary evaluation of the potentially eligible child after the child has been referred to the municipality;
 - a request by the child's parent(s) to the municipality for the provider to deliver EIP services to the child and family;
 - a request by the family's service coordinator, evaluator, or other EIP provider to the municipality for the provider to deliver EIP services to the child and family;
 - payment, performance evaluations, or other awards or benefits for employees or subcontractors of State-approved EIP providers (i.e., payments or bonuses by an

- agency for its employees or subcontractors that are based on the number of referrals and/or services received); or,
- contracting practices of the municipality with respect to delivery of EIP services to potentially eligible and eligible children and families.

Incentives are any type of inducement whose receipt is contingent upon or designed to influence the receipt of referrals or arrangement to deliver EIP services by the provider, including but not limited to the following:

- 8.1. Offers of “free” services unrelated to but in association with EIP services (such as child care, play groups, etc.) for eligible or potentially eligible children;
- 8.2. Offers of “free” baby/toddler products or other gifts (i.e., things of value) to parents of *potentially eligible* children, municipal staff, or to other approved EIP service coordinators, evaluators, and service providers;
- 8.3. Offers or provision of things of value to children or parents or family members of *children receiving services* from the EIP provider, *which are unrelated to the implementation of a child’s IFSP or to the educational needs of the child or support of the family in meeting the developmental needs of the child;*
- 8.4. Sponsorship of social events or other activities for parents of *potentially eligible children*, for the Early Intervention Official and/or municipal staff, or for other approved EIP service coordinators, evaluators, and service providers; and
- 8.5. Sponsorship of social events or other activities for children and/or parents and other family members of *children receiving services* from the EIP provider *that are unrelated to the implementation of a child’s individualized family service plan and/or to the educational needs of the child or support of the family in meeting the developmental needs of the child.*

Incentives **do not** include things of value or social events that are provided to a child and parent(s) or other family members, which are necessary to implement the child’s and family’s IFSP or to meet the educational or support needs of the child and family (such as toys, books, etc., that are needed to enhance and promote the child’s development and achieve the goals in the child’s IFSP, or social events to enhance a child’s and family’s interaction with other children and families).

9. Marketing and advertising materials must **not** include:
 - 9.1. Any information that is false, deceptive, or fraudulent with respect to any aspect of the EIP under Title II-A of Article 25 of the NYS PHL.
 - 9.2. Any information that misrepresents the EIP under Title II-A of Article 25 of the NYS PHL, or the program or policy requirements of the State or of the municipal public agency responsible for local administration of the EIP.
 - 9.3. Any contact information, except that of the appropriate municipal agency responsible for local administration of the EIP, when the purpose of the materials is to refer potentially eligible children or to provide information about obtaining EIP services.
 - 9.4. Any information that would mislead a parent to believe that the decision regarding appropriate early intervention services, the provider of early intervention services, and the settings in which early intervention services will be delivered is based solely

upon what the parent and/or a State-approved EIP provider's or any other service provider's request.

- 9.5. Any information that would mislead a parent to believe an eligible child can receive, at no cost to the parent, child care services or any and all services that may also be offered by the State-approved EIP provider, but which are not delivered under the auspices of or funded through the EIP.
- 9.6. Any information that would indicate that transportation to a State-approved EIP provider's site, or other locations where early intervention services are provided, is available to all eligible children, rather than being an early intervention service determined through the IFSP process and authorized by the municipality.
- 9.7. Statements that would lead the reader to infer that the services being delivered by the State-approved EIP provider under the auspices of the EIP are something other than early intervention services.

Appendix A – Sample Advertisement

The Early Intervention Program (EIP) is a public program for infants and toddlers with special needs. Children with diagnosed conditions that lead to developmental delays (such as Down syndrome, cerebral palsy, autism, etc.) are eligible for the EIP. Children with no diagnosis who have delays in development may be eligible for the EIP if their delays are serious enough.

If you have concerns about your child's development, you can call the <county name> Early Intervention Program at (xxx) xxx-xxxx to refer your child. Someone else can help you make the referral to the Early Intervention Program if you wish. If your child is found to be eligible for services by someone approved to perform this evaluation, you, county <New York City> staff, and other team members will make a plan to help your child – and your family.

Early intervention services in your plan and authorized by the county<New York City> are provided at no cost to you. The county will arrange for the services to be provided and will choose the provider based on the needs of your child and family. Your child's health insurance may be used to cover some of the costs. All other costs for EIP services are paid for by your county and New York State.

Early intervention services are provided where it's best for the child - in places such as your home, day care, or other community settings. The EIP covers the cost of early intervention services only. The EIP does not pay for day care or other fees charged by community settings.

<Name of Provider> is approved by New York State and has a contract(s) with <county name(s)> to provide the following early intervention services <EIP services offered by the provider>.