

TITLE II-A EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES

Section 2540. Establishment of early intervention program.

- 2541. Definitions.
- 2542. Comprehensive child find system and public awareness program.
- 2543. Service coordinators.
- 2544. Screening and evaluations.
- 2545. Individualized family services plans ("IFSP").
- 2546. Interim services.
- 2547. Respite services.
- 2547-a. Day care support services.
- 2548. Transition plan.
- 2549. Due process.
- 2550. Responsibilities of lead agency.
- 2551. Coordinated standards and procedures.
- 2552. Responsibility of municipality.
- 2553. Early intervention coordinating council.
- 2554. Local early intervention coordinating councils.
- 2556. Administrative costs.
- 2557. Financial responsibility and reimbursement.
- 2558. Responsibility for certain temporary-resident infants and toddlers with disabilities.
- 2559. Third party insurance and medical assistance program payments.
- 2559-a. Transportation.
- 2559-b. Regulations.

S 2540. Establishment of early intervention program. There is established an early intervention program under the administration of the commissioner.

S 2541. Definitions. As used in this title the following terms shall have the following meanings, unless the context clearly requires otherwise:

1. "Children at risk" means children who may experience a disability because of medical, biological or environmental factors which may

produce developmental delay, as determined by the commissioner through regulation.

2. "Coordinated standards and procedures" means standards and procedures developed by state early intervention service agencies pursuant to section twenty-five hundred fifty-one of this title.

3. "Council" means the early intervention coordinating council established under section twenty-five hundred fifty-three of this title.

4. "Developmental delay" means that a child has not attained developmental milestones expected for the child's chronological age, as measured by qualified professionals using appropriate diagnostic instruments and/or procedures and informed clinical opinion, in one or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive.

5. "Disability" means:

(a) a developmental delay; or

(b) a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, such as Down syndrome or other chromosomal abnormalities, sensory impairments, inborn errors of metabolism or fetal alcohol syndrome.

6. "Early intervention official" means an appropriate municipal official designated by the chief executive officer of a municipality and an appropriate designee of such official.

7. "Early intervention services" means developmental services that:

(a) are provided under public supervision;

(b) are selected in collaboration with the parents;

(c) are designed to meet a child's developmental needs in any one or more of the following areas:

(i) physical development, including vision and hearing,

(ii) cognitive development,

(iii) communication development,

(iv) social or emotional development, or

(v) adaptive development;

(d) meet the coordinated standards and procedures;

(e) are provided by qualified personnel;

(f) are provided in conformity with an IFSP;

(g) are, to the maximum extent appropriate, provided in natural environments, including the home and community settings where children

without disabilities would participate;

(h) include, as appropriate:

(i) family training, counseling, home visits and parent support groups,

(ii) special instruction,

(iii) speech pathology and audiology,

(iv) occupational therapy,

(v) physical therapy,

(vi) psychological services,

(vii) case management services, hereafter referred to as service coordination services,

(viii) medical services for diagnostic or evaluation purposes, subject to reasonable prior approval requirements for exceptionally expensive services, as prescribed by the commissioner,

(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) nursing services,

(xii) nutrition services,

(xiii) social work services,

(xiv) vision services,

(xv) assistive technology devices and assistive technology services,

(xvi) transportation and related costs that are necessary to enable a child and the child's family to receive early intervention services, and

(xvii) other appropriate services approved by the commissioner.

(i) are cost-effective.

8. (a) "Eligible child" means an infant or toddler from birth through age two who has a disability; provided, however, that any toddler with a disability who has been determined to be eligible for program services under section forty-four hundred ten of the education law and:

(i) who turns three years of age on or before the thirty-first day of August shall, if requested by the parent, be eligible to receive early intervention services contained in an IFSP until the first day of September of that calendar year; or

(ii) who turns three years of age on or after the first day of September shall, if requested by the parent and if already receiving services pursuant to this title, be eligible to continue receiving such

services until the second day of January of the following calendar year.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, a child who receives services pursuant to section forty-four hundred ten of the education law shall not be an eligible child.

9. "Evaluation" means a multidisciplinary professional, objective assessment conducted by appropriately qualified personnel and conducted pursuant to section twenty-five hundred forty-four of this title to determine a child's eligibility under this title.

10. "Evaluator" means a team of two or more professionals approved pursuant to section twenty-five hundred fifty-one of this title to conduct screenings and evaluations.

11. "IFSP" means the individualized family service plan adopted in accordance with section twenty-five hundred forty-five of this title.

12. "Lead agency" means the department of health, the public agency responsible for the administration of the early intervention system in collaboration with the state early intervention service agencies.

13. "Municipality" means a county outside the city of New York or the city of New York in the case of a county contained within the city of New York.

13-a. Subject to federal law and regulations, "natural environment" or "natural setting" means a setting that is natural or normal for the child's age peers who have no disability.

14. "Parent" means parent or person in parental relation to the child. With respect to a child who has no parent or person in a parental relation, "parent" shall mean the person designated to serve in parental relation for the purposes of this title, pursuant to regulations of the commissioner promulgated in consultation with the commissioner of social services for children in foster care.

15. "Qualified personnel" means:

(a) persons holding a state approved or recognized certificate, license or registration in one of the following fields:

- (i) special education teachers;
- (ii) speech and language pathologists and audiologists;
- (iii) occupational therapists;
- (iv) physical therapists;
- (v) social workers;

- (vi) nurses;
- (vii) dietitians or nutritionists;
- (viii) other persons designated by the commissioner who meet requirements that apply to the area in which the person is providing early intervention services, where not in conflict with existing professional licensing, certification and/or registration requirements.

(b) persons holding a state approved license in one of the following fields:

- (i) psychologists; or
- (ii) physicians.

16. "Service coordinator" means a person who:

(a) meets the qualifications established in federal law and regulation and demonstrates knowledge and understanding of:

- (i) infants and toddlers who may be eligible for services under this title;
- (ii) principles of family-centered services;
- (iii) part H of the federal individuals with disabilities education act and its corresponding regulations;
- (iv) the nature and scope of services available under this title; and
- (v) the requirements for authorizing and paying for such services and other pertinent information;

(b) is responsible for:

- (i) assisting eligible children and their families in gaining access to services listed on the IFSP;
- (ii) coordinating early intervention services with other services such as medical and health services provided to the child;
- (iii) coordinating the performance of evaluations and assessments;
- (iv) participating in the development, monitoring and evaluation of the IFSP;
- (v) assisting the parent in identifying available service providers;
- (vi) coordinating service delivery;
- (vii) informing the family of advocacy services;
- (viii) where appropriate, facilitating the transition of the child to other appropriate services; and
- (ix) assisting in resolving any disputes which may arise between the family and service providers, as necessary and appropriate; and

(c) meets such other standards as are specified pursuant to section

twenty-five hundred fifty-one of this title.

17. "State early intervention service agencies" means the departments of health, education and social services and the offices of mental health, mental retardation and developmental disabilities and office of alcoholism and substance abuse services.

18. "Year" shall mean the twelve-month period commencing July first unless otherwise specified.

S 2542. Comprehensive child find system and public awareness program.

1. The commissioner shall develop a comprehensive child find system that ensures that eligible children in the state are identified, located, referred to the early intervention official and evaluated. Such system shall:

(a) require early intervention officials to identify and locate eligible children within their municipality;

(b) be coordinated with efforts to identify, locate and track children conducted by other agencies responsible for services to infants and toddlers and their families, including the efforts in (i) part B of the federal individuals with disabilities education act, including early childhood direction centers, (ii) the maternal and child health program under title V of the federal social security act, including the infant health assessment program, (iii) medicaid's early periodic screening, diagnosis and treatment program under title XIX of the federal social security act, and (iv) the federal supplemental security income program; and

(c) provide for the identification, tracking and screening of children at risk of developmental delay, using resources available through the programs, identified in paragraph (b) of this subdivision and such other available resources as the commissioner shall commit to this purpose.

2. The commissioner shall develop, implement, and maintain a public awareness program to inform the general public and the professional community of the availability of the early intervention program and the benefits of services to infants and toddlers with disabilities and their families. The program shall include materials which describe the normal developmental achievements of young children, identification and procedures for referral of children with disabilities, and how to gain access to early intervention services.

3. The following persons and entities, within two working days of identifying an infant or toddler suspected of having a disability or at risk of having a disability, shall refer such infant or toddler to the early intervention official or the health officer of the public health district in which the infant or toddler resides, as designated by the municipality, but in no event over the objection of the parent made in accordance with procedures established by the department for use by such primary referral sources, unless the child has already been referred: hospitals, child health care providers, day care programs, local school districts, public health facilities, early childhood direction centers and such other social service and health care agencies and providers as the commissioner shall specify in regulation; provided, however, that the department shall establish procedures, including regulations if required, to ensure that primary referral sources adequately inform the parent or guardian about the early intervention program, including through brochures and written materials created or approved by the department.

4. The commissioner shall provide each early intervention official with a list of all approved evaluators and service coordinators in the municipality or geographic area proximate to such municipality or, with respect to the city of New York, subdivisions of the city as prescribed by the commissioner.

Such list of approved evaluators shall be updated at least annually and shall describe the specific areas of expertise of each qualified evaluator, if known.

S 2543. Service coordinators. 1. Upon referral to the early intervention official of a child thought to be an eligible child by a parent or professional, the early intervention official shall promptly designate an initial service coordinator, selecting whenever appropriate a service coordinator who has an established relationship with the child or family, and shall promptly notify the parent of such designation.

2. The initial service coordinator shall promptly arrange a contact with the parent after such designation, provided that such contact must be in a time, place and manner reasonably convenient for the parent and consistent with the timeliness requirements of this title.

3. The parent of the eligible child shall provide and the early

intervention official shall collect such information and or documentation as is necessary and sufficient to determine the eligible child's third party payor coverage and to seek payment from all third party payors including the medical assistance program and other governmental agency payors.

S 2544. Screening and evaluations. 1. Each child thought to be an eligible child is entitled to a multidisciplinary evaluation, and the early intervention official shall ensure such evaluation, with parental consent.

2. (a) The parent may select an evaluator from the list of approved evaluators as described in section twenty-five hundred forty-two of this title to conduct the evaluation. The parent or evaluator shall immediately notify the early intervention official of such selection. The evaluator may begin the evaluation no sooner than four working days after such notification, unless otherwise approved by the initial service coordinator.

(b) the evaluator shall designate an individual as the principal contact for the multidisciplinary team.

3. (a) To determine eligibility, an evaluator shall, with parental consent, either (i) screen a child to determine what type of evaluation, if any, is warranted, or (ii) provide a multidisciplinary evaluation. In making the determination whether to provide an evaluation, the evaluator may rely on a recommendation from a physician or other qualified person as designated by the commissioner.

(b) If, based upon the screening, a child is believed to be eligible, or if otherwise elected by the parent, the child shall, with the consent of a parent, receive a multidisciplinary evaluation. All evaluations shall be conducted in accordance with the coordinated standards and procedures and with regulations promulgated by the commissioner.

4. The evaluation of each child shall:

(a) be conducted by personnel trained to utilize appropriate methods and procedures;

(b) be based on informed clinical opinion;

(c) be made without regard to the availability of services in the municipality or who might provide such services; and

(d) with parental consent, include the following:

- (i) a review of pertinent records related to the child's current health status and medical history;
 - (ii) an evaluation of the child's level of functioning in each of the developmental areas set forth in paragraph (c) of subdivision seven of section twenty-five hundred forty-one of this title;
 - (iii) an assessment of the unique needs of the child in terms of each of the developmental areas set forth in paragraph (c) of subdivision seven of section twenty-five hundred forty-one of this title, including the identification of services appropriate to meet those needs;
 - (iv) an evaluation of the transportation needs of the child, if any;
- and
- (v) such other matters as the commissioner may prescribe in regulation.

5. An evaluation shall not include a reference to any specific provider of early intervention services.

6. Nothing in this section shall restrict an evaluator from utilizing, in addition to findings from his or her personal examination, other examinations, evaluations or assessments conducted for such child, including those conducted prior to the evaluation under this section, if such examinations, evaluations or assessments are consistent with the coordinated standards and procedures.

7. Following completion of the evaluation, the evaluator shall provide the parent and service coordinator with a copy of a summary of the full evaluation. To the extent practicable, the summary shall be provided in the native language of the parent. Upon request of the parent, early intervention official or service coordinator, the evaluator shall provide a copy of the full evaluation to such parent, early intervention official or service coordinator.

8. A parent who disagrees with the results of an evaluation may obtain an additional evaluation or partial evaluation at public expense to the extent authorized by federal law or regulation.

9. Upon receipt of the results of an evaluation, a service coordinator may, with parental consent, require additional diagnostic information regarding the condition of the child, provided, however, that such evaluation or assessment is not unnecessarily duplicative or invasive to the child, and provided further, that:

- (a) where the evaluation has established the child's eligibility, such

additional diagnostic information shall be used solely to provide additional information to the parent and service coordinator regarding the child's need for services and cannot be a basis for refuting eligibility;

(b) the service coordinator provides the parent with a written explanation of the basis for requiring additional diagnostic information;

(c) the additional diagnostic procedures are at no expense to the parent; and

(d) the evaluation is completed and a meeting to develop an IFSP is held within the time prescribed in subdivision one of section twenty-five hundred forty-five of this title.

10. (a) If the screening indicates that the infant or toddler is not an eligible child and the parent elects not to have an evaluation, or if the evaluation indicates that the infant or toddler is not an eligible child, the service coordinator shall inform the parent of other programs or services that may benefit such child, and the child's family and, with parental consent, refer such child to such programs or services.

(b) A parent may appeal a determination that a child is ineligible pursuant to the provisions of section twenty-five hundred forty-nine of this title, provided, however, that a parent may not initiate such appeal until all evaluations are completed.

11. Notwithstanding any other provision of law to the contrary, where a request has been made to review an IFSP prior to the six-month interval provided in subdivision seven of section twenty-five hundred forty-five of this title for purposes of increasing frequency or duration of an approved service, including service coordination, the early intervention official may require an additional evaluation or partial evaluation at public expense by an approved evaluator other than the current provider of service, with parent consent.

S 2545. Individualized family services plans ("IFSP"). 1. If the evaluator determines that the infant or toddler is an eligible child, the early intervention official shall convene a meeting, at a time and place convenient to the parent, consisting of the parent, such official, the evaluator, the initial service coordinator and any other persons who the parent or the initial service coordinator, with the parent's

consent, invite, provided that such meeting shall be held no later than forty-five days from the date that the early intervention official was first contacted regarding the child, except under exceptional circumstances prescribed by the commissioner. The early intervention official, at or prior to the time of scheduling the meeting, shall inform the parent of the right to invite any person to the meeting.

2. The early intervention official, initial service coordinator, parent and evaluator shall develop an IFSP for an eligible child whose parents request services. The IFSP shall be in writing and shall include, but not be limited to:

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

(b) with parental consent, a statement of the family's strengths, priorities and concerns that relate to enhancing the development of the infant or toddler;

(c) a statement of (i) the major outcomes expected to be achieved for the child and the family, including timelines, and (ii) the criteria and procedures that will be used to determine whether progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

(d) a statement of specific early intervention services, including transportation and the mode thereof, necessary to meet the unique needs of the child and the family, including the frequency, intensity, location and the method of delivering services;

(e) a statement of the natural environments, including the home and community settings where children without disabilities participate, in which early intervention services shall appropriately be provided and an explanation of their appropriateness, and, where the child is in day care, a plan for qualified professionals to train the day care provider to accommodate the needs of the child, where appropriate;

(f) a statement of other services, including but not limited to medical services, that are not required under this title but that are needed by the child and the family;

(g) a statement of other public programs under which the child and family may be eligible for benefits, and a referral, where indicated;

(h) the projected dates for initiation of services and the anticipated duration of such services; (i) the name of the service coordinator selected by the parent who will be responsible for the implementation of the IFSP and coordination with other agencies and persons;

(j) the steps to be taken supporting the potential transition of the toddler with a disability to services provided under section forty-four hundred ten of the education law or to other services, to the extent the child is thought to be eligible for such services, including:

(i) discussions with and education of parents regarding potential options and other matters related to the child's transition;

(ii) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(iii) with parental consent, the transmission of information about the child to the committee on preschool special education, to ensure continuity of services, if appropriate, including evaluation and assessment information and copies of IFSPs.

3. In developing the IFSP, consideration shall first be given to provision of transportation by a parent of a child to early intervention services. Other modes of transportation shall be provided if the parent can demonstrate the inability to provide appropriate transportation services.

4. If the early intervention official and the parent agree on the IFSP, the IFSP shall be deemed final and the service coordinator shall be authorized to implement the plan.

5. If the early intervention official and the parent do not agree on an IFSP, the service coordinator shall implement the sections of the proposed IFSP that are not in dispute, and the parent shall have the due process rights set forth in section twenty-five hundred forty-nine of this title.

6. The contents of the IFSP shall be fully explained to the parent, and informed consent from the parent shall be obtained prior to the provision of the early intervention services therein. If the parent does not provide such consent with respect to a particular early intervention service, then only those early intervention services with respect to which consent is obtained shall be provided.

7. The IFSP shall be reviewed at six month intervals and shall be

evaluated annually by the early intervention official, service coordinator, the parent and providers of services to the eligible child. Upon request of a parent, the plan may be reviewed by such persons at more frequent intervals.

8. If, at any time, the parent and the service coordinator agree, in writing, that the child has met all the goals set forth in the IFSP or is otherwise no longer in need of services pursuant to this article, the service coordinator shall certify that the child is no longer an eligible child.

9. A parent may, at any time during or after development of the IFSP, select a service coordinator who will become responsible for implementing the IFSP and who may be different from the initial service coordinator.

S 2546. Interim services. 1. Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in sections twenty-five hundred forty-four and twenty-five hundred forty-five of this title, if the following conditions are met:

(a) Parental consent is obtained;

(b) An interim IFSP is developed that includes: (i) the name of a service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and (ii) the early intervention services that have been determined to be needed immediately by the child and the child's family; and

(c) The evaluation and assessment are completed within forty-five days from the date the early intervention official was first contacted regarding the child.

2. The costs that an approved provider of early intervention services incurs in providing such interim services shall be approved costs to the extent they are otherwise consistent with section twenty-five hundred fifty-five of this title.

S 2547. Respite services. 1. Subject to the availability of federal funds, the commissioner shall allocate a portion of such funds for respite services for families of eligible children. The commissioner shall establish criteria for selecting families for such services, which

may include the severity of the child's disability, the availability of respite services to the family through other programs, and the availability of informal supports to the family.

2. In addition to respite services provided pursuant to subdivision one of this section and subject to the amounts appropriated therefor, the state shall reimburse the municipality for fifty percent of the costs of respite services provided to eligible children and their families with the approval of the early intervention official.

3. The commissioner shall contact the appropriate federal governmental agencies and personnel to facilitate the availability of federal funds for respite services.

S 2547-a. Day care support services. The commissioner shall allocate up to one million dollars of federal funds for purposes of establishing two or more demonstration programs for the provision of day care support services for eligible children which may include the use of paraprofessionals to work with one or more children with disabilities within the same setting. The commissioner, in consultation with other appropriate state agencies, shall establish criteria for the selection of demonstration sites for such services, such criteria to include, but not be limited to, geographic distribution, the disability severity of children to be served by such a program and the availability of similar services from other sources.

S 2548. Transition plan. To the extent that a toddler with a disability is thought to be eligible for services pursuant to section forty-four hundred ten of the education law, the early intervention official shall notify in writing the committee on preschool special education of the local school district in which an eligible child resides of the potential transition of such child and, with parental consent, arrange for a conference among the service coordinator, the parent and the chairperson of the preschool committee on special education or his or her designee at least ninety days before such child would be eligible for services under section forty-four hundred ten of the education law to review the child's program options and to establish a transition plan, if appropriate. If a parent does not consent to a conference with the service coordinator and the chairperson of the

preschool committee on special education or his or her designee to determine whether the child should be referred for services under section forty-four hundred ten of the education law, and the child is not determined to be eligible by the committee on preschool special education for such services prior to the child's third birthday, the child's eligibility for early intervention program services shall end at the child's third birthday.

S 2549. Due process. 1. If a parent disagrees with the determination of the evaluator or the local early intervention official with regard to the eligibility for or provision of early intervention services or if such official fails to act within such period of time as may be required by this title or regulations of the commissioner, a parent may make a request in writing for mediation or an impartial hearing to resolve the dispute; provided, however, if a parent elects not to pursue mediation, such election shall not (a) preclude a parent from requesting an impartial hearing or (b) constitute a failure to exhaust administrative remedies.

2. A request for mediation shall be made to the early intervention official for the municipality in which the child resides. Upon such request, the municipality shall notify a community dispute resolution center designated by the commissioner to provide mediation services for such municipality. The community dispute resolution center shall arrange for the mediation to be conducted at a place and time convenient to the parent. Such mediation shall be at no cost to the parent. If all parties agree to the terms of a mediation agreement, a copy of such agreement shall be forwarded by the community dispute resolution center to the participating parties and the service coordinator who shall incorporate the provisions of such agreement into the IFSP no later than five days after receiving a copy of such agreement. If the parties are unable to reach agreement, in full or in part, the mediator shall inform the parent of the availability of the impartial hearing procedures.

3. A parent may file a written request at any time for an impartial hearing with the commissioner or a designee provided, however, that a request for a hearing to contest a determination that a child is not eligible for services under this title must be made within six months of such determination. Upon receipt of such request, the commissioner, or

the designee, shall promptly notify the parent, or a person designated by the parent, and other appropriate parties in accordance with the regulations of the commissioner. Any such notice to the parent shall be provided in the native language of such person whenever practicable and, if not, in a manner to ensure notice to such person and shall include but not be limited to:

- (a) the procedural safeguards afforded to a parent;
- (b) the date, time and location for the impartial hearing, which shall be reasonably convenient for the parent;
- (c) the procedures for the appointment of an impartial hearing officer; and
- (d) the right of the parent to appeal the decision of the impartial hearing to a court of competent jurisdiction.

4. After receipt of notice from the commissioner of a parent's request for an impartial hearing, the early intervention official shall promptly notify the parent as to whether the municipality intends to be represented by an attorney at such hearing.

5. The impartial hearing shall be conducted by the hearing officer in accordance with the regulations of the commissioner. The hearing shall be held, and a decision rendered, within thirty days after the department receives the request for an impartial hearing except to the extent that the parent consents, in writing, to an extension. The decision shall be in writing and shall state the reasons for the decision and shall be final unless appealed by a party to the proceeding. A copy of the decision reached by the hearing officer shall be mailed to the parent, any public or private agency that was a party to the hearing, the service coordinator, the department and any state early intervention service agency with an interest in the decision. Where ordered by the hearing officer, the service coordinator shall modify the IFSP in accordance with the decision within five days after such decision.

6. During the pendency of any mediation or impartial hearing conducted pursuant to this section, the child and family shall, with parental consent, receive those early intervention services that are not in dispute or that are provided pursuant to the IFSP previously in effect.

7. (a) All orders or determinations made hereunder shall be subject to review as provided for in article seventy-eight of the civil practice

law and rules. In any proceeding under article seventy-eight of the civil practice law and rules, the court may grant any relief authorized by the provisions of section seventy-eight hundred six of such law and rules and also may, in its discretion, remand the proceedings to the department for further consideration upon a finding that any relevant and material evidence is then available which was not previously considered by the department.

(b) A parent who, after completing mediation, substantially prevails in an impartial hearing or a judicial challenge to an order or determination under this title shall be entitled to reimbursement for reasonable attorney's fees incurred in such impartial hearing or judicial challenge provided, however, that the parent shall only be entitled to reimbursement for such fees for prevailing in an impartial hearing if the municipality was represented by an attorney at such impartial hearing.

8. (a) The early intervention official shall maintain the confidentiality of all personally identifiable information regarding the children and families receiving early intervention services. The early intervention official shall ensure that no information regarding the conditions, services, needs, or other individual information regarding a child and family is communicated to any parties other than the service coordinator and service providers currently serving the child and family, without the express written consent of the parent.

(b) Providers of service to eligible children and families shall maintain the confidentiality of all personally identifiable information regarding children and families receiving their services. The provider shall ensure that no information regarding the condition, services, needs, or any other individual information regarding a child and family is released to any party other than the early intervention official without the express written consent of the parent, except as specifically permitted in the coordinated standards and procedures, which shall additionally ensure that the requirements of federal or state law which pertain to the early intervention services of the state early intervention service agencies have been maintained.

(c) This section shall not prohibit disclosure otherwise required by law.

S 2550. Responsibilities of lead agency. 1. The lead agency is responsible for the general administration and supervision of programs and activities receiving assistance under this title, and the monitoring of programs and activities used by the state to carry out this title, whether or not such programs or activities are receiving assistance made available under this title, to ensure that the state complies with the provisions of this title.

2. In meeting the requirements of subdivision one of this section, the lead agency shall adopt and use proper methods of administering the early intervention program, including:

(a) establishing standards for evaluators, service coordinators and providers of early intervention services;

(b) approving, and periodically re-approving evaluators, service coordinators and providers of early intervention services who meet department standards;

(c) compiling and disseminating to the municipalities lists of approved evaluators, service coordinators and providers of early intervention services;

(d) monitoring of agencies, institutions and organizations under this title and agencies, institutions and organizations providing early intervention services which are under the jurisdiction of a state early intervention service agency;

(e) enforcing any obligations imposed on those agencies under this title or Part H of the federal individuals with disabilities education act and its regulations;

(f) providing training and technical assistance to those agencies, institutions and organizations, including initial and ongoing training and technical assistance to municipalities to help enable them to identify, locate and evaluate eligible children, develop IFSPs, ensure the provision of appropriate early intervention services, promote the development of new services, where there is a demonstrated need for such services and afford procedural safeguards to infants and toddlers and their families;

(g) correcting deficiencies that are identified through monitoring;
and

(h) in monitoring early intervention services, the commissioner shall provide municipalities with the results of any review of early

intervention services undertaken and shall provide the municipalities with the opportunity to comment thereon.

3. The commissioner, through a comprehensive system of personnel development, shall promote the availability of qualified personnel to provide evaluations and early intervention services to eligible children and their families.

S 2551. Coordinated standards and procedures. 1. The state early intervention service agencies shall jointly establish coordinated standards and procedures for:

(a) early intervention services and evaluations;
(b) child find system and public awareness program; and
(c) programs and services, operating under the approval authority of any state early intervention service agency, which include any early intervention services or evaluations.

2. Such coordinated standards and procedures shall be designed to:

(a) enhance the objectives of this title, including the provision of services in natural environments to the maximum extent possible;
(b) minimize duplicative and inconsistent regulations and practices among the state early intervention service agencies;
(c) conform, to the extent appropriate, to existing standards and procedures of state early intervention service agencies; and
(d) ensure that persons who provide early intervention services are trained, or can demonstrate proficiency in principles of early childhood development.

3. Coordinated standards and procedures may include guidelines suggesting appropriate early intervention services for enumerated disabilities that are most frequently found in eligible children.

4. Coordinated standards and procedures may encompass or allow for agreements among two or more such agencies.

5. Any standards promulgated by regulation or otherwise by any state early intervention service agency governing early intervention services or evaluations shall be consistent with the coordinated standards and procedures.

6. In the event of an inability to agree upon any coordinated standard or procedure, any state early intervention service agency may refer the issue to the early intervention coordinating council for its advice with

respect to the standard or procedure which the council shall provide to the early intervention service agencies affected by the issue. The commissioner, after obtaining such advice, shall adopt an appropriate standard or procedure, provided however, that the commissioner may adopt an interim standard or procedure while awaiting such advice.

7. Coordinated standards and procedures shall provide that any agency which is an approved program or service provider under section forty-four hundred ten of the education law, and which also plans to provide early intervention services may apply to the commissioner of education for approval to provide such services. Such approval shall be granted based on the agency's compliance with the coordinated standards and procedures for early intervention services and, where applicable, education certifications.

8. The early intervention service agencies, in consultation with the director of the budget, shall, where appropriate, require as a condition of approval that evaluators and providers of early intervention services participate in the medical assistance program.

9. The coordinated standards and procedures shall permit such evaluators and providers of services to rely on subcontracts or other written agreements with qualified professionals, or agencies employing such professionals, provided that such professionals perform their responsibilities in conformance with regulations of the commissioner and that providers and evaluators fully disclose any such arrangements, including any financial or personal interests, on all applications for approval.

10. Coordinated standards and procedures may identify circumstances and procedures under which an evaluator or service provider may be disqualified under this title, including procedures whereby a municipality may request such disqualification.

S 2552. Responsibility of municipality. 1. Each municipality shall be responsible for ensuring that the early intervention services contained in an IFSP are provided to eligible children and their families who reside in such municipality and may contract with approved providers of early intervention services for such purpose.

2. After consultation with early intervention officials, the commissioner shall develop procedures to permit a municipality to

contract or otherwise make arrangements with other municipalities for an eligible child and the child's family to receive services from such other municipalities.

3. The municipality shall monitor claims for service reimbursement authorized by this title and shall verify such claims prior to payment. The municipality shall inform the commissioner of discrepancies in billing and when payment is to be denied or withheld by the municipality.

4. The early intervention official shall require an eligible child's parent to furnish the parents' and eligible child's social security numbers for the purpose of the department's and municipality's administration of the program.

S 2553. Early intervention coordinating council. 1. (a) The department shall establish an early intervention coordinating council.

(b) The council shall consist of twenty-seven members, unless otherwise required by federal law, appointed by the governor. At least five members shall be parents, four of whom shall be parents of children with disabilities aged twelve or younger and one of whom shall be the parent of a child with disabilities aged six or younger; at least five shall be representatives of public or private providers of early intervention services; at least one shall be involved in personnel preparation or training; at least two shall be early intervention officials; at least two shall be members of the legislature; seven shall be the commissioner and the commissioners of education, social services, mental retardation and developmental disabilities, mental health, alcoholism and substance abuse services and the superintendent of insurance, or their appropriate designees with sufficient authority to engage in policy planning and implementation on behalf of their agencies.

(c) The governor shall appoint eight members on the recommendation of the temporary president of the senate and the speaker of the assembly, each of whom shall recommend four members as follows: one parent of a child with disabilities age twelve or younger; one representative of public or private providers of early intervention services; one member of the legislature; and one early intervention official. The governor shall appoint four members on the recommendations of the minority leader

of the assembly and the minority leader of the senate, each of whom shall recommend two members as follows: one parent of a child with disabilities age twelve or younger; one representative of public or private providers of early intervention services.

(d) The governor shall designate a chairperson from among the members of the council. All members shall serve for terms of three years. Such terms shall be established so that the terms of no more than one-third of the members of the council expire each year.

2. The council shall:

(a) assist the lead agency in the effective performance of the lead agency's responsibilities set out under this title, including:

(i) identifying the sources of fiscal support for early intervention services and programs, assignment of financial responsibility to the appropriate agency and promotion of interagency agreements;

(ii) preparing applications and amendments required pursuant to federal law;

(iii) advising and assisting the commissioner regarding payment methodologies established pursuant to section twenty-five hundred fifty-five of this title to reimburse adequately the cost of services authorized pursuant to this article and to promote the efficient, economical, productive and stable delivery of early intervention services. The council shall convene a reimbursement advisory panel, the members of which shall be appointed by the commissioner, to assist the council regarding such payment methodologies. Such panel shall consist of no more than sixteen members, and shall include at least four representatives of municipalities, at least four representatives of statewide and regional provider organizations, and such other members as the commissioner shall deem appropriate.

(b) advise and assist the commissioner and other state early intervention service agencies in the development of coordinated standards and procedures pursuant to section twenty-five hundred fifty-one of this title in order to promote the full participation and cooperation of such agencies;

(c) advise and assist the commissioner and the commissioner of education regarding the transition of toddlers with disabilities to services provided under section forty-four hundred ten of the education law, to the extent such services are appropriate;

(d) advise and assist the commissioner in identifying barriers that impede timely and effective service delivery, including advice and assistance with regard to interagency disputes; and

(e) prepare and submit an annual report to the governor and legislature on the status of the early intervention program.

3. The council shall meet at least four times a year. Special meetings may be called by the chairperson and shall be called at the request of the commissioner.

4. At least sixty days prior to the commissioner's final approval of rules and regulations pursuant to this title, other than emergency rules and regulations, the commissioner shall submit proposed rules and regulations to the council for its review. The council shall review all proposed rules and regulations and report its recommendations thereon to the commissioner within sixty days. The commissioner shall not act in a manner inconsistent with the recommendations of the council without first providing the reasons therefor. The council, upon a majority vote of its members, may require that an alternative approach to the proposed rules and regulations be published with a notice of the proposed rules and regulations pursuant to section two hundred two of the state administrative procedure act. When an alternative approach is published pursuant to this section, the commissioner shall state the reasons for not selecting such alternative approach.

5. The members of the council shall be allowed their reasonable and necessary expenses incurred in the performance of their duties hereunder.

S 2554. Local early intervention coordinating councils. 1. A local early intervention coordinating council shall be established in each municipality. The council shall consist of members appointed by the early intervention official. At least four members of each council shall be parents of infants or toddlers with disabilities or of children aged three through twelve with disabilities. Each council shall also include at least three public or private providers of early intervention services, at least one child care provider or representative of child care providers, the chief executive officers or their designees of the municipality's departments of social services, health and mental hygiene, a representative from the local developmental disabilities

services office and a representative from one or more committees on preschool special education of local school districts in the municipality. A local body which has been previously constituted may serve this purpose if it has the appropriate members. The commissioner, in his or her discretion, may waive one or more of the foregoing membership composition requirements in those municipalities where such requirements cannot reasonably be met.

2. The local early intervention coordinating council shall meet, in open forum, at least four times a year for its first two years of existence.

3. The council shall advise the early intervention official regarding:

(a) the planning for, delivery and assessment of the early intervention services for eligible children and their families, including the transition from early intervention services to services and programs under section forty-four hundred ten of the education law and other early childhood programs;

(b) the identification of service delivery reforms needed to promote the availability of early intervention services within natural environments;

(c) the coordination of public and private agencies; and

(d) such other matters relating to early intervention policies and procedures within the municipality as are brought to its attention by parents, providers, public agencies or others.

4. The council will report annually to the early intervention official on the adequacy of the early intervention system to ensure the availability of family centered, coordinated services; and interface with other existing planning bodies that serve like populations.

S 2556. Administrative costs. On or after July first, nineteen hundred ninety-four, and annually thereafter, municipalities shall be eligible for reimbursement for administrative costs exclusive of due process costs incurred during the preceding year pursuant to this title. Such reimbursement shall be made in the first instance from any federal funds available for such purpose, as determined by the commissioner. To the extent that such federal funds are not sufficient or available to reimburse a municipality for such administrative costs, reimbursement shall be made with state funds in an amount up to, but not exceeding,

one hundred dollars for each eligible child served in such preceding year.

S 2557. Financial responsibility and reimbursement. 1. The approved costs for an eligible child who receives an evaluation and early intervention services pursuant to this title shall be a charge upon the municipality wherein the eligible child resides or, where the services are covered by the medical assistance program, upon the social services district of fiscal responsibility with respect to those eligible children who are also eligible for medical assistance. All approved costs shall be paid in the first instance and at least quarterly by the appropriate governing body or officer of the municipality upon vouchers presented and audited in the same manner as the case of other claims against the municipality. Notwithstanding the insurance law or regulations thereunder relating to the permissible exclusion of payments for services under governmental programs, no such exclusion shall apply with respect to payments made pursuant to this title. Notwithstanding the insurance law or any other law or agreement to the contrary, benefits under this title shall be considered secondary to any plan of insurance or state government benefit program under which an eligible child may have coverage. Nothing in this section shall increase or enhance coverages provided for within an insurance contract subject to the provisions of this title.

2. The department shall reimburse the approved costs paid by a municipality for the purposes of this title, other than those reimbursable by the medical assistance program or by third party payors, in an amount of fifty percent of the amount expended in accordance with the rules and regulations of the commissioner. Such state reimbursement to the municipality shall not be paid prior to April first of the year in which the approved costs are paid by the municipality.

3. The department may perform audits, which may include site visitation, to all or any of the following: municipalities; service coordinators; evaluators or providers of early intervention services. The department shall provide the municipalities with a copy of the findings of such audits. Early intervention program state aid reimbursement or portion thereof may be withheld if, on post-audit and review, the commissioner finds that the early intervention services were

not provided or those provided were not in substantial conformance with the rules and regulations established by the commissioner or that the recipient of such services was not an eligible child as defined in section twenty-five hundred forty-one of this title. In the event that the commissioner determines that there may be a withholding of state reimbursement to any municipality under this section, he shall inform the state early intervention coordinating council and the relevant local early intervention coordinating council and shall consider alternative courses of action recommended within sixty days by either body prior to withholding state reimbursement.

3-a. Each municipality may perform an audit, which may include site visitation, of evaluators and providers of such services within its municipality in accordance with standards established by the commissioner. The municipality shall submit the results of any such audit to the commissioner for review and, if warranted, adjustments in state aid reimbursement pursuant to subdivision three of this section, as well as for recovery by the municipality of its share of any disallowances identified in such audit.

4. The commissioner shall collect data, by municipality, on the early intervention program authorized under this title for purposes of improving the efficiency, cost effectiveness, and quality of such program. Such municipality data collection shall include but not be limited to:

(a) The number and ages of children enrolled in the early intervention program;

(b) The total number of children, within a municipality, receiving a single service, the percentage of those children by service type, and the average frequency of visits per week for such service type;

(c) The total number of children, within a municipality, receiving multiple services, the percentage of those children by service type, the average frequency of visits per week for such service type and the average number of service types that each child receives;

(d) The number of New York state approved agencies, institutions, or organizations providing early intervention services by service specialty or specialties and the number of New York state approved independent providers of early intervention services by service specialty or specialties;

(e) The number and percentage of children receiving a single service by type of New York state approved service provider, and the number and percentage of children receiving multiple services by type of New York state approved service provider;

(f) The overall number of New York state approved evaluators. The number of approved evaluators who also provide services to early intervention children they have evaluated;

(g) The number of families receiving family supportive services such as family training, counseling, parent support groups, and respite;

(h) The types of clinical practice guidelines, evaluation tools and testing instruments used by municipalities to establish eligibility or need for early intervention services;

(i) Both service, cost and payment oversight mechanisms used by counties to ensure quality and efficient delivery of early intervention services;

(j) The number of children that have third party reimbursement;

(k) The number of claims submitted to third party payors by municipality. The percentage of claims denied by third party payors. The reasons for the denials.

The commissioner shall collect and analyze such data elements to determine service and utilization patterns and to enhance the department's ongoing provision of program oversight and guidance. In addition, the commissioner shall report for the period July first, two thousand three to December thirty-first, two thousand three, and for each calendar year thereafter, to the governor and the legislature, by March first of each year, the information and analysis required by this subdivision.

5. The department shall contract with an independent organization to act as the fiscal agent for the department. A municipality may elect to utilize the services of such organization for early intervention program fiscal management and claiming as determined by the commissioner or may select an independent agent to act as the fiscal agent for such municipality or may act as its own fiscal agent.

S 2558. Responsibility for certain temporary-resident infants and toddlers with disabilities. 1. Definitions. In addition to the definitions contained in section twenty-five hundred forty-one of this

title, the following terms shall have the following meanings:

(a) "Foster child" shall mean a child in the care, custody or guardianship of a commissioner of a local social services district.

(b) "Homeless child" shall mean a child placed in a hotel, motel, shelter, or other temporary housing arrangement by a social services district because of the unavailability of permanent housing.

(c) "Municipality of current location" shall mean a municipality in which a child lives which is different from the municipality in which a child or such child's family lived at the time a social services district assumed responsibility for the placement of such child or family or at the time the child was admitted for care or treatment in a facility licensed or operated by another state agency.

(d) "Municipality of residence" shall mean the municipality in which a child or such child's family lived at the time the local social services district assumed responsibility or custody for such child or family or at the time the child was admitted for care or treatment in a facility licensed or operated by another state agency.

(e) "Child in residential care" shall mean an infant or toddler living in a residential facility licensed or operated by a state agency. For the purposes of subdivisions two, three and four of this section, a child in residential care shall be deemed to be a homeless child.

2. Evaluation and IFSP responsibility. The municipality of current location of a foster child or homeless child shall be responsible for the evaluation and IFSP procedures prescribed for an infant or toddler suspected of having a disability. The municipality of current location shall identify to the commissioner each eligible foster child or homeless child, and the municipality of current location of such child shall also transmit a copy of the IFSP and cost of service of such child to the municipality of residence.

3. Contract and payment responsibility. The municipality of current location shall be the municipality of record for an eligible foster child or homeless child for the purposes of this title, provided that notwithstanding the provision of subdivision two of section twenty-five hundred fifty-seven of this title, the state shall reimburse one hundred percent of the approved costs paid by such municipality which shall be offset by the local contribution due pursuant to subdivision four of this section.

4. Local contribution. The municipality of residence shall be financially responsible for the local contribution in the amount of fifty percent of the approved costs. The commissioner shall certify to the comptroller the amount of the local contribution owed by each municipality to the state. The comptroller shall deduct the amount of such local contribution first from any moneys due the municipality pursuant to section twenty-five hundred fifty-six of this title and then from any other moneys due or to become due to the municipality.

S 2559. Third party insurance and medical assistance program payments.

1. Nothing in this title shall be construed to permit the department or any other state agency or municipality to reduce medical assistance or other assistance or services available to eligible children.

2. Notwithstanding any other provisions of law, costs incurred for early intervention services that otherwise qualify as medical assistance that are furnished to an eligible child who is also eligible for benefits pursuant to title eleven of article five of the social services law are considered to be medical assistance for purposes of payments to providers and state reimbursement to the extent that federal financial participation is available therefor.

3. (a) Providers of early intervention services and transportation services shall in the first instance and where applicable, seek payment from all third party payors including governmental agencies prior to claiming payment from a given municipality for services rendered to eligible children, provided that, for the purpose of seeking payment from the medical assistance program or from other third party payors, the municipality shall be deemed the provider of such early intervention services to the extent that the provider has promptly furnished to the municipality adequate and complete information necessary to support the municipality billing, and provided further that the obligation to seek payment shall not apply to a payment from a third party payor who is not prohibited from applying such payment, and will apply such payment, to an annual or lifetime limit specified in the insured's policy.

(b) The commissioner, in consultation with the director of budget and the superintendent of insurance, shall promulgate regulations providing public reimbursement for deductibles and copayments which are imposed under an insurance policy or health benefit plan to the extent that such

deductibles and copayments are applicable to early intervention services.

(c) Payments made for early intervention services under an insurance policy or health benefit plan which are provided as part of an IFSP pursuant to section twenty-five hundred forty-five of this title shall not be applied by the insurer or plan administrator against any maximum lifetime or annual limits specified in the policy or health benefits plan, pursuant to section eleven of the chapter of the laws of nineteen hundred ninety-two which added this title.

(d) A municipality, or its designee, shall be subrogated, to the extent of the expenditures by such municipality for early intervention services furnished to persons eligible for benefits under this title, to any rights such person may have or be entitled to from third party reimbursement. The right of subrogation does not attach to benefits paid or provided under any health insurance policy or health benefits plan prior to receipt of written notice of the exercise of subrogation rights by the insurer or plan administrator providing such benefits.

4. Notwithstanding any other provision of law, the commissioner, pursuant to a memorandum of understanding with the commissioner of the office of mental retardation and developmental disabilities, shall develop and submit a medicaid home and community based services waiver, pursuant to section 1915c of the social security act, for the purpose of creating a waiver program to provide and finance services for children who qualify for the early intervention program. In further establishing eligibility criteria under the waiver program, the commissioner, in conjunction with the commissioner of the office of mental retardation and developmental disabilities, shall establish health, developmental and psycho-social criteria which shall permit the broadest eligibility based on criteria for the early intervention program and federal standards for participation in a waiver program. The waiver application shall be submitted pursuant to section 1915c of the social security act no later than January first, two thousand four.

S 2559-a. Transportation. The municipality in which an eligible child resides shall, beginning with the first day of service, provide either directly, by contract, or through reimbursement at a mileage rate authorized by the municipality for the use of a private vehicle or for

other reasonable transportation costs, for suitable transportation pursuant to section twenty-five hundred forty-five of this title. All contracts for transportation of such children shall be provided pursuant to the procedures set forth in section two hundred thirty-six of the family court act, using the date on which the child`s IFSP is implemented, in lieu of the date the court order was issued; provided, however, that the city of New York shall provide such transportation in accordance with the provisions of chapter one hundred thirty of the laws of nineteen hundred ninety-two, if applicable.

S 2559-b. Regulations. The commissioner may adopt regulations necessary to carry out the provisions of this title. In promulgating such regulations, the commissioner shall incorporate coordinated standards and procedures, where applicable, and shall consider the regulations, guidelines and operating procedures of other state agencies that administer or supervise the administration of services to infants, toddlers and preschool children to ensure that families, service providers and municipalities are not unnecessarily required to meet differing eligibility, reporting or procedural requirements.