Attachment C

Notice

The information contained on this website is not the official version of the Compilation of the Rules and Regulations of the State of New York (NYCRR). No representation is made as to its accuracy. To ensure accuracy and for evidentiary purposes, reference should be made to the Official Compilation of the Rules and Regulations of the State of New York, available from West Publishing at 1-800-344-5009.

November 5, 1997

Final Regulations*

Pursuant to the authority vested in the New York State Department of Health by Title II-A of Article 25 of the Public Health Law, Part 69 of Subchapter H of Chapter II of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is hereby amended to be effective on the earliest date permitted by law. The title of Part 69 of Title 10, and the reference to statutory authority, are amended to read as follows:

Part 69
Testing for Phenylketonuria and Other Diseases and Conditions/Early Intervention Program
(Statutory Authority: Public Health Law §§2500-a,2500-e, Article 25 Title II-A.)

A new subpart 69-4 is added as follows:

SUBPART 69-4
Early Intervention Program

(Statutory authority: Public Health Law Article 25 Title II-A)

Sec. 69-4.1 Definitions
Sec. 69-4.2 Early Intervention Official's or Public Health Officer's Role in the Child Find System
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Sec. 69-4.22 Third-party payments
Sec. 69-4.30 Computation of rates for early intervention services provided to infants and children ages birth to three years old and their families or caregivers.

*This version of the final regulations contains technical corrections to numbering of provisions. There are no substantive changes to regulation content or language.

Sec. 69-4.1 Definitions

(a) *Approve* means any type of approval process used by State early intervention service agencies to approve providers of services, including licensure or certification.

(b) *Assessment* means ongoing procedures used to identify:

(1) the child's unique needs and strengths and the services appropriate to meet those needs; and
(2) the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

(c) *Child find system* means all policies and procedures established by the state early intervention service agencies to: (1) ensure that at-risk and eligible children are identified, located, and referred to the early intervention official or public health officer as designated by the municipality; (2) determine the extent to which children are receiving needed services; and (3) ensure coordination among the state agencies' major efforts to identify at-risk and eligible children.

(d) *Completed mediation* means

(1) the parties have participated in mediation and reached an agreement;
(2) the parties have participated in mediation but have been unable to reach an agreement during mediation or the parent requests an impartial hearing;
(3) a parent's request for mediation has not been accommodated according to the time frame set forth in section 69-4.17(g)(13); or
(4) the early intervention official declines to participate in mediation.

(e) *Days* means calendar days.

(f) *Designated County Official* means the official designated by the municipality as responsible for receipt of referrals of children suspected of having, or at-risk for, developmental delays or disabilities.

(g) *Developmental delay* means that a child has not attained developmental milestones expected for the child's chronological age adjusted for prematurity in one or more of the following areas of development: cognitive, physical (including vision and hearing), communication, social/emotional, or adaptive development.

(1) A developmental delay for purposes of the Early Intervention Program is a developmental delay that has been measured by qualified personnel using informed clinical opinion, appropriate diagnostic procedures and/or instruments and documented as:

(i) a twelve month delay in one functional area; **or**

(ii) a 33% delay in one functional area or a 25% delay in each of two areas; **or**

(iii) if appropriate standardized instruments are individually administered in the evaluation process, a score of at least 2.0 standard deviations below the mean in one functional area or a score of at least 1.5 standard deviation below the mean in each of two functional areas.

(h) *Disability* means a developmental delay or a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(i) *Dominant Language* means the language or mode of communication normally used

by the parent of an eligible or potentially eligible child, including braille, sign language, or other mode of communication.

(j) *Early Intervention Official* means an appropriate municipal official designated by the chief executive officer of a municipality and an appropriate designee of such official.

(k) *Early Intervention Services* means

(1) services that are:

(i) designed to meet the developmental needs of children eligible under this program and the needs of the family related to enhancing the child's development in accordance with the functional outcomes specified in the Individualized Family Service Plan;
(ii) selected in collaboration with the parent;
(iii) in compliance with state standards;
(iv) provided:
(*a*) under public supervision;
(*b*) by qualified personnel;
(*c*) in conformity with an individualized family service plan and to the maximum extent appropriate, provided in natural environments;
(*d*) at no cost to the family; and
(v) are cost effective.

(2) Early intervention services include:

(i) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(ii) *Assistive technology service* means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

(*a*) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(*b*) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(*c*) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(*d*) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(*e*) training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

(*f*) training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to, or are otherwise

substantially involved in, the major life functions of individuals with disabilities.

(iii) *Audiology*, including:

(*a*) identification of children with auditory impairment using at risk criteria and appropriate audiologic screening techniques;

(*b*) determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(*c*) referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(*d*) provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(*e*) provision of services for prevention of hearing loss; and

(*f*) determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(iv) *Family training, counseling, home visits and parent support groups,* including services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(v) *Medical services only for diagnostic or evaluation purposes* means services provided by a licensed physician to determine a child's developmental status and need for early intervention services subject to reasonable prior approval requirements for exceptionally expensive services as prescribed by the Commissioner.

(vi) *Nursing services*, including:

(*a*) the assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(*b*) provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(*c*) administration of medications, treatments, and regimens prescribed by a licensed physician.

(vii) *Nutrition services*, including:

(a) conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical, and clinical variables; feeding skills and feeding problems; and, food habits and food preferences;

(*b*) developing and monitoring appropriate plans to address the nutritional needs of eligible children; and

(*c*) making referrals to appropriate community resources to carry out nutrition goals.

(viii) *Occupational therapy* includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:

(*a*) identification, assessment, and intervention;

(*b*) adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(*c*) prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(ix) *Physical therapy* includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaptation. These services include:

(*a*) screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;

(*b*) obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(*c*) providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(x) *Psychological services*, including:

(*a*) administering psychological and developmental tests and other assessment procedures;

(*b*) interpreting assessment results;

(*c*) obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and

(*d*) planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(xi) *Service Coordination*, including assistance and services provided by a

service coordinator to enable an eligible child and the child's family to receive the rights, procedural safeguards and services that are authorized to be provided under the Early Intervention Program.

(xii) *Social work services*, including:

(*a*) making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(*b*) preparing a social/emotional developmental assessment of the child within the family context;

(*c*) providing individual and family-group counseling with parents and other family members, and appropriate social skill building activities with the child and parents;

(*d*) working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(*e*) identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(xiii) *Special instruction*, including:

(*a*) the design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(*b*) curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(*c*) providing families and any primary caregivers (*e.g.,* child care providers) with information, skills, and support related to enhancing the skill development of the child; and

(*d*) working with the child to enhance the child's development.

(xiv) *Speech-language pathology*, including:

(*a*) identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(*b*) referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

(*c*) provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(xv) *Vision services*, including:

(*a*) evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(*b*) referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(*c*) communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

(xvi) *Health Services* means services necessary to enable a child to benefit from the other early intervention services during the time that the child is receiving other early intervention services. The term includes:

(*a*) such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(*b*) consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(*c*) The term health services does not include the following:

(1) services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(2) services that are purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose);

(3) devices necessary to control or treat a medical condition; or

(4) medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(xvii) *Transportation and related costs* includes the cost of travel (*e.g.*, mileage or travel by taxi, common carrier, or other means) and other costs (*e.g.*, tolls and parking expenses) that are necessary to enable an eligible child and the child's family to receive early intervention services.

(l) *Eligible child* means any infant or toddler from birth through age two years who has a disability, provided that if such infant or toddler:

(1) turns three years of age on or before August 31st, he or she shall, if requested by the parent, be eligible to receive early intervention services contained in an Individualized Family Service Plan until September 1 of that

calendar year; or,

(2) turns three years of age on or after September 1, he or she shall, if requested by the parent and if already receiving early intervention services, be eligible to continue receiving early intervention services until January 2 of the next calendar year; except,

(3) if the infant or toddler is receiving preschool special education services under Section 4410 of the State Education Law, he or she shall not be an eligible child.

(m) *Evaluation* means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility for the Early Intervention Program, including determining the status of the child in each of the following areas of development: cognitive, physical, communication, social or emotional, and adaptive development.

(n) *Evaluator* means a team of two or more professionals approved pursuant to Section 69-4.5 of this subpart to conduct screenings and evaluations.

(o) *Family assessment* means the process of information gathering and identification of family priorities, resources and concerns, which the family decides are relevant to their ability to enhance their child's development.

(p) *Family Concerns* means those areas that parent identifies as needs, issues, or problems which they wish to have addressed within the Individualized Family Service Plan.

(q) *Family Priorities* means those areas which the parent selects as essential targets for early intervention services to be delivered to their child and family unit.

(r) *Family Resources* means the strengths, abilities, and formal and informal supports that can be mobilized to address family concerns, needs or desired outcomes.

(s) *Hearing Officer* means the person duly designated for the purpose of conducting or participating in a hearing pursuant to the Public Health Law, including an administrative officer or an administrative law judge assigned by the Department to the hearing.

(t) *Hearing record* means:

(1) all notices, pleadings, and motions;
(2) evidence presented during the hearing;
(3) questions and offers of proof, objections thereto, and rulings thereon;
(4) any statements of matters officially noticed by the hearing officer; and
(5) any findings of fact, conclusions of law, decision, determination, opinion, order or report made by the impartial hearing officer.

(u) *Include* means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(v) *Individualized Family Service Plan (IFSP*) means a written plan for providing early intervention services to a child eligible for the Early Intervention Program and the child's family. The plan must:

(1) be developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services;
(2) be based on the evaluation and assessment described in this subpart; and

(3) include matters as specified in this subpart.

(w) *Informed clinical opinion* means the best use of quantitative and qualitative information by qualified personnel regarding a child, and family if applicable. Such information includes, if applicable, the child's functional status, rate of change in development, and prognosis.

(x) *Informed consent* means:

(1) the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's dominant language or other mode of communication;

(2) the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records if any that will be released and to whom; and

(3) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(y) *Initial service coordinator* means the service coordinator designated by the early intervention official upon receipt of a referral of a child thought to be eligible for early intervention services who functions as the service coordinator who participates in the formulation of the Individualized Family Service Plan.

(z) *Interim individualized family service plan* means a temporary plan developed with parental consent for a child with a known developmental delay or disability who has apparent immediate needs to enable early intervention service delivery between initial identification of the child's needs and the completion of the multidisciplinary evaluation.

(aa) *Mediation* means a voluntary, non-adversarial process by which the parent of a child and the early intervention official or designee are assisted in the resolution of a dispute.

(ab) *Medical/biological risk* means early developmental and health events suggestive of medical needs or biological insults to the developing central nervous system which, either singly or collectively, increase the probability of later disability.

(ac) *Multidisciplinary* means the involvement of two or more professionals from different disciplines in the provision of integrated and coordinated services including evaluation and assessment services and development of the Individualized Family Service Plan.

(ad) *Municipality* means a county outside of the City of New York or the City of New York in the case of a county contained within the City of New York.

(ae) *Natural environment* means settings that are natural or normal for the child's age peers who have no disability, including the home, a relative's home when care is delivered by the relative, child care setting, or other community setting in which children without disabilities participate.

(af) *Ongoing service coordinator* means the service coordinator designated in the Individualized Family Service Plan.

(ag) *Parent* means a parent by birth or adoption, or person in parental relation to the child. With respect to a child who is a ward of the state, or a child who is not a ward of the state but whose parents by birth or adoption are unknown or unavailable and the child has no person in parental relation, the term "parent" means a person who

has been appointed as a surrogate parent for the child in accordance with Section 69-4.16 of this subpart. This term does not include the state if the child is a ward of the state.

(ah) *Person in parental relation* means:

(1) the child's legal guardian;

(2) the child's standby guardian after their authority becomes effective pursuant to Section 1726 of the Surrogate's Court Procedure Act;

(3) the child's custodian; a person shall be regarded as the custodian of a child if he or she has assumed the charge and care of the child because the parents, or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child, or are living outside the state or their whereabouts are unknown; or

(4) persons acting in the place of a parent, such as a grandparent or stepparent with whom the child lives, as well as persons who are legally responsible for the child's welfare;

(5) except, this term does not apply to a child who is a ward of the state, and does not include a foster parent.

(ai) *Personally identifiable information* includes:

(1) the name of the child, the parent or other family member;

(2) the address of the child, the parent or other family member;

(3) a personal identifier such as the social security number of the child, parent or other family member; and

(4) a list of personal characteristics or other information that would make it possible to identify the child, the parent or other family member with reasonable certainty.

(aj) *Qualified personnel* are those individuals who are approved as required by this subpart to deliver services to the extent authorized by their licensure, certification or registration, to eligible children and have appropriate licensure, certification, or registration in the area in which they are providing services, including:

(1) audiologists;

(2) certified occupational therapy assistants;

(3) licensed practical nurses, registered nurses and nurse practitioners;

(4) certified low vision specialists;

(5) occupational therapists;

(6) orientation and mobility specialists;

(7) physical therapists;

(8) physical therapy assistants;

(9) pediatricians and other physicians;

(10) physician assistants;

(11) psychologists;

(12) registered dieticians;

(13) school psychologists;

(14) social workers;

(15) special education teachers;

(16) speech and language pathologists and audiologists;

(17) teachers of the blind and partially sighted;

(18) teachers of the deaf and hearing handicapped;

(19) teachers of the speech and hearing handicapped;

(20) other categories of personnel as designated by the Commissioner.

(ak) *Record* means any information recorded in any way, maintained by an Early Intervention Official, designee, or approved evaluator, service provider or service coordinator. A record shall include any file, evaluation, report, study, letter, telegram, minutes of meetings, memorandum, summary, interoffice or intraoffice communication, memorandum reflecting an oral conversation, a handwritten or other note, chart, graph, data sheet, film, videotape, slide, sound recording, disc, tape and information stored in microfilm or microfiche or in computer readable form.

(al) *Screening* means a process involving those instruments, procedures, family information and observations, and clinical observations used by an approved evaluator to assess a child's developmental status to indicate what type of evaluation, if any, is warranted.

(am) *Ward of the State* means a child whose custody and guardianship have been transferred to the local social services official pursuant to a voluntary surrender by the child's parent or by a family court or surrogate's court in conjunction with the termination of the parental rights of the child's parent.

Sec. 69-4.2 Early Intervention Official's or Public Health Officer's Role in the Child Find System

(a) The early intervention official shall:

(1) make all reasonable efforts to identify and locate eligible children within their municipality;

(2) coordinate efforts to identify, locate and track children conducted by other agencies responsible for services to infants and toddlers and their families; and

(3) provide for identification, tracking and screening of children at risk of developmental delay, using available resources and such other resources as the Commissioner shall commit to this purpose.

(i) The municipality shall designate either the early intervention official or the public health officer to receive all early intervention referrals. If the Public Health Officer is designated to receive referrals, and is not the early intervention official, he or she shall promptly transmit the referral of children suspected of having a developmental delay to the early intervention official.

Sec. 69-4.3 Referrals

(a) The following primary referral sources shall, within two working days of identifying an infant or toddler who is less than three years of age and suspected of having a disability or at risk of having a disability, refer such infant or toddler to the official designated by the municipality, unless the child has already been referred or unless the parent objects: all individuals who are qualified personnel; all approved evaluators, service coordinators, and providers of early intervention services; hospitals; child health care providers; day care programs; local health units; local school districts; local social service districts; public health facilities; early childhood direction centers; and, operators of any clinic approved under Article 28 of Public Health Law, Article 16 of the Mental Hygiene Law, or Article 31 of the Mental Hygiene Law.

(1) A primary referral source who has identified an infant or toddler suspected of having a disability shall:

(i) provide a general explanation of the services that are available under the Early Intervention Program and the benefits to the child's development and to the family of accessing those services;

(ii) inform the parent that, unless the parent objects, their child will be referred to the early intervention official for purposes of a free, multidisciplinary evaluation to determine eligibility for services;

(iii) whenever feasible, inform the parent about such referral in their dominant language or other mode of communication; and

(iv) ensure the confidentiality of all information transmitted at the time of referral.

(2) A primary referral source who has identified an infant or toddler at risk of a disability shall:

(i) provide a general explanation of the developmental screening, home visiting, and tracking services that are available to the family, including the Infant-Child Health Assessment Program, and the benefits to the child's development and to the family of accessing those services;

(ii) inform the parent that, unless the parent objects, their child will be referred to the designated county official for the purposes of developmental screening, home visiting, and tracking services, which may include enrollment in the Infant Child Health Assessment Program;

(iii) whenever feasible, inform the parent about such referral in their dominant language or other mode of communication; and

(iv) ensure the confidentiality of all information transmitted at the time of referral.

(3) When a parent objects to the referral the primary referral source shall:

(i) maintain written documentation of the parent's objection to the referral and follow-up actions taken by the primary referral source;

(ii) provide the parent with the name and telephone number of the early intervention official if the child is suspected of having a disability or Infant-Child Health Assessment Program if the child is at-risk; and

(iii) within two months, make reasonable efforts to follow-up with the parent, and if appropriate, refer the child unless the parent objects.

(b) Information transmitted in a referral from a primary referral source, for an infant or toddler suspected of having a disability or at risk of developing a disability, shall consist of only the following information, unless written consent is obtained from a parent to the transmittal of further information to the early intervention official:

(1) the child's name, sex, and birth date;

(2) the name, address and telephone number of the parent and/or if applicable, the person in parental relation to the child;

(3) when necessary and applicable, the name and telephone number of another person through whom the parent may be contacted;

(4) if the child is being referred because he or she is at risk of developing a disability, the referral shall include an indication that the child is not suspected of having a disability, but is at risk of developing a disability in the future; and

(5) name and telephone number of the primary referral source.

(c) Referrals may be made at any time by parents via telephone, in writing or in person.

(d) Referrals of children suspected of having a disability, which includes a developmental delay and/or a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, shall be based on:

(1) the results of a developmental screening or diagnostic procedure(s); direct experience, observation, and perception of the child's developmental progress;

(2) information provided by a parent which is indicative of the presence of a developmental delay or disability;

(3) or a request by a parent that such referral be made.

(e) Diagnosed physical and mental conditions with a high probability of developmental delay include:

(1) chromosomal abnormalities associated with developmental delay (*e.g.,* Down Syndrome);

(2) syndromes and conditions associated with delays in development (*e.g.,* fetal alcohol syndrome);

(3) neuromuscular disorder (*e.g.,* any disorder known to affect the central nervous system, including cerebral palsy, spina bifida, microcephaly or macrocephaly);

(4) clinical evidence of central nervous system (CNS) abnormality following bacterial/viral infection of the brain or head/spinal trauma;

(5) hearing impairment (a diagnosed hearing loss that cannot be corrected with treatment or surgery);

(6) visual impairment (a diagnosed visual impairment that cannot be corrected with treatment (including glasses or contact lenses) or surgery);

(7) diagnosed psychiatric conditions, such as reactive attachment disorder of infancy and early childhood; (symptoms include persistent failure to initiate or respond to primary caregivers; fearfulness and hypervigilance that does not respond to comforting by caregivers; absence of visual tracking); and

(8) emotional/behavioral disorder (the infant or toddler exhibits atypical emotional or behavioral conditions, such as delay or abnormality in achieving expected emotional milestones such as pleasurable interest in adults and peers; ability to communicate emotional needs; self-injurious/persistent stereotypical behaviors).

(f) Referrals of children at risk of having a disability shall be made based on the following medical/biological risk factors:

(1) Medical/biological neonatal risk criteria, including:

(i) birth weight less than 1501 grams
(ii) gestational age less than 33 weeks
(iii) central nervous system insult or abnormality (including neonatal seizures, intracranial hemorrhage, need for ventilator support for more than 48 hours, birth trauma)
(iv) congenital malformations
(v) asphyxia (Apgar score of three or less at five minutes)
(vi) abnormalities in muscle tone, such as hyper- or hypotonicity
(vii) hyperbilirubinemia (> 20mg/dl)
(viii) hypoglycemia (serum glucose under 20 mg/dl)
(ix) growth deficiency/nutritional problems (*e.g.*, small for gestational age; significant feeding problem)
(x) presence of Inborn Metabolic Disorder (IMD)
(xi) perinatally- or congenitally-transmitted infection (*e.g.*, HIV, hepatitis B, syphilis)
(xii) 10 or more days hospitalization in a Neonatal Intensive Care Unit (NICU)
(xiii) maternal prenatal alcohol abuse
(xiv) maternal prenatal abuse of illicit substances
(xv) prenatal exposure to therapeutic drugs with known potential developmental implications (*e.g.*, psychotropic medications, anticonvulsant, antineoplastic)
(xvi) maternal PKU
(xvii) suspected hearing impairment (*e.g.,* familial history of hearing impairment or loss; suspicion based on gross screening measures)
(xviii) suspected vision impairment (suspicion based on gross screening measures)

(2) Medical/biological post-neonatal and early childhood risk criteria, including:

(i) parental or caregiver concern about developmental status
(ii) serious illness or traumatic injury with implications for central nervous

system development and requiring hospitalization in a pediatric intensive care unit for ten or more days

(iii) elevated venous blood lead levels (above 19 mcg/dl)

(iv) growth deficiency/nutritional problems (*e.g.,* significant organic or inorganic failure-to-thrive, significant iron-deficiency anemia)

(v) chronicity of serous otitis media (continuous for a minimum of three months)

(vi) HIV infection

(g) The following risk criteria may be considered by the primary referral source in the decision to make a referral:

(1) no prenatal care

(2) parental developmental disability or diagnosed serious and persistent mental illness

(3) parental substance abuse, including alcohol or illicit drug abuse

(4) no well child care by 6 months of age or significant delay in immunizations; and/or

(5) other risk criteria as identified by the primary referral source

(h) When the child is in the care and custody or custody and guardianship of the local social services district, the early intervention official shall notify the local social services commissioner or designee that the child has been referred.

Sec. 69-4.4 Qualifications of Service Coordinators

(a) All early intervention service coordinators shall meet the following qualifications:

(1) a minimum of one of the following educational or service coordination experience credentials:

(i) two years experience in service coordination activities as delineated in this subpart (voluntary or part-time experience which can be verified will be accepted on a pro rata basis); or

(ii) one year of service coordination experience and an additional year of experience in a service setting with infants and toddlers with developmental delays or disabilities; or

(iii) one year of service coordination experience and an Associates degree in a health or human service field; or

(iv) a Bachelor's degree in a health or human service field.

(2) demonstrated knowledge and understanding in the following areas:

(i) infants and toddlers who may be eligible for early intervention services;

(ii) state and federal laws and regulations pertaining to the Early Intervention Program;

(iii) principles of family centered services;

(iv) the nature and scope of services available under the Early Intervention Program and the system of payments for services in the State; and

(v) other pertinent information.

(b) Service coordinators shall participate in the introductory service coordination training session sponsored or approved by the Department of Health in the first three months and by no later than one year of direct or contractual employment as an early intervention service coordinator, provided that training sessions are offered and accessible in locations with reasonable proximity to their place of employment at least three times annually.

(1) Employees of incorporated entities, sole proprietorships, partnerships, and State operated facilities approved to deliver service coordination services must submit documentation of participation in the introductory service coordination training to their employers for retention in their personnel record.

(2) Individual service coordinators must submit documentation of their participation in introductory service coordination training to the Department of Health for retention with their approved application to deliver service coordination services.

(3) Failure to participate in the introductory service coordination training sponsored or approved by the Department of Health may result in the disqualification as a provider of service coordination services in accordance with procedures set forth in Section 69-4.17(i).

Sec. 69-4.5 Approval of Service Coordinators, Evaluators, and Service Providers

(a) Early intervention service coordinators, evaluators, and/or service providers shall be approved to deliver service coordination services, evaluations, and early intervention services as follows:

(1) incorporated entities, sole proprietorships, partnerships, and state-operated facilities operating under the approval of any state early intervention service agency shall apply to such agency or to the Department of Health for approval to provide service coordination services, evaluations, and/or early intervention services, except that those entities which are currently approved by or otherwise affiliated with the Department of Social Services or Office of Alcohol and Substance Abuse Services shall apply to the Department of Health for approval to provide service coordination services, evaluations, and/or early intervention services;

(2) municipalities, incorporated entities, sole proprietorships, and partnerships not approved by any state early intervention service agency shall apply to the Department of Health for approval to provide service coordination services, evaluations, and/or early intervention services;

(3) those entities and individuals seeking approval to provide early intervention service coordination services, evaluations, and/or early intervention services shall complete an approved Medicaid provider agreement and reassign Medicaid benefits to the municipality;

(4) the state early intervention services agency or the Department of Health shall approve applicants, other than individuals, as providers of service coordination, evaluations, and/or early intervention services based on:

(i) the character and competence of the service provider;

(ii) assurances of fiscal viability;

(iii) assurances of the capacity to provide service coordination services,

evaluations, and/or early intervention services;

(iv) assurance of availability of qualified personnel;

(v) completion of an approved Medicaid provider agreement and reassignment of Medicaid benefits to the municipality;

(vi) assurances of adherence to applicable federal and state laws and regulations;

(vii) assurances of the capacity to deliver services on a twelve-month basis and flexibility in the hours of service delivery, including weekend and evening hours;

(viii) assurances of capacity and agreement that qualified personnel will participate in inservice training pursuant to a plan developed by the Department of Health;

(ix) assurances of compliance with the confidentiality requirements set forth in Section 69-4.17(c) of this subpart;

(x) provision of copies of all organizational documents, such as partnership agreements or certificates of incorporation; and

(xi) such additional pertinent information or documents necessary for the Agency's approval, as requested.

(5) Individual service coordinators, evaluators, and service providers shall be approved by the Department of Health to provide early intervention service coordination services, supplemental evaluations, and/or early intervention services. Qualified individuals with appropriate licensure, certification, or registration shall apply to the Department of Health for approval to provide service coordination services, supplemental evaluations, and/or early intervention services. The Department of Health shall approve individuals to deliver early intervention service coordination services, supplemental evaluations, and/or early intervention services based on the following factors:

(i) the character and competence of the individual;

(ii) assurances of the capacity to provide service coordination, supplemental evaluations, and/or early intervention services;

(iii) qualifications as specified in this subpart;

(iv) completion of an approved Medicaid provider agreement and reassignment of Medicaid benefits to the municipality;

(v) assurances of adherence to applicable federal and state laws and regulations;

(vi) current licensure, certification, or registration in a discipline designated by the Commissioner as qualified personnel;

(vii) assurances to notify the Department of Health within two working days of suspension, expiration, or revocation of licensure, certification, or registration;

(viii) assurances of the capacity to deliver services on a twelve-month basis and flexibility in the hours of service delivery, including weekend and

evening hours;

(ix) assurances of capacity and agreement to attend in-service training programs pursuant to a plan developed by the Department of Health;

(x) assurances of compliance with the confidentiality requirements set forth in Section 69-4.17(c) of this Subpart; and

(xi) such additional pertinent information or documents necessary for the Agency's consideration, as requested.

(b) All applicants shall receive written notice of their approval to deliver service coordination services, evaluations, and/or early intervention services from the Department of Health, State Education Department, Office of Mental Retardation and Developmental Disabilities or Office of Mental Health.

(1) The notice shall inform the applicant that a contract with the municipality is necessary to be reimbursed for service coordination services, evaluations, and/or early intervention services and to be included on the list of approved evaluators, service coordinators, and/or service providers.

(2) The early intervention officials for municipalities in the catchment areas in which the applicant proposes to deliver service coordination services, evaluations, and/or early intervention services, shall receive written notice of the applicant's approval from the state agency approving the application.

(c) The municipality, upon entering into a contract with the approved provider of service coordination services, evaluations and/or early intervention services, shall notify the Department of Health within 10 working days of the finalization of the contract. The notification shall include the time period for which the contract is valid.

(d) The State Education Department, Office of Mental Retardation and Developmental Disabilities, or Office of Mental Health shall notify the Department of Health of their approval of any applicant as a provider of service coordination services, evaluations and/or early intervention services within five working days.

(e) Approved service coordinators, evaluators and/or service providers shall notify, in writing, the state early intervention service agency which granted his or her approval, if such service coordinator, evaluator and/or service provider wishes to modify the catchment area, the target population or the qualified personnel available to deliver services.

(f) The State Education Department, Office of Mental Retardation and Developmental Disabilities, or Office of Mental Health shall notify the Department of Health of any modifications in the catchment area, the target population or the qualified personnel available to deliver services submitted to such agency by an approved service coordinator, evaluator or service provider within five working days of notification.

(g) An approved service coordinator, evaluator and/or service provider who intends to cease providing service coordination services, evaluations or early intervention services, or in the case of an agency, intends to cease ownership, possession or operation of the agency, or chooses to voluntarily terminate status as an approved service coordination, evaluation and/or service provider agency, shall submit to the Commissioner and early intervention official written notice of such intention not less than 90 days prior to the intended effective date of such action.

Sec. 69-4.6 Standards for Initial and Ongoing Service Coordinators

(a) All individuals approved to provide early intervention service coordination shall fulfill those functions and activities necessary to assist and enable an eligible infant and toddler and parent to receive the rights, procedural safeguards and services that are authorized to be provided under State and federal law, including other services not required under the Early Intervention Program, but for which the family may be eligible.

(1) Each eligible infant and toddler and their family shall be provided with one service coordinator who shall be responsible for:

(i) coordinating all services across agency lines; and

(ii) serving as the single point of contact in helping parents to obtain the services and/or assistance they need.

(b) Service coordination shall be an active ongoing process that involves:

(1) assisting parents of eligible infants and toddlers in gaining access to the early intervention services and other services identified in the Individualized Family Service Plan;

(2) ensuring the Individualized Family Service Plan outcomes and strategies reflect the family's priorities, concerns and resources, and that changes are made as the family's priorities concerns and resources change;

(3) coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the infant or toddler needs or is receiving;

(4) facilitating the timely delivery of available services; and

(5) continuously seeking the appropriate services and situations necessary to benefit the development of the child for the duration of the child's eligibility.

(c) Specific service coordination activities shall include:

(1) coordinating the performance of evaluations and assessments;

(2) facilitating and participating in the development, review and evaluation of Individualized Family Service Plans;

(3) assisting families in identifying available service providers;

(4) coordinating and monitoring the delivery of services;

(5) informing families of the availability of advocacy services;

(6) coordinating with medical and health care providers, including a referral to appropriate primary health care providers as needed; and

(7) facilitating the development of a transition plan to preschool services if appropriate or to other available supports and services.

69-4.7 Initial Service Coordinators

(a) Upon referral to the early intervention official of a child thought to be an eligible child, 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 in writing.

(1) Upon receipt of the referral, the early intervention official shall make reasonable efforts to promptly forward a copy of the Early Intervention Program parents' handbook to the parent by mail or other suitable means.

(2) For children in the care and custody or custody and guardianship of the local social services commissioner, the early intervention official shall notify the local commissioner of social services or designee of the designation of an initial service coordinator.

(b) The initial service coordinator shall promptly arrange a contact with the parent in a time, place and manner reasonably convenient for the parent and consistent with applicable timeliness requirements.

(c) The initial service coordinator shall inform the parent of their rights and entitlement under the Early Intervention Program and shall document the information provided in the child's record.

(1) At the initial contact with the parent, the initial service coordinator shall ensure the parent has a copy of the Early Intervention Program parents' handbook, review the handbook, provide an overview of the early intervention system and services, discuss the role of the initial service coordinator, and review the parent's rights, responsibilities and entitlements under the program.

(d) The initial service coordinator shall ascertain if the child and family are presently receiving case management services or other services from public or private agencies. If so, the initial service coordinator shall discuss options for collaboration with the parent and, if appropriate, obtain consent for the release of information for the purpose of collaboration with other case management services.

(e) All information provided to the parent shall be in the parent's dominant language or other mode of communication unless clearly not feasible to do so.

(f) All information obtained from the parent shall be confidential and may only be disclosed upon written consent, unless otherwise required or permitted to be disclosed by law.

(g) The initial service coordinator shall inform the family that services must be at no cost to parents and use of Medicaid and/or third-party insurance for payment of services is required under the Early Intervention Program.

(1) The service coordinator shall inform the parent that any deductible or co-payments will be paid by the municipality.

(2) The service coordinator shall inform the parent that use of third-party insurance for payment of early intervention services will not be applied against lifetime or annual limits specified in their insurance policy, if such policy is subject to New York State law and regulation.

(3) The service coordinator shall inform the parent that the municipality will not obtain payment from their insurer if the insurer is not prohibited from applying, and will apply, payment for early intervention services to the annual and lifetime limits specified in their insurance policy.

(h) The initial service coordinator must obtain, and parents must provide, information

about the status of the family's third party insurance coverage and Medicaid status and promptly notify the early intervention official of such status, including:

(1) Medicaid enrollment status and identification number, if any;

(2) type of health insurance policy or health benefits plan, name of insurer or plan administrator, and policy or plan identification number;

(3) type of coverage extended to the family by the policy; and

(4) such additional information necessary for reimbursement.

(i) The service coordinator shall assist the parent in identifying and applying for benefit programs for which the family may be eligible, including:

(1) the Medical Assistance Program;

(2) Supplemental Social Security Income Program;

(3) Physically Handicapped Children's Program;

(4) Child Health Plus; and

(5) Social Security Disability Income.

(j) The initial service coordinator shall review all options for evaluation and screening with the parent from the list of approved evaluators including location, types of evaluations performed, and settings for evaluations (e.g., home vs. evaluation agency). Upon selection of an evaluator by the parent, the initial service coordinator shall ascertain from the parent any needs the parent may have in accessing the evaluation.

(k) The initial service coordinator shall at the parent's request assist the parent in arrangement of the evaluation after the parent selects from the list of approved evaluators.

(l) If the parent has accessed an approved evaluator prior to contact by the initial service coordinator, the initial service coordinator shall contact the parent to assure that the parent has received information concerning alternative approved evaluators and ascertain from the parent any needs the parent may have in accessing the evaluation.

(m) Upon receipt of the results of the evaluation, the initial service coordinator may with the approval of the early intervention official and with parental consent, require additional diagnostic information regarding the condition of the child, provided that such information is not unnecessarily duplicative or invasive to the child according to guidelines of the Department of Health.

(1) Prior to obtaining written consent for additional diagnostic information, the initial service coordinator shall provide the parent with a written explanation which shall include:

(i) diagnostic information requested;

(ii) reasons for obtaining the information, and use of the information;

(iii) location of diagnostic testing;

(iv) source of payment and that no costs shall be incurred by the parent;

(v) a statement that the information shall not be used to refute eligibility; and

(vi) a statement that the meeting to formulate the Individualized Family Service Plan shall be held within the 45 day time limit.

(2) The initial service coordinator shall assist the parent in accessing the diagnostic testing as needed and desired by the parent.

(3) The initial service coordinator shall facilitate the parent understanding of the results of the diagnostic information, and with parent consent, incorporate this diagnostic information into the planning and formulation of the Individualized Family Service Plan.

(n) Upon the determination of a child as ineligible for early intervention services, the initial service coordinator shall inform the parent of the right to due process procedures as set forth in this Subpart.

(1) The initial service coordinator shall inform the parent of other services which the parent may choose to access and for which the child may be eligible and offer assistance with appropriate referrals.

(o) Upon determination of the child's eligibility for the early intervention program, the initial service coordinator shall discuss the Individualized Family Service Plan process with the parent and shall inform the parent:

(1) of the required participants in the Individualized Family Service Plan meeting and the parent's option to invite other parties;

(2) that the initial service coordinator may invite other participants, provided that the service coordinator obtains the parent's consent and explains the purpose of this person's participation;

(3) that inclusion of family assessment information is optional;

(4) that their priorities, concerns and resources shall play a major role in the establishment of outcomes and strategies among the parent, evaluator, service coordinator and early intervention official;

(5) of the opportunity to select an ongoing service coordinator, who may be different from the initial service coordinator, at the Individualized Family Service Plan meeting or at any other time after the formulation of the Individualized Family Service Plan;

(6) that the final decisions about the services to be provided to the child will be made by the parent and the early intervention official; and

(7) that services can be delivered in a range of settings such as an approved provider's facility, as well as a variety of natural environments, including the child's home, child care site or other community settings.

(p) The initial service coordinator shall assist the parent in preparing for the meeting to develop the Individualized Family Service Plan, including facilitating their understanding of the child's multidisciplinary evaluation and identifying their resources, priorities, and concerns related to their child's development.

(1) The initial service coordinator shall discuss with the parent the options for early intervention services and facilitate the parent's investigation of various options as requested by the parent.

Sec. 69-4.8 Evaluators/Screening, Evaluation and Assessment Responsibilities

(a) *Evaluations and Screening*

(1) If the parent selects an approved evaluator prior to the designation of an initial service coordinator, the parent or evaluator shall immediately notify the early intervention official of such selection.

(i) The evaluator may begin the evaluation no sooner than four working days of the early intervention official's receipt of written notice from the parent or evaluator, unless otherwise approved by the initial service coordinator.

(ii) The evaluator shall obtain parental consent to conduct the evaluation prior to the initiation of the evaluation.

(2) A multidisciplinary evaluation shall be performed to determine the child's initial and ongoing eligibility for early intervention services and costs shall be reimbursed in accordance with this sub-part. The evaluator shall obtain informed parental consent to perform the evaluation and screening prior to initiating the evaluation procedures.

(i) The evaluator may, with parental consent, screen a child to determine what type of evaluation, if any, is necessary.

(a) A screening shall not be performed if the child is known to have a diagnosed condition with a high probability of developmental delay.

(ii) Whenever feasible and appropriate, standardized instruments with demonstrated reliability and validity and appropriate levels of sensitivity and specificity shall be used to perform the screening.

(iii) The parent shall be present during the performance of any screening procedure, unless the parent's circumstances prevent the parent's presence. The local social services commissioner or designee may be present at the screening of a child in his or her care and custody, or custody and guardianship, in lieu of a parent who elects not to participate.

(iv) Screeners shall discuss the results of the screening with the parent, facilitate the parent's understanding of the screening results and address any concerns identified by the parent.

(a) If the results of the screen indicate that an evaluation is not warranted, the evaluator and the parent may agree to conclude the evaluation process. Costs for such screening shall be reimbursed in accordance with this sub-part.

(b) If the results of the screen indicate that an evaluation is warranted, the evaluator shall discuss with the parent the implications of the results for the child's evaluation, including composition of the multidisciplinary team.

(3) The multidisciplinary evaluation team shall include two or more qualified personnel from different disciplines who are trained to utilize appropriate methods and procedures, have sufficient expertise in child development, and at least one of whom shall be a specialist in the area of the child's suspected delay or disability.

(4) The multidisciplinary evaluation and assessment of the child shall be based on informed clinical opinion, employ age-appropriate instruments and procedures, and include the following:

(i) an evaluation of the child's level of functioning in each of the following developmental domains: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development;

(a) the evaluation of the child's physical development shall include a health assessment including a physical examination, routine vision and hearing screening and, where appropriate, a neurological assessment, except when:

(1) a physical examination has occurred within sufficient recency (as determined by the child's age and commonly accepted examination schedules, such as those recommended by the American Academy of Pediatrics and/or NYS Child/Teen Health Plan), and documentation of such examination is available; and

(2) no indications are present which suggest the need for re-examination (*e.g.*, rapid regression in developmental status);

(ii) with parental consent, a review of pertinent records related to the child's current health status and medical history;

(iii) a parent interview about the family's resources, priorities, and concerns related to the child's development and about the child's developmental progress. With the consent of the parent, an interview of other family members or individuals who have pertinent knowledge about the child's development may also be conducted. Information about the child's developmental progress may be gathered from the local social services commissioner, unless the parent objects, regarding children in his or her care and custody or custody and guardianship;

(iv) an assessment of the unique needs of the child in each developmental domain, including the identification of services appropriate to meet those needs. The evaluator should avoid making recommendations regarding frequency and duration of specific services until such time as the family's total priorities, concerns and resources have been assessed and the total plan for services under the IFSP is under discussion; and

(v) an evaluation of the transportation needs of the child, which shall include:

(a) parental ability or inability to provide transportation;

(b) the child's special needs related to transportation; and

(c) safety issues/parental concerns related to transportation.

(5) With written parental consent, the evaluator may use findings from other current examinations, evaluations, or assessments, and health assessments performed for the child, including those conducted prior to initiation of the multidisciplinary evaluation, provided that:

(i) such procedures were performed in a manner consistent with the procedures set forth in this subdivision;

(ii) such findings are used to augment and not replace the multidisciplinary evaluation to determine eligibility;

(iii) no indications are present which suggest the need to repeat such procedures (*e.g.*, the strengths/needs of the child have changed sufficiently to warrant re-examination); and

(iv) where feasible, consultation with the professional(s) who performed such procedures is sought.

(6) The multidisciplinary evaluation shall be conducted in a professional, objective manner and shall: consider the unique characteristics of the child; employ appropriate instruments and procedures; include informed clinical opinion and observations; and use several sources and types of information about the child, including parent perceptions and observations about their child's development.

(i) Instruments used as part of a multidisciplinary evaluation, whether norm- or criterion- referenced, shall be reliable and valid; have appropriate level of sensitivity and specificity; be sensitive to the child's and parent's culture and dominant language or other mode of communication.

(ii) The evaluation procedures, including clinical observation, shall be conducted in an environment appropriate to the unique needs of the child and conducive to ensuring accuracy of results, with consideration given to the preference of the parent. Such settings may include structured (*e.g.,* clinic or office), unstructured (*e.g.*, play room), and natural settings (*e.g.*, the child's home).

(7) The child's parent shall have the opportunity to be present and participate in the performance of evaluation and assessments, unless the parent's circumstances prevent the parent's presence.

(8) The parent shall have the opportunity to engage in the family assessment process with the evaluation team.

(i) Family assessments shall be family-directed and designed to determine the resources, priorities, and concerns of the family related to enhancement of the child's development. Family assessments shall be voluntary on the part of the family.

(a) If the family assessment is carried out, the assessment must:

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

(2) be based on information provided by the family through

a personal interview;

(3) incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development; and

(4) be completed within a sufficient timeframe to enable convening of the Individualized Family Service Plan meeting within 45 days from the date of referral.

(9) Results of the child's evaluation and assessment shall be fully shared with the parent following the completion of evaluation and assessments, in a manner understandable to the parent.

(i) The evaluation team shall prepare an evaluation report and written summary and submit the summary, and upon request the report, to the following individuals as soon as practicable subsequent to the evaluation and within a sufficient timeframe to enable convening of the Individual Family Service Plan meeting within 45 days of the date that the early intervention official received the referral: the parent, early intervention official, and initial service coordinator; and with parental consent, the child's primary health care provider and the local social services commissioner or designee for those children in the care and custody or custody and guardianship of the local social services commissioner.

(ii) Components of the evaluation report and summary shall include identification of the persons performing the evaluation and assessment, a description of the assessment process and conditions, the child's response, the family's belief about whether the child's response was optimal, measures and/or score that were used, and an explanation of these measures and/or scores.

(iii) The evaluation report and summary shall include a statement of the child's eligibility, including diagnosed condition with a high probability of delay, if any, and/or developmental delay in accordance with the definition of developmental delay in section 69-4.1(g) of this Subpart.

(iv) The parent shall have the opportunity to discuss the evaluation results, with the evaluators or designated contact, including any concerns they may have about the evaluation process; and to receive assistance in understanding these results, and ensure the evaluation has addressed their concerns and observations about their child.

(v) To the extent feasible and within the parent's preference and consent regarding disclosure to the interpreter, and within confidentiality requirements, the written and oral summary shall be provided in the dominant language or other mode of communication of the parent.

(10) If a parent requests a second evaluation or component of the evaluation at public expense, the early intervention official shall authorize a second evaluation or component, if he/she deems it necessary and appropriate, and shall document the cause. Costs for such evaluation authorized by the early intervention official shall be reimbursed in accordance with this Subpart.

(11) If a child is determined ineligible for services, including determinations that second evaluations or components of evaluations are not necessary or appropriate, the parent may exercise his or her right to mediation or a

hearing. However, the parent may not initiate an action regarding ineligibility for early intervention services until all evaluations and assessments are completed and a determination of ineligibility has been made.

(12) With parental consent, certain evaluation and assessment procedures may be performed or repeated and costs may be reimbursed as a supplemental evaluation in accordance with this sub-part, if deemed necessary and appropriate by the early intervention official, in conjunction with the required annual evaluation of the Individualized Family Service Plan, or more frequently under the following conditions:

(i) an observable change in the child's developmental status indicates the need for modification of the Individualized Family Service Plan or a change in eligibility status; and

(ii) the parent, early intervention official or service coordinator, or service provider(s) requests a re-assessment at the six month review of the Individualized Family Service Plan.

(13) After a child's initial multidisciplinary evaluation, any supplemental evaluations must be stated in the child's Individualized Family Service Plan, and must include the type of supplemental evaluation, and the date and evaluator if known.

(14) Nondiscriminatory evaluation and assessment procedures shall be employed in all aspects of the evaluation and assessment process.

(i) Responsiveness to the cultural background of the family shall be a primary consideration in all aspects of evaluation and assessment.

(a) Tests and other evaluation materials and procedures shall be administered in the dominant language or other mode of communication of the child, unless it is clearly not feasible to do so.

(ii) No single procedure or instrument may be used as the sole criteria or indicator of eligibility.

(15) An evaluation or assessment shall not include a reference to any specific provider of early intervention services.

Sec. 69-4.9 Standards for the Provision of Services

(a) For purposes of this section, early intervention providers includes all approved service coordinators, evaluators, and service providers.

(b) Each municipality shall ensure that the early intervention services contained in Individualized Family Service Plans 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. Municipalities shall make reasonable efforts to ensure that early intervention services contracted for are delivered in a manner that protects the health and safety of eligible children.

(1) If an early intervention official reasonably believes that the early intervention provider is out of compliance with health and safety standards, or otherwise posing an imminent risk of danger to children, parents, or staff, the municipality shall take immediate action to ensure the health and safety of such persons.

(2) Upon the taking of such action by the municipality, the early intervention official shall immediately notify the Department of Health, for purposes of the initiation by the Department of an investigation which may result in the disqualification of the early intervention service provider in accordance with procedures set forth in Section 69-4.17(i) of this Subpart.

(i) The Department shall notify all early intervention officials in the catchment area of the provider that an investigation has been initiated.

(c) All providers of early intervention services shall maintain a physical plant that ensures a safe environment for eligible children and their families.

(d) Providers of early intervention services who are otherwise required to be approved by a State early intervention service agency to deliver other health or human services shall comply with the physical plant standards promulgated by the approving state early intervention service agency.

(e) Providers of early intervention services who are approved by the Department of Health or other State early intervention service agencies to deliver services in a facility-based setting shall employ a policy for addressing health, safety, and sanitation issues which is submitted to the approving agency as part of the application process and monitored by that agency.

(f) Individual providers of early intervention services who deliver such services in their own home or private office shall maintain a physical plant which meets all applicable health and safety codes (including local health and safety codes) and physical plant standards.

(g) State early intervention service agencies and early intervention officials shall make reasonable efforts to ensure that early intervention services delivered to eligible infants and toddlers:

(1) are family-centered, including parents in all aspects of their child's services and in decisions concerning the provisions of services;

(2) use a child development emphasis in intervention strategies, incorporating quality child development practices with necessary adaptations to enhance the eligible child's development;

(3) use an individualized approach for both children and their families, including consideration and respect for cultural, lifestyle, ethnic, and other individual and family characteristics; and

(4) use a team approach that is multidisciplinary, interdisciplinary, or transdisciplinary, including the expertise of all appropriate qualified personnel.

(h) Providers of early intervention services shall be responsible for:

(1) consulting with parents, other service providers (including primary health care providers; family day care homes, and day care centers), and representatives of appropriate community agencies to ensure the effective provision of services;

(2) providing support, education, and guidance to parents and other caretakers (including other family members, family day care, and day care centers) regarding the provision of those services; and

(3) participating in the multidisciplinary team's assessment of a child and the child's family and in the development of integrated goals and outcomes for the Individualized Family Service Plan.

(i) To the maximum extent appropriate to the needs of the child, early intervention services shall be provided in natural environments.

(j) Early intervention evaluators, service providers and service coordinators may be denied approval or removed from the approved provider list according to procedures set forth in Section 69-4.17(i) of this Subpart.

Sec. 69-4.10 Service Model Options

(a) The Department of Health, state early intervention service agencies, and early intervention officials shall make reasonable efforts to ensure the full range of early intervention service options are available to eligible children and their families.

(1) The following models of early intervention service delivery shall be available:

(i) home and community based individual/collateral visits: the provision by appropriate qualified personnel of early intervention services to the child and/or parent or other designated caregiver at the child's home or any other natural environment in which children under three years of age are typically found (including day care centers and family day care homes);

(ii) facility-based individual/collateral visits: the provision by appropriate qualified personnel of early intervention services to the child and/or parent or other designated caregiver at an approved early intervention provider's site;

(iii) parent-child groups: a group comprised of parents or caregivers, children, and a minimum of one appropriate qualified provider of early intervention services at an early intervention provider's site or a community-based site (e.g. day care center, family day care, or other community settings);

(iv) group developmental intervention: the provision of early intervention services by appropriate qualified personnel to a group of eligible children at an approved early intervention provider's site or in a community-based setting where children under three years of age are typically found (this group may also include children without disabilities); and

(v) family/caregiver support group: the provision of early intervention services to a group of parents, caregivers (foster parents, day care staff, etc.) and/or siblings of eligible children for the purposes of:

(a) enhancing their capacity to care for and/or enhance the development of the eligible child; and

(b) providing support, education, and guidance to such individuals relative to the child's unique developmental needs.

Sec. 69-4.11 Individualized Family Service Plan

(a) Individualized Family Service Plan (IFSP) Participation

(1) If the evaluator determines that the infant or toddler is an eligible child, the early intervention official shall convene a meeting within 45 days of the receipt of the child's referral, to develop the initial IFSP, except under exceptional circumstances, including illness of the child or parent.

(2) The meeting shall consist of the following individuals:

(i) the parent;

(ii) the early intervention official;

(iii) the evaluator;

(a) if the evaluator is unable to attend the meeting, arrangements must be made for the evaluator's involvement in the meeting, by participating in a telephone conference call, having a knowledgeable authorized representative attend the meeting, or making pertinent records available at the meeting;

(iv) the initial service coordinator; and

(v) any other persons, such as the child's primary health care provider, or child care provider, who the parent or the initial service coordinator, with the parent's consent, invite.

(3) The following individuals may also participate in the meeting as appropriate:

(i) an advocate or person outside of the family, if the parent requests that person to participate;

(ii) persons who may be providing services to the child or family; and

(iii) the local social services commissioner for children in the care and custody or custody and guardianship of such commissioner.

(4) The IFSP meeting must be conducted:

(i) in settings and at times that are convenient to the parent; and

(ii) in the dominant language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(5) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(6) The early intervention official, initial service coordinator, parent, and evaluator or designated contact from the evaluation team shall jointly develop an IFSP for a parent who requests services.

(7) If the early intervention official and the parent agree on the initial or subsequent IFSPs, the IFSP shall be deemed final and the ongoing service coordinator shall be authorized to implement the plan.

(8) The contents of the IFSP must be fully explained to the parent and informed written consent from the parent must be obtained prior to the provision of early intervention services described in the plan. If the parent does not

provide consent with respect to a particular early intervention service, or withdraws consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

(9) 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 may exercise his or her due process rights to resolve the dispute.

(10) The IFSP shall be in writing and include the following:

(i) a statement, based on objective criteria, of the child's present levels of functioning in each of the following domains: physical development, including vision and hearing; cognitive development; communication development; social or emotional development; and adaptive development;

(ii) a physician's or nurse practitioner's order pertaining to early intervention services which require such an order and which includes a diagnostic statement and purpose of treatment;

(iii) with parental consent, a statement of the family's strengths, priorities and concerns that relate to enhancing the development of the child;

(iv) a statement of

(a) the major outcomes expected to be achieved for the child and the family, including timelines, and

(b) 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 is necessary;

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

(vi) a statement of the natural environments in which early intervention services shall appropriately be provided;

(vii) when the child is in day care and when appropriate, a plan for qualified professionals to train the day care provider to accommodate the needs of the child;

(viii) when early intervention services are delivered to an eligible child in a group setting without typically developing peers, the IFSP shall document:

(a) the reasons why the parent, early intervention official, service coordinator, and evaluator agree that such placement is appropriate to meet the unique needs of the child;

(ix) a statement of other services, including medical services, that are not required under this program but are needed by the child and the family and the payment mechanism for these services (listing of non-required

services does not constitute responsibility for payment of those services on the part of the municipality);

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

(xi) the projected dates for initiation of services as soon as possible after the IFSP meeting and the anticipated duration of these services;

(xii) the name of the ongoing service coordinator, who may be different from the initial service coordinator, selected by the parent who will be responsible for the implementation of the IFSP and coordination with other agencies, services and persons;

(xiii) if applicable, a statement of any supplemental evaluations, including the type, and the date and evaluator if known; and

(xiv) if applicable, the steps to be taken supporting the potential transition of the toddler with a disability to services provided under section 4410 of the Education Law, or to other services, including:

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

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

(c) with parental consent, procedures to prepare program staff or individual qualified personnel who will be providing services to the child to facilitate a smooth transition; and

(d) 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 or a copy of the Individualized Family Service Plan.

(b) The IFSP shall be reviewed at six month intervals and shall be evaluated annually to determine the degree to which progress toward achieving the outcomes is being made and whether or not there is a need to amend the IFSP to modify or revise the services being provided or anticipated outcomes. Upon request of the parent, or if conditions warrant, the IFSP may be reviewed at more frequent intervals.

(1) IFSP reviews shall be conducted by a meeting or other means amenable to the parent.

(2) An IFSP meeting shall be conducted at least annually to evaluate the IFSP for the child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under Section 69-4.8 and any other information available from the ongoing assessment of the child and family, must be used in determining the services that are needed and will be provided.

(3) The annual meeting to evaluate the IFSP and six month reviews must include the individuals listed in Section 69-4.11(a)(2) as participants.

(i) If the evaluator is unable to attend the meeting, arrangements must be

made for the evaluator's involvement in the meeting, including participating in a telephone conference call; having a knowledgeable authorized representative attend the meeting; or making pertinent records available at the meeting.

(c) Interim services

(1) The initial service coordinator shall inform the parent of the availability of interim services for the child and/or family in immediate need of early intervention services.

(2) Interim early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment, if the following conditions are met:

(i) parental consent is obtained;

(ii) the parent and the early intervention official agree to an interim IFSP that includes:

(a) the name of a service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons;

(b) a physician's or nurse practitioner's order pertaining to those early intervention services which require such an order and which includes a diagnostic statement and purpose of treatment; and

(c) the early intervention services needed immediately by the child and the child's family, including the location, frequency, and intensity and providers of such services.

(iii) The evaluation and assessment are completed and an Individualized Family Service Plan meeting is convened within 45 days of referral to the early intervention official.

(3) 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 2555 of the Public Health Law.

Sec. 69-4.12 Monitoring of Approved Service Providers (Including Evaluators, Service Providers and Service Coordinators)

(a) Programmatic Monitoring. For purposes of this section, approved service providers means municipalities, incorporated entities, sole proprietorships, partnerships, state-operated facilities and individual qualified personnel approved by a state early intervention service agency to deliver service coordination services, evaluations, and/or early intervention services.

(1) Approved service providers shall be monitored on an annual basis by their approving state early intervention service agency.

(i) State early intervention service agencies shall monitor approved service providers in accordance with these regulations and applicable federal law and regulations and shall report annually to the Department of Health on monitoring activities, including the status of any corrective action plans, and technical assistance activities directed

at providers of early intervention services. Monitoring procedures may include:

(a) institution of reporting requirements;

(b) provision of technical assistance in the development and implementation of self-assessment and internal quality control procedures; and

(c) corrective action plans where appropriate.

(2) Approved service providers may be monitored by municipalities with which they have entered into a contract to deliver service coordination services, evaluations, and/or early intervention services in accordance with Early Intervention Program regulations and/or terms of the municipal contract.

(3) Whenever feasible and appropriate, state early intervention service agencies and municipalities shall jointly conduct monitoring activities.

(i) By October 1 of each year, state early intervention service agencies shall determine and inform the Department of Health of monitoring activities to be conducted during the federal fiscal year, including a site visit schedule which identifies the approved providers under their approval authority which will receive a site visit during that federal fiscal year.

(4) Monitoring activities, including site visits, may include the following components:

(i) a sample review of records, including Individualized Family Service Plans;

(ii) interviews with personnel responsible for the administration and provision of early intervention services;

(iii) review of status of licensure, certification, or registration;

(iv) review of organizational structure and staffing patterns, including supervision of personnel and participation of personnel in in-service training;

(v) a review of compliance with these regulations;

(vi) a review of internal quality assurance procedures (e.g., mechanisms for parent involvement in planning and evaluation of service delivery);

(vii) review of information or gathering of information about parent experiences and satisfaction with service delivery, (e.g., exit interviews with parents, parent satisfaction questionnaires, etc);

(viii) where applicable and practicable, observation of the delivery of early intervention services and interviews with families; and

(ix) where applicable, a review of the status of any corrective action plans for any previously identified deficiencies.

(b) An initial site visit shall be conducted within one year of approval by a state early intervention service agency of a newly incorporated service entity or other

incorporated service entity which has not been previously involved in the delivery of services to eligible children and their families. Such site visits shall be conducted by the approving state early intervention agency.

(c) Fiscal auditing. For purposes of this section, approved service providers means incorporated entities, sole proprietorships, partnerships, state-operated facilities and individual qualified personnel approved by a state early intervention service agency to deliver service coordination services, evaluations, and/or early intervention services.

(1) Each municipality may conduct an audit of approved service providers under contract to deliver service coordination services, evaluations, and/or early intervention services. The municipality shall submit the results of any such audit to the Commissioner for review and, if warranted, adjustments in state aid reimbursement, as well as for recovery by the municipality of its share of any disallowances identified in such audit.

(i) All audits will be based upon these and other applicable regulations and generally accepted accounting principles.

(ii) Audits may include a comprehensive review of all financial records and related documentation.

(2) The early intervention official shall have the ability to perform, or cause to be performed, a fiscal audit of approved service providers under contract with the municipality and located in another municipality, provided that:

(i) prior to initiation of such audit, the early intervention official ascertains that neither the state nor the municipality where services are being delivered has performed or intends to perform such an audit within six months;

(ii) a full fiscal audit is performed;

(iii) where appropriate, the auditing is performed in conjunction with the approving state early intervention service agency to avoid unnecessary duplication of auditing procedures;

(iv) results of the audit shall be made available upon request of any other municipality making payments under the Early Intervention Program to the approved evaluator, service provider or service coordinator; and

(v) no other municipality may conduct an additional audit for the time period specified above.

Sec. 69-4.13 Local Early Intervention Coordinating Councils

(a) A local early intervention coordinating council shall be established in each municipality and shall consist of the following members appointed by the early intervention official:

(1) at least four parents of children with disabilities age birth through twelve years of age;

(2) at least three public or private providers of early intervention services;

(3) at least one child care provider or representative of child care providers;

(4) the chief executive officers or their designees of the municipalities'

departments of social services, health and mental hygiene; and, a representative from the local developmental disabilities services office; and

(5) a representative from one or more committees on preschool special education of local school districts in the municipality.

(b) If membership requirements cannot be reasonably met, the early intervention official may submit a written request to the Commissioner for a waiver of such requirements.

(c) The local early intervention coordinating council shall meet in open forum accessible to the general public preferably quarterly, but in no event less than every six months. The early intervention official shall ensure appropriate public notice of the meeting, which shall include its purpose, date, time, and location. The notice shall be within a sufficient time period prior to the meeting to enable public participation.

(d) The local early intervention coordinating councils shall advise their early intervention officials regarding:

(1) the planning for, delivery and evaluation of the early intervention services for eligible children and their families, including methods to identify and address gaps in services;

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

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

(4) 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.

(e) 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.

Sec. 69-4.14 Reporting

(a) Early intervention officials shall report to the Department of Health such data as the Department may require.

(1) The early intervention official, in conjunction with the local early intervention coordinating council, shall annually and upon request submit a report to the Department and the Early Intervention Coordinating Council on the status of the program within the municipality including gaps in services and methods to address these gaps.

(b) Approved early intervention evaluators, service providers, and service coordinators will provide to early intervention officials all the data necessary to complete required reports in a timely manner.

Sec. 69-4.15 Children in Care

(a) Definitions. The following terms shall have the following meanings:

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

(2) "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;

(3) "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 a state agency other than the Department of Health;

(4) "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 a state agency other than the Department of Health; and

(5) "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 (b),(c) and (d) of this section, a child in residential care shall be deemed a homeless child.

(b) 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. For reimbursement purposes, the municipality of current location shall identify to the Commissioner of Health each eligible foster child or homeless child. 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.

(c) Contract and payment responsibility. The municipality of current location shall be the municipality of record for an eligible foster child or homeless child, provided that the state shall reimburse one hundred percent of the approved costs paid by such municipality which shall be offset by the local contribution.

(d) Local contribution. The municipality of residence shall be financially responsible for the local contribution in the amount of fifty percent of the approved costs.

Sec. 69-4.16 Parents, Persons in Parental Relation and Surrogate Parents

(a) The early intervention official shall make every effort to protect the right of parents, which includes persons in a parental relation, to make decisions about a child's receipt of early intervention services.

(b) Where the parent's availability to the child is limited due to life circumstances, including residing far from their child or the parent is residing in an institution, or the child's placement in the care and custody of the local social services commissioner, the early intervention official shall, as appropriate, facilitate the parent's involvement in early intervention services.

(c) The early intervention official shall be responsible for the determination of the need for a surrogate parent for eligible or potentially eligible children and make reasonable efforts, including contacting persons who might have information concerning the parent, or visit and/or send letters via regular and certified mail to addresses at which the parent may have lived, to discover the whereabouts of a parent before appointing a surrogate.

(1) The early intervention official shall establish agreements with local social service districts, Family Court and other relevant public agencies regarding procedures which will be used to identify eligible or potentially eligible children in need of surrogate parents.

(2) Upon receipt of a referral of an eligible or potentially eligible child who is in the care and custody or custody and guardianship of the local commissioner of social services, the early intervention official, in consultation with the local commissioner of social services or designee, shall determine the availability of the parent.

(3) In the event that the child is a ward of the State, or in the care and custody of the local social services commissioner, and his or her parents by birth or adoption are unavailable and the child has no person in parental relation, the early intervention official shall consult with the local commissioner of social services with care and custody or custody and guardianship of the child to promptly appoint a surrogate parent.

(d) The early intervention official shall appoint a qualified surrogate parent for any eligible or potentially eligible child when the child is a ward of the state, or when the child is not a ward of the state but his or her parents by birth or adoption are unavailable, after reasonable efforts to facilitate their participation and the child has no person in parental relation.

(e) The early intervention official shall allow an available birth parent or adoptive parent to voluntarily appoint a surrogate parent upon written consent.

(f) The early intervention official shall select a surrogate parent who is qualified and willing to serve in such capacity and who:

(1) has no interest that conflicts with the interests of the child;

(2) has knowledge and skills that ensure adequate representation of the child;

(3) if available and appropriate, is a relative who has an ongoing relationship with the child or a foster parent with whom the child resides;

(4) is not an employee of any agency involved in the provision of early intervention or other services to the child, provided however that a person who otherwise qualifies to be a surrogate parent is not considered an employee solely because he or she is paid by a public agency to serve as a surrogate parent; and

(5) has been selected, for any child who is a ward of the state or for any child whose parent is unavailable and who is in the care and custody of the local social services commissioner, in consultation with the local commissioner of social services or designee.

(g) The early intervention official shall afford the surrogate parent the same rights and responsibilities as accorded to the parent by the Early Intervention Program and shall represent the child in all matters related to:

(1) screening, evaluation, and assessment of the child;

(2) development and implementation of the Individualized Family Service Plan, including annual evaluations and periodic reviews;

(3) the ongoing provision of early intervention services;

(4) the right to request mediation or an impartial hearing in the event of a dispute; and

(5) any other rights established in the Early Intervention Program.

(h) The surrogate parent shall maintain the confidentiality of all information regarding the child, including written records.

(i) A person appointed to serve as a surrogate parent shall be removed by the early intervention official in the event:

(1) the surrogate parent is no longer willing or available to participate in that capacity;

(2) the surrogate parent fails to fulfill his or her duties;

(3) the child is no longer a ward of the state; or

(4) a parent becomes available.

(j) The surrogate parent may request a hearing to challenge a determination by an early intervention official to remove the surrogate parent for failure to fulfill the duties of a surrogate parent. Upon request by the former surrogate parent, a hearing shall be conducted under the provisions of Part 51 of Title 10.

(k) In the event that the surrogate parent is removed and the child continues to require the assistance of a surrogate parent, the early intervention official shall appoint a surrogate parent within no more than 10 working days of the removal.

Sec. 69-4.17 Procedural Safeguards

(a) The early intervention official shall make reasonable efforts to ensure that the parent is fully informed, in their dominant language, and understand the rights and entitlement afforded them under the Early Intervention Program, including the right to:

(1) elect or decline to have the child screened and/or evaluated to determine eligibility for early intervention services and to participate in the voluntary family assessment process;

(2) elect or decline to participate in the Early Intervention Program without jeopardizing their right to future participation in the Early Intervention Program;

(3) accept or decline any early intervention service without jeopardizing other early intervention services;

(4) confidentiality of personally identifiable information;

(5) review and correct records;

(6) be notified by the early intervention official within a reasonable time prior to a proposal or refusal to initiate or change the identification, evaluation, or delivery of appropriate early intervention services to the child and family unit;

(7) participate in and invite the participation of others in all decision-making meetings regarding a proposal, or refusal, to initiate or change the identification, evaluation, or delivery of services to the child and family unit;

(8) use due process procedures to resolve complaints;

(9) use an attorney or advocate in any and all dealings with the State early intervention program;

(10) receive an explanation of the use of and impact on insurance, including protection against co-payments and safeguards for lifetime and annual caps as provided in State law; and

(11) when the initial service coordinator or the early intervention official has not made contact with the parent prior to the evaluation, the approved evaluator shall review with the parent their rights under the program and document the review in the evaluation summary.

(b) Notice

(1) Written notice must be given by the early intervention official to the parent of an eligible child ten working days before the early intervention official proposes or refuses to initiate or change the identification, evaluation, service setting, or the provision of appropriate early intervention services to the child and the child's family.

(i) The notice must be sufficient in detail to inform the parent about:
(a) the action that is being proposed or refused;
(b) the reasons for taking such action; and
(c) all procedural safeguards available under the Early Intervention Program.

(ii) The notice must be:

(a) written in language understandable to the general public; and
(b) provided in the dominant language of the parents, unless it is clearly not feasible to do so.

(iii) If the dominant language or other mode of communication of the parent is not a written language, the early intervention official shall take steps to ensure that:

(a) the notice is translated orally or by other means to the parent in the parent's dominant language or other mode of communication;
(b) the parent understands the notice; and
(c) there is written evidence that the requirements of this paragraph have been met.

(iv) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(2) The early intervention official shall make reasonable efforts to ensure the parent receives written notification about the right to due process and the method by which mediation and an impartial hearing can be requested at the following times:

(i) upon denial of eligibility;

(ii) upon disagreement between the early intervention official and the parent on an initial or subsequent IFSP or proposed amendment to an

existing IFSP; and

(iii) upon request from the parent for such information.

(c) Confidentiality

(1) Personally identifiable data, information, or records pertaining to an eligible child shall not be disclosed by any officer or employee of the Department of Health, state early intervention service agencies, municipalities, evaluators, service providers or service coordinators, to any person other than the parent of such child, except in accordance with Title 34 of the Code of Federal Rules Part 99, Sections 300.560 through 300.576 (with the modification specified in Section 303.5(b) of Title 34 of the Code of Federal Regulations) and Part 303 of Title 34 of the Code of Federal Regulations (Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 available from the Early Intervention Program, Room 208 Corning Tower Building, Empire State Plaza, Albany, New York 12237-0618), to preserve the confidentiality of records pertaining to children participating in the early intervention program.

(2) Each municipality, evaluator, service provider and service coordinator shall adopt procedures comparable to those set forth in part 99 and Sections 300.560 through 300.576 (with the modifications specified in Section 303.5(b)) of Title 34 of the Code of Federal Regulations (Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 available from the Early Intervention Program, Room 208 Corning Tower Building, Empire State Plaza, Albany, New York 12237-0618) to preserve the confidentiality of records pertaining to eligible children participating in the Early Intervention Program.

(3) Early intervention officials, all providers approved to deliver early intervention services and all personnel involved in mediation and impartial hearing procedures shall:

(i) implement and maintain policies and procedures to assure the protection of confidential personally identifiable information, which may include existing policies and procedures where appropriate and applicable;

(ii) submit assurances that all employees, including independent contractors, consultants, and volunteers with access to personally identifiable information are informed of and are required to adhere to all confidentiality requirements of personally identifiable information;

(iii) adhere to all legal requirements that protect records containing sensitive information (*e.g.,* such as sexual or physical abuse, treatment for mental illness or mental health problems, HIV status, communicable disease status, the child's parentage, etc.); and

(iv) identify the person or person(s) with designated responsibility for guaranteeing the confidentiality of personally identifiable information.

(4) Early intervention officials shall ensure the confidentiality of all information maintained in an electronic format, except as required or permitted by state or federal law.

(5) The early intervention official shall provide for the confidential exchange of information among parent, evaluators, service providers and service coordinators, including policies and procedures which enable the parent to

voluntarily give written consent for general release of information.

(i) The parent shall be informed of the right to refuse to sign a general release and offered the opportunity to sign a more selective release which specifies by name or category those individuals to whom information may be disclosed or from whom it may be sought.

(ii) The parent's authorization for general release shall be revokable at any time and the parent shall be informed of the right to revoke such authorization. Such information shall be included on any such release form.

(6) The early intervention official shall make reasonable efforts to ensure notification of the parent when maintenance of personally identifiable information is no longer necessary for the purposes of the early intervention program.

(i) At the request of the parent, the early intervention official shall ensure all personally identifiable information is removed from the record and destroyed. However, a permanent record of the child and the family's name and address and the types and dates of services received may be maintained without time limitation.

(d) Access to Records

(1) The early intervention official and approved evaluators, service providers, and service coordinators shall ensure the parent is afforded the opportunity to review and inspect all the records pertaining to the child and the child's family that are collected, maintained, or used for the purposes of the Early Intervention Program, unless the parent is otherwise prohibited such access under State or federal law. The opportunity to review and inspect the record includes the right to:

(i) understandable explanations about and/or interpretations of the record upon the parent's request;

(ii) obtain a copy of the record within 10 working days of the receipt of the request by the early intervention official or approved evaluator, service provider, or service coordinator;

(iii) obtain a copy of the record within five working days if the request is made as part of a mediation or impartial hearing; and

(iv) have a representative of the parent view the record.

(2) For children in the care and custody or custody and guardianship of the local social services district, the local commissioner of social services or designee shall be accorded access to the records collected, maintained or used for the purposes of the Early Intervention Program.

(3) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(4) The early intervention official or evaluator, service provider or service coordinator may charge a reasonable fee not to exceed 10 cents per page for the first copy and 25 cents per page for any additional copies of the record,

provided that the fee does not prevent the parent from exercising the right to inspect and review records and providing that no fees shall be charged to parents to obtain copies of any evaluation or assessment documents to which parents are specifically entitled under other sections of this subpart, except an evaluator or service provider may charge for copies as permitted under Public Health Law §18.

(5) Parents shall not be charged fees for the search and retrieval of the record.

(6) Where any part of the record contains information on more than one child, the parent shall only have the opportunity to review and inspect the portion of the record which pertains to their child.

(7) Each early intervention official, evaluator, service provider and service coordinator shall keep a record of parties obtaining access to records gathered, maintained, or used for purposes of the Early Intervention Program (except access by parents and authorized employees of the municipality or approved evaluator, service provider, or service coordinator) including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(e) Amending the Record

(1) The early intervention official, evaluator, service provider and service coordinator shall ensure the parent the right to present objections and request amendments to the contents of the record because the parent believes the information is inaccurate, misleading, or violates the privacy or other rights of the child.

(2) The parent may at any time present objections pertaining to the contents of the record to the early intervention official, evaluator, service provider or service coordinator, and request that amendments be made.

(3) The early intervention official, evaluator, service provider or service coordinator shall respond to the parent objection and request for amendments of the record within 10 working days.

(i) If the early intervention official, evaluator, service provider or service coordinator concurs with the parent's request, the service coordinator shall ensure the contents of the record are amended as requested and notify the parent of the amendment in writing or via a verbal explanation in their dominant language unless clearly not feasible to do so.

(ii) If the early intervention official, evaluator, service provider or service coordinator does not concur with the parent's request to amend the record, the early intervention official shall notify the parent in writing of the decision and inform the parent of the right to an administrative hearing.

(4) An administrative hearing to amend the record must meet, at a minimum, the following requirements:

(i) the municipality shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent;

(ii) the municipality shall give the parent notice of the date, time, and place, reasonably in advance of the hearing;

(iii) the hearing may be conducted by any individual designated by the municipality, who does not have direct interest in the outcome of the hearing;

(iv) the municipality shall give the parent a full and fair opportunity to present evidence relevant to the issues. The parent may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney;

(v) the municipality shall make a decision in writing within a reasonable period of time after the hearing;

(vi) the decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and reasons for the decision;

(vii) if, as a result of the hearing, the municipality determines that the record contains information that is inaccurate, misleading, or violates the privacy rights of the child or family, the municipality shall order the amendment of the record as requested by the parent;

(viii) if the record is ordered to be amended, the early intervention official shall ensure the record is amended and notify the parent in writing of the amendment; and

(ix) if, as a result of the hearing, the municipality determines that the contents of the record are not inaccurate or misleading or do not violate the privacy rights of the child and family, the municipality shall order that the parent be notified in writing of such decision and informed of the right to place a statement in the record reflective of their views. The municipality shall ensure that such parental statement is incorporated, maintained, and disseminated as part of the record.

(f) Availability of Due Process

(1) The parent of an eligible or potentially eligible child shall have the right to access mediation and/or an impartial hearing at no cost for the resolution of individual child complaints regarding eligibility determinations or the provision of early intervention services.

(2) The Department of Health shall establish, implement, and maintain impartial hearing and mediation processes for the resolution of individual complaints regarding the identification, evaluation, assessment, eligibility determinations, and development, review and implementation of the individualized family service plan (IFSP).

(i) The Department of Health shall ensure the availability of hearing officers who are trained and knowledgeable of the federal and State law and regulations pertaining to the Early Intervention Program and the conduct of administrative hearing procedures.

(3) The failure of the parent to participate in mediation proceedings for the resolution of a complaint or dispute shall not constitute a failure to exhaust administrative remedies and shall not prevent the parent from accessing an impartial hearing.

(g) Mediation Procedures

(1) The Department shall ensure that a statewide mediation system shall be available to ensure parent and early intervention officials may voluntarily access a non-adversarial process for the resolution of complaints regarding the provision of early intervention services.

(2) Mediation services for the resolution of disputes regarding eligibility determination or early intervention service delivery shall be available from community dispute resolution centers upon the written request of the parent and/or early intervention official and the mutual agreement of the parent and the early intervention official to participate in mediation.

(3) The early intervention official shall ensure the parent, upon the request for mediation services by the parent or the early intervention official, is informed of:

(i) the voluntary nature of mediation;

(ii) the parent's right to withdraw at any time from mediation and request an impartial hearing; and

(iii) the right to be accompanied by supportive persons and/or an attorney.

(4) The parent's request to the early intervention official for mediation services may be made in a written format selected by the parent.

(5) The early intervention official's request that the parent agree to participate in mediation services shall be made in writing in the dominant language of the parent, if feasible, and in a manner understandable to the parent.

(6) If the early intervention official requests mediation, the early intervention official shall obtain the express written consent of the parent to transmit personally identifiable information to the community dispute resolution center.

(7) Within two working days of receipt of a request by the early intervention official for mediation by the parent, the early intervention official shall notify the appropriate community dispute resolution center in writing of the request for mediation. The parent and service coordinator shall simultaneously be sent a copy of such notification, which shall include:

(i) the names, addresses, and telephone numbers of the parties to participate in the mediation;

(ii) the need for interpretive services, if any; and

(iii) the nature of the dispute(s) which has resulted in the request for mediation.

(8) Immediately upon receipt of a request for mediation, the community dispute resolution center shall contact the parent and early intervention official to discuss at a minimum the following:

(i) the mediation process;

(ii) a convenient site and time for the mediation; and

(iii) the need for interpretative services or alternative communication services, if any.

(9) The community dispute resolution center shall, upon a determination of the mutual agreement of the parent and early intervention official to participate in mediation, make appropriate arrangements for and convene the mediation proceedings within two weeks of the receipt of the request by the early intervention official, unless an extension is requested or consented to in writing by the parent.

(i) The mediation proceedings shall be convened at a date, time, and location convenient to the parent.

(10) The mediator and community dispute resolution center shall maintain the confidentiality of all personally identifiable information as required by state or federal law or regulations.

(11) The parent and the early intervention official may represent themselves during the mediation proceedings.

(i) The parent and the early intervention official shall have the right to invite others to accompany them at the mediation proceeding.

(12) The parent and/or the early intervention official may be accompanied by an attorney at the mediation proceeding, provided that advanced notice is given to the other party of the intention to be accompanied by an attorney.

(13) The mediation process shall be completed within 30 calendar days of the receipt of the request for mediation by the community dispute resolution center.

(i) When mediation has resulted in successful negotiation of a partial or full agreement on areas in dispute between the parent and the early intervention official, the mediator shall document the terms of the negotiated agreement, including a list of unresolved issues, in writing and obtain the signatures of the parent and the early intervention official on the written agreement.

(ii) The mediator shall, whenever feasible, provide the written agreement in the dominant language of the parent or other alternative mode of communication.

(iii) The mediator shall forward a copy of such agreement to the community dispute resolution center, which shall ensure that the parent, early intervention official, and service coordinator receive a copy of the written agreement.

(iv) The service coordinator shall ensure that the terms of services agreed to in the written agreement are incorporated into the Individualized Family Service Plan within five working days of the receipt of the written agreement.

(v) When the mediation has not resulted in the negotiation of a resolution, the early intervention official shall ensure the parent is informed of the right to and procedures for requesting and obtaining an impartial hearing.

(v) In any due process proceedings subsequent to the mediation process, only requests for mediation and mediation agreements may be available for presentation as evidence.

(14) Mediation records shall be maintained by the community dispute resolution center for a period of
at least six years.

(h) Impartial Hearing Procedures for Individual Child Complaints

(1) The parent shall have the right to an impartial hearing which ensures the fair and prompt resolution of individual child disputes or complaints.

(i) A request for an impartial hearing must be made in writing and signed by a parent and submitted to the Commissioner of Health or designee.

(2) Upon the receipt of a request for an impartial hearing, the Commissioner of Health or designee shall inquire of the early intervention official whether or not mediation has been requested or completed, and provide the parent and respondents with a notice of hearing. If any party is represented by counsel, notice also shall be served upon the attorney representing the party.

(i) The notice of hearing shall, at a minimum:

(a) specify the date, time, and place of the hearing, which shall be convenient to the parent;

(b) briefly state the issues which are to be the subject of the impartial hearing, if known;

(c) explain the manner in which the impartial hearing will be conducted;

(d) describe the circumstances under which attorney's fees shall be reimbursed;

(e) advise the parent of the right to be represented by counsel and to be accompanied by any person of their choice;

(f) advise the parent of the right to interpreter for the deaf services;

(g) advise the parent of the right to testify, present evidence, and produce and cross-examine witnesses;

(h) advise the parent of the right to appeal the decision of the hearing officer;

(i) inform the parent that early intervention services that are not in dispute shall be continued pending the decision of the hearing officer and any appeal of such decision; and

(j) inform the parent of the availability and procedures for requesting mediation.

(ii) If the municipality intends to be represented by counsel, the early intervention official shall notify the parent within five working days of receipt of the notice of an impartial hearing request, and the hearing shall be held no sooner than five working days from the receipt of the notice.

(a) The service coordinator shall ensure the parent is informed about legal services and advocacy organizations available to assist them in the impartial hearing process.

(3) All notices and papers connected with a hearing, other than the notice of hearing and statement of charges, if any, may be served by ordinary mail and may be deemed complete three days after mailing.

(4) Upon receipt of a request for an impartial hearing, a hearing officer shall be assigned.

(i) The hearing officer shall complete the impartial hearing and render a decision within 30 days of the filing of a written request by the parent.

(ii) No hearing officer shall preside who has any bias with respect to the matter involved in the proceeding. Any party may file with the Department a request, together with a supporting affidavit, that a hearing officer be removed on the basis of personal bias or for other good cause.

(iii) A hearing officer shall be disqualified for bias. For purposes of this subpart, bias shall exist only when there is an expectation of pecuniary or other personal benefit from a particular outcome of the case; when the individual is an employee of any agency or other entity involved in the provision of early intervention services or care of the child; or, when there is a substantial likelihood that the outcome of the case will be affected by a person's prior knowledge of the case, prior acquaintance with the parties, witnesses, representatives, or other participants in the hearing, or other predisposition with regard to the case. The appearance of impropriety shall not constitute bias and shall not be a grounds for disqualification. Hearing officers are presumed to be free from bias.

(iv) A hearing officer may disqualify himself/herself for bias on his/her own motion. A party seeking disqualification for bias has the burden of demonstrating bias. The party seeking disqualification shall submit to the hearing officer an affidavit pursuant to State Administrative Procedures Act Section 303 setting forth the facts establishing bias. Mere allegations of bias shall be insufficient to establish bias.

(v) The hearing officer shall rule on the request for disqualification.

(vi) Upon the refusal of the impartial hearing officer to voluntarily withdraw from the case, the party filing the request shall have the right to appeal this decision to a court of competent jurisdiction. Any such appeal shall not interrupt the hearing proceedings unless the parties consent to an adjournment pending the outcome of such appeal or otherwise ordered by a court.

(5) The hearing officer shall conduct the impartial hearing in a fair and impartial manner and shall have the power to:

(i) rule upon requests by parties to the hearing, including all requests for adjournments;

(ii) administer oaths and affirmations and issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records and other evidence pertinent to the impartial hearing;

(iii) admit or exclude evidence;

(iv) limit the number of times any witness may testify, repetitious examination or cross-examination, and the amount of corroborative or duplicative testimony;

(v) hear arguments on facts or law;

(vi) order that opening statements be made by the parties to the impartial hearing;

(vii) order the parties to appear for a pre-hearing conference to consider matters which may simplify the issue or expedite the hearing, and which may ensure that the parties understand the procedures governing the hearing;

(viii) ensure that a written or electronic verbatim record of the proceedings is maintained and made available to the parties; and

(ix) perform such other acts as may be necessary for the maintenance of order and efficient conduct of the impartial hearing, unless otherwise prohibited by law or regulation.

(6) A parent involved in an impartial hearing has the right to obtain a written or electronic verbatim transcription of the proceeding.

(7) The procedures used to conduct the impartial hearing proceeding shall provide the parties with a fair and prompt resolution of any dispute.

(i) The parties to the impartial hearing may be represented by legal counsel or individuals with special knowledge or training with respect to children eligible for early intervention services and may be accompanied by other persons of their choice.

(ii) The parent shall have the right to determine whether or not the child who is the subject of the impartial hearing shall attend the hearing.

(iii) The impartial hearing shall be closed to the public unless the parent requests an open hearing. Upon such request, the hearing officer shall make a determination regarding whether the hearing will be opened to the public.

(iv) The parties to the impartial hearing, and their respective counsel or representative, if any, shall have an opportunity to present evidence and to question all witnesses at the hearing.

(v) All evidence including documents and a listing of witnesses shall be disclosed to the opposing party at least five working days before the hearing.

(a) The parent has the right to prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding.

(vi) The local social services commissioner or designee shall be afforded notice and a right to be heard at any mediation process and/or impartial hearing for any child in his or her care and custody or custody

and guardianship.

(vii) Each witness shall be sworn or given an affirmation by the impartial hearing officer.

(viii) The hearing officer shall consider all relevant evidence and shall include as part of the record all records, documents and memoranda submitted into evidence. The formal rules of evidence do not apply; provided, however that any request for mediation and mediation agreement entered into by the parties may be included as evidence.

(ix) The parties may enter into a stipulation to resolve the matters in dispute at any time prior to the issuance of a decision by the impartial hearing officer.

(a) The parties shall inform the hearing officer of such stipulation.

(b) Upon such notice, the hearing officer shall terminate the proceedings and provide notice to the Department of Health of the termination.

(x) The hearing officer may issue a consent order upon such stipulation by the parties. Such consent order shall have the same force and effect and shall be implemented in the same manner as an order issued by the hearing officer.

(xi) Upon conclusion of the proceedings, the hearing officer shall render a written decision within 30 days of the request for the hearing, which shall include:

(a) the findings of fact and conclusions of law;

(b) a determination regarding the matters in dispute;

(c) an order of implementation of the determination; and

(d) the right to appeal the decision to a court of competent jurisdiction.

(xii) The decision of the hearing officer shall be final, provided that any party may seek judicial review by a court of competent jurisdiction.

(xiii) Where a decision is not rendered within 30 days, the hearing officer may issue interim orders which shall ensure that the child and family receive appropriate early intervention services to the extent feasible and consistent with the services requested by the parent.

(xiv) Where the hearing officer determines that delay in rendering a written decision may result in harm to the child's health or welfare, the hearing officer may provide for an expedited hearing, including an interim verbal decision where necessary, to be followed by a written decision.

(xv) A copy of the written decision shall be mailed to the parties of the hearing, the service coordinator for the child and family, the Commissioner of Health or designee, the local social services commissioner or designee for children in his or her care and custody or custody and guardianship and any other state early intervention service agency affected by such decision.

(xvi) The early intervention official or service coordinator shall modify the Individualized Family Service Plan no later than five working days after receipt of the written or oral decision, whichever is issued sooner.

(xvii) The records and decisions by hearings officers shall be maintained for at least six years.

(i) Availability of Complaint Procedures

(1) All complaints alleging violations of laws, rules and regulations by a state early intervention service agency, early intervention official, or provider approved to deliver early intervention services shall be submitted by a parent, representative of the parent or any other individual or entity to the Department of Health for investigation and resolution. For the purpose of this section, "provider" refers to evaluators, service providers and service coordinators.

(i) Complaints shall be submitted in writing to the Department, unless a person or entity has just cause for submitting an oral complaint.

(2) All investigations shall be completed within 60 calendar days of the receipt of the allegation by the Department of Health.

(3) Upon receipt of a complaint the complainant shall be informed of the following:

(i) the procedures governing the investigation;

(ii) the right of the complainant to receive a copy of the final report and to appeal the findings and decision of the report to the United States Secretary of Education; and

(iii) the right to confidentiality of all personally identifying information unless the complainant provides written consent for its release.

(4) A state early intervention service agency shall, upon referral by the Department of Health of an allegation pertaining to a provider of early intervention services approved by that agency, investigate the complaint and supply the Department of Health with a copy of the final investigation report.

(i) The final report shall include the findings and determination of the investigation and corrective actions and or/procedures, including a copy of the corrective action plan if any.

(5) The investigation of any complaint shall include:

(i) a determination of the need for conducting an on-site investigation.

(a) In the event of a determination that an on-site investigation is unnecessary, the state early intervention service agency shall document the reasons and include a justification for such decision in its final report.

(ii) provision for an interview of the complainant; any person

named in the allegation; and, any person who is likely to have relevant information pertaining to the allegation; and

(iii) provision for the receipt of any documentation which may confirm or deny the substance of the allegation.

(6) Upon completion of an investigation a determination shall be made as to whether the allegation is substantiated and the complainant and subject of the investigation shall be notified in writing of such determination within 10 working days. Written notification shall include:

(i) the findings and determination of the merit of each allegation; and

(ii) corrective actions to be taken, if any.

(a) Subjects of the complaint shall receive a request and instructions for the development of a corrective action plan, if any.

(iii) Corrective action plans developed by the subject of an investigation shall be submitted for approval to the Department of Health or other state early intervention service agency which completed the investigation.

(a) At a minimum, the corrective action plan shall specify the date by which the plan shall be implemented and procedures for implementation.

(iv) The subject of the investigation shall be reviewed periodically until corrective actions have been taken and/or a corrective action plan has been fully implemented.

(a) If appropriate, an on-site follow-up inspection will be performed by the oversight agency to ascertain that all appropriate corrective actions have been taken by the subject of the investigation.

(7) Any provider of early intervention services, who on the basis of an investigation is found to be disqualified to provide such services, shall be immediately removed from the list of approved providers.

(i) The state early intervention service agency which has disqualified the provider of service shall notify the Department of Health immediately of such disqualification.

(ii) Upon the disqualification of a provider of service, the Department of Health shall immediately notify the early intervention official(s) in the provider's catchment area of such disqualification.

(iii) The early intervention official, upon notification of the disqualification of an approved provider, shall notify the parents of any child receiving services from such provider, and in collaboration with the parent and the service coordinator, make arrangements for provision of services by a qualified provider.

(8) Providers who have been disqualified may reply to the commissioner's or state

early intervention service agency's notification within 30 days addressing the statement of reasons, indicating whether deficiencies or violations exist and what corrective steps will be taken and in what time period. If no reply is received, termination will be effective 30 days from receipt of notification.

(9) An early intervention service provider who has been disqualified shall, upon request, be entitled to an impartial hearing.

(i) If a provider is disqualified, such individual or entity shall be given notice promptly of such action, the reasons therefore, the right to an impartial hearing and that such hearing may be obtained by the individual or entity by petitioning the Commissioner of Health or designee within 15 days from the date the notice of agency action is served. Failure to request a hearing within the required 15-day period will result in a waiver of the disqualified provider's right to a hearing.

(ii) A written notice of hearing shall be sent by certified mail to the disqualified provider, and other parties involved, at least 10 days prior to the scheduled date of the hearing. Such notice shall:

(a) specify the date, time, and place of the hearing;

(b) state briefly the issues which are to be the subject of the hearing;

(c) explain the manner in which the impartial hearing will be conducted;

(d) apprise the petitioner of its right to be represented by an attorney, to testify, present documenting evidence, produce witnesses, cross-examine adverse witnesses, and to examine prior to and during the hearing the documents and records supporting the action under appeal; and

(e) state that failure to appear at the hearing shall constitute waiver of the petitioner's right to a hearing and that an order will be issued disqualifying the petitioner from participating in the Early Intervention Program.

(iii) The burden of proof to participate in the Early Intervention Program shall be on the disqualified provider.

(iv) An impartial hearing shall be conducted by a hearing officer under provisions of Part 51 of this Title.

(v) A copy of the impartial hearing decision shall be sent to the petitioner, his/her representative, if any, and the local agency within 45 days from the date on which the request for the hearing was received, except that such time may be extended if the petitioner has requested and been granted a postponement of his/her hearing. An impartial hearing decision unfavorable to the petitioner shall contain a statement informing the petitioner of the availability of judicial review as provided in the Civil Practice Law and Rules.

(10) A record of each impartial hearing shall be maintained as provided in Part 51 of this Title 10 and shall be retained for at least three years from the date of the decision. The record of each impartial hearing shall be available for public inspection and copying.

(j) Pendency

(1) During the pendency of any mediation, impartial hearing, or appeal, the early intervention official shall ensure the following services for the child and family are implemented:

(i) the services provided pursuant to the Individualized Family Service Plan previously in effect; or

(ii) if the early intervention official and the parent do not agree on the IFSP, the sections of the proposed IFSP that are not in dispute.

(2) The early intervention official of a municipality to which a child and family has moved shall ensure that the services identified in the previous Individualized Family Service Plan of the former municipality shall continue to be provided to the extent feasible until a new Individualized Family Service Plan has been developed or that the parent and early intervention official otherwise agree to a modification of such former plan.

Sec. 69-4.18 Respite Services

(a) As appropriate, respite services and models for respite services may be discussed with the parent at the individualized family service plan meeting.

(b) The provision of respite services for an eligible child and family shall be determined in the context of IFSP development, based on the individual needs of the child and family, and with consideration given to the following criteria:

(1) severity of child's disability and needs;

(2) potential risk of out-of-home placement for the child if respite services are not provided;

(3) lack of access to informal support systems (e.g., extended family, supportive friends, community supports, etc.);

(4) lack of access to other sources of respite (e.g., Family Support Services under the auspices of the Office of Mental Retardation and Developmental Disabilities and respite provided through other State early intervention service agencies), due to barriers such as waiting lists, remote/inaccessible location of services, etc.;

(5) presence of factors known to increase family stress (e.g., family size, presence of another child or family member with a disability, etc.); and

(6) the perceived and expressed level of need for respite services by parent.

Sec. 69-4.19 Transportation

(a) The municipality shall ensure that transportation is available beginning the first day of service as agreed upon in the individualized family service plan when transportation is necessary to enable the child and the child's family to receive early

intervention services.

(1) Transportation may be provided directly, by contract, or through reimbursement of the parent at a mileage rate authorized by the municipality for the use of a private vehicle or for other reasonable transportation costs, including public transportation, tolls, and parking fees.

(b) In developing the IFSP, consideration shall first be given to provision of transportation by a parent of a child to early intervention services.

(c) If the parent has demonstrated an inability to provide or access transportation, the municipality in which an eligible child resides shall arrange and provide payment for suitable transportation services necessary for the child and parent participation in early intervention services contained within the Individualized Family Service Plan.

Sec. 69-4.20 Transition Planning

(a) A transition plan shall be developed for every child transitioning from the Early Intervention Program to programs under Education Law, Section 4410, and/or to other early childhood services.

(1) All meetings to discuss the transition plan must be at a time and place mutually convenient to all participants.

(2) The transition plan shall include procedures to prepare the child and family for changes in service delivery, including:

(i) steps to help the child adjust to and function in a new setting;

(ii) procedures to prepare program staff or individual qualified personnel who will be providing services to the child to facilitate a smooth transition; and

(iii) with parental consent, the service coordinator shall incorporate the transition plan into the Individualized Family Service Plan.

(b) At least 120 days prior to the child's potential eligibility for services under the Education Law, Section 4410, the early intervention official, with parental consent, shall provide written notification to the Committee on Preschool Special Education of the local school district in which an eligible child resides of the potential transition of the child.

(1) For children in the care and custody or custody and guardianship of the commissioner of the local social services district, the early intervention official shall notify the local commissioner of social services or designee of the child's potential transition.

(2) The service coordinator shall review information concerning the transition procedure with the parent and obtain parental consent for the transfer of appropriate evaluations, assessments, Individualized Family Service Plans, and other pertinent records.

(3) With parent consent, the early intervention official shall convene a conference with the parent, service coordinator, and the chairperson of the Committee on Preschool Special Education or designee, at least 90 days prior to the child's eligibility for services under Education Law, Section 4410, or no later than 90 days before the child's third birthday, whichever is first to review

program options and if appropriate, establish a transition plan.

(i) The local social services commissioner may participate in the conference for children in the care and custody or custody and guardianship of the social services commissioner.

(ii) The conference may be combined with the initial meeting of the Committee on Preschool Special Education pertaining to the child.

(c) For children thought not to be eligible for programs under Education Law, Section 4410, the service coordinator shall assist the parent in development of a transition plan to other appropriate early childhood and supportive services. The service coordinator shall assist the parent in identifying, locating, and accessing such services.

(d) With parental consent, the early intervention official shall notify the Committee on Preschool Special Education of those children potentially eligible for transition to the preschool special education program but whose parents have selected to continue with early intervention services for the specified period of eligibility for the Early Intervention Program.

Sec. 69-4.21 Reimbursement of Municipal Administrative Costs

(a) Municipalities shall be eligible for reimbursement for administrative costs, exclusive of due process costs, incurred during the preceding year pursuant to this title.

(b) The costs of direct early intervention services are not considered administrative costs. Administrative costs shall include personnel and operating expenses incurred for administration of the program.

Sec. 69-4.22 Third-party Payments

(a) Municipalities shall in the first instance and where applicable, seek payment from private third party insurers, prior to claiming payment from Medicaid or the Department of Health, for services delivered to eligible children and their families, provided that the municipality shall not obtain 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 municipality or its designee shall be subrogated, to the extent of expenditures by the municipality for early intervention services provided to an eligible child and parent, to any rights the child or parent may have or be entitled to from third party reimbursement.

(1) The early intervention official shall, upon notification by the initial service coordinator of the parent's eligibility for benefits from a health insurance policy or benefits plan promptly notify the health insurer or benefits plan administrator of the intent to exercise subrogation rights.

(c) All approved evaluators, service coordinators, and service providers shall forward to the early intervention official within a reasonable period all documentation and information necessary to support municipality billing of all third party payors, including the Medical Assistance Program.

(d) The municipality shall pay all co-payments and deductibles to meet any requirement of an insurance policy or health benefit plan in accessing funds applied to payment for early intervention services. These payments will be subject to the same level of state reimbursement as all other payments by the municipality for early intervention

services.

(1) The municipality shall establish a procedure to ensure that the parent does not make a first instance payment for co-pays and deductibles. Such procedures may include an arrangement between the municipality and the provider for payment of co-payments and deductibles to the provider directly.

Sec. 69-4.30 Computation of rates for early intervention services provided to infants and children ages birth to three years old and their families or caregivers.

(a) The commissioner shall annually determine the rates for approved early intervention services and evaluations provided to eligible children, subject to the approval of the director of the budget. For payments made pursuant to this section for early intervention services to Medicaid patients, reimbursement shall be based upon a uniform payment schedule with discrete prices as set forth in subdivision (d) of this section. To be eligible to receive reimbursement pursuant to this section, providers must be approved to provide early intervention services pursuant to Article 25 of the Public Health Law.

(b) For purposes of this section, a billable visit shall mean a face to face contact for the provision of authorized early intervention services between a provider of early intervention services and the individual(s) receiving such services, except for service coordination as described in subdivision (c)(3) of this section. Duration shall mean the time spent by a provider of early intervention services providing direct care or client contact. Activities such as case recording, training and conferences, supervisory conferences, team meetings and administrative work are not separately billable activities.

(c) Reimbursement shall be available at prices established pursuant to this section for the following early intervention program services:

(1) Screening as defined in section 69-4.1(ll) of this Subpart and performed in accordance with section 69-4.8 of this Subpart. A provider shall submit one claim for a screening regardless of the number of visits required to perform and complete a screening. Reimbursement may be provided for up to two screenings of a child suspected of having a developmental delay in any twelve month period without prior approval of the Early Intervention Official. The Early Intervention Official shall approve and notify the department of any additional screenings provided to a child within the twelve month period. If additional screenings are necessary, such notice shall be provided on a monthly basis on forms provided by the department. Reimbursement shall not be provided for screenings performed after a child has been found eligible for early intervention services.

(2) Multidisciplinary evaluation as defined in section 69-4.1(m) of this Subpart and performed in accordance with section 69-4.8 of this Subpart. Reimbursable evaluations shall include core evaluations and supplemental evaluations. A provider shall submit one claim for a core or supplemental evaluation regardless of the number of visits required to perform and complete the evaluation.

(i) A core evaluation shall include a developmental assessment, a review of pertinent records and a parent interview as specified in section 69-4.8(a)(4) of this Subpart, and may include a family assessment.

(a) A developmental assessment shall mean procedures conducted by qualified personnel with sufficient expertise in early childhood development who are trained in the use of professionally acceptable methods and procedures to evaluate each of the developmental domains: physical development, cognitive development, communication development, social or emotional development and adaptive development.

(b) A family assessment shall mean a voluntary, family-directed assessment conducted by qualified personnel who are trained in the use of professionally acceptable methods and

procedures to assist the family in identifying their concerns, priorities and resources related to the development of the child.

(ii) Supplemental evaluations shall include supplemental physician or non-physician evaluations and shall be provided upon the recommendation of the multi- disciplinary team conducting the core evaluation and agreement of the child's parent. A supplemental evaluation may also be provided in conjunction with the core evaluation by a specialist trained in the area of the child's suspected delay or disability who is present during the core evaluation as required by section 69-4.8(a)(3) of this Subpart and who provides an in-depth assessment of the child's strengths and needs in such area. Supplemental evaluations provided subsequent to the child's Individualized Family Service Plan (IFSP) must be required by and performed in accordance with the IFSP as specified in section 69-4.8(a)(13) of this Subpart.

(a) Supplemental physician evaluation shall mean an evaluation by a physician licensed pursuant to article 131 of the Education Law for the purpose of providing specific medical information regarding physical or mental conditions that may impact on the growth and development of the child and completing the required evaluation of the child's physical development as specified in section 69- 4.8(a)(4)(i)(a) of this Subpart, or assessing specific needs in one or more of the developmental domains in accordance with section 69-4.8(a)(4)(iv) of this Subpart.

(b) Supplemental non-physician evaluation shall mean an additional evaluation for assessing the child's specific needs in one or more of the developmental domains in accordance with section 69-4.8(a)(4)(iv) of this Subpart. Information obtained from this evaluation shall provide direction as to the specific early intervention services that may be required for the child. Supplemental non-physician evaluations may be conducted only by qualified personnel as defined in section 69-4.1(jj) of this Subpart.

(iii)(a) A multidisciplinary evaluation consisting of a core evaluation and up to four supplemental evaluations (which may include any combination of physician and non-physician evaluations) may be reimbursed within a 12 month period without prior approval of the Early Intervention Official to develop and implement the initial IFSP and subsequent annual IFSPs. The Early Intervention Official shall approve and notify the department of any additional core or supplemental evaluations provided to a child within a twelve month period. If additional core or supplemental evaluations are necessary, such notice shall be provided on a monthly basis on forms provided by the department. Additional core or supplemental evaluations provided subsequent to the child's initial IFSP must be required by and performed in accordance with the IFSP as specified in section 69-4.8(a)(13) of this Subpart.

(b) Certain evaluation and assessment procedures may be repeated if deemed necessary and appropriate by the Early Intervention Official in conjunction with the required annual evaluation of the child's IFSP or more frequently in accordance with section 69-4.8(a)(12) of this Subpart. If additional evaluation or assessment procedures are necessary, the Early Intervention Official shall approve up to one more core evaluation and two supplemental evaluations prior to the next annual IFSP. Such additional evaluations must be required by and performed in accordance with the child's IFSP as specified in section 69-4.8(a)(13) of this Subpart. Any additional evaluations within that period shall be based on the indicators specified in section 69-4.8(a)(12), approved by the Early Intervention Official and the Commissioner of Health of the New York State Department of Health and required by and performed in accordance with the child's IFSP.

(3) Service coordination as defined in section 69-4.1(k)(2)(xi) of this Subpart. Service coordination shall be provided by appropriate qualified personnel and billed in 15 minute units that reflect the time spent providing services in accordance with sections 69-4.6 and 69-4.7 of this Subpart, or billed under a capitation methodology as may be established by the Commissioner subject to the approval of the Director of the Budget. When units of time are billed, the first unit shall reflect the initial five to fifteen minutes of service provided and

each unit thereafter shall reflect up to an additional fifteen minutes of service provided. Except for child/family interviews to make assessments and plans, contacts for service coordination need not be face-to-face encounters; they may include contacts with service providers or a child's parent, caregiver, daycare worker or other similar collateral contacts, in fulfillment of the child's IFSP.

(4) Assistive technology as defined in section 69-4.1(k)(2)(ii) of this Subpart;

(5) Home and community-based individual/collateral visit. This shall mean the provision by appropriate qualified personnel of early intervention services to an eligible child and/or parent(s) or other designated caregiver at the child's home or other natural setting in which children under three years of age are typically found (including day care centers, other than those located at the same premises as the early intervention provider, and family day care homes). Reimbursable home and community-based individual/collateral visits shall include basic and extended visits.

(i) A basic visit is less than one hour in duration. Up to three (3) such visits provided by appropriate qualified personnel within different disciplines per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(ii) An extended visit is one hour or more in duration. Up to three (3) such visits provided by appropriate qualified personnel within different disciplines per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(iii) Notwithstanding subparagraphs (i) and (ii) of this paragraph, no more than three (3) basic and extended visits combined per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.
(iv) A provider shall not bill for a basic and extended visit provided on the same day by appropriate qualified personnel within the same discipline without prior approval of the Early Intervention Official.

(6) Office/facility-based individual/collateral visit. This shall mean the provision by appropriate qualified personnel of early intervention services to an eligible child and/or parent(s) or other designated caregiver at an approved early intervention provider's site (including day care centers located at the same premises as the early intervention provider). Up to one (1) visit per discipline and no more than three (3) office/facility-based visits per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(7) Parent-child group visit. This shall mean the provision of early intervention services in a group comprised of parent(s) or other designated caregivers and eligible children, and a minimum of one appropriate professional qualified to provide early intervention services at an early intervention provider's site or a community-based site (e.g. day care center, family day care, or other community settings). Up to one (1) visit per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(8) Basic group developmental intervention visit. This shall mean the provision of early intervention services by appropriate qualified personnel to eligible children in a group which may also include children without disabilities, at an approved early intervention provider's site or in a community-based setting where children under three years of age are typically found.

(i) Up to one (1) group developmental intervention visit per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(ii) For purposes of subparagraph (i) of this paragraph and subparagraphs (i) of paragraphs (9) through (11) of this subdivision, a group developmental intervention visit shall include a basic visit as described in this paragraph, an enhanced visit as described in paragraph (9) of this subdivision, a basic with one-to-one aide visit as described in paragraph (10) of this subdivision, or an enhanced with one-to-one aide visit as described in paragraph (11) of this subdivision.

(9) Enhanced group developmental intervention visit. This shall mean a group developmental intervention visit as defined in paragraph (8) of this subdivision provided to a child who, due to age, significant medical needs (such as major feeding difficulties, severe orthopaedic impairment), significant behavior management needs and/or level of developmental functioning, require significantly more time and attention from adults during group activities.

(i) Up to one (1) group developmental intervention visit per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(10) Basic group developmental intervention with one-to-one aide visit. This shall mean the provision of early intervention services by appropriate qualified personnel to eligible children in a group which may also include children without disabilities, with attendance at the group developmental intervention session by an additional aide or appropriate qualified personnel. This visit must be provided at an approved early intervention provider's site or in a community-based setting where children under three years of age are typically found.

(i) Up to one (1) group developmental intervention visit per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(11) Enhanced group developmental intervention with one-to-one aide visit. This shall mean a group developmental intervention with one-to-one aide visit as defined in paragraph (10) of this subdivision provided to a child who, due to age, significant medical needs (such as major feeding difficulties, severe orthopaedic impairment), significant behavior management needs and/or level of developmental functioning, require significantly more time and attention from adults during group activities.

(i) Up to one (1) group developmental intervention visit per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official.

(12) Family/caregiver support group visit. This shall mean the provision of early intervention services by appropriate qualified personnel to a group of parents or other designated caregivers (such as foster parents, day care staff) and/or siblings of eligible children for the purposes of:
(i) enhancing their capacity to care for and/or enhance the development of the eligible child; and/or (ii) provide support, education, and guidance to such individuals relative to the child's unique developmental needs. Up to two (2) visits per day may be billed for each eligible child as specified in an approved IFSP without prior approval of the Early Intervention Official (for example, one (1) for parents or other designated caregivers and one (1) for sibling(s) in a given day).

(13) The Early Intervention Official shall approve and notify the department of any visits provided in addition to those described in paragraphs (5) through (12) as may be required by and provided in accordance with the child's IFSP. If such additional visits are necessary, such notice shall be provided on a monthly basis on forms provided by the department.

(d) The prices established pursuant to this section shall provide full reimbursement for the

following:

(1) physician services, nursing services, therapist services, technician services, nutrition services, psychosocial services, service coordination, and other related professional and paraprofessional expenses directly incurred by the approved provider;

(2) space occupancy, except as provided in subdivision (f) of this section, and plant overhead costs;

(3) all supplies directly related to the provision of early intervention services, except as provided in subdivision (g) of this section; and

(4) administrative, personnel, business office, data processing, recordkeeping, housekeeping, and other related provider overhead expenses.

(e) The price for each service shall be adjusted for regional differences in wage levels to reflect differences in labor costs for personnel providing direct care and support staff and shall include consideration of absentee data and child to professional to paraprofessional ratios.

(f) Until June 30, 1996, those early intervention service providers authorized to provide services pursuant to section 236 of the Family Court Act during 1993, shall be reimbursed for actual allowable capital costs obligated prior to July 1, 1993 that are associated with the provision of early intervention services described in subdivision (c) of this section. Capital costs shall be defined as depreciation or amortization, and interest associated with acquisition and/or construction of the physical plant and lease expenses including leasehold improvements associated with the physical plant.

(g) Assistive Technology Devices - Reimbursement for approved assistive technology devices shall be at reasonable and customary charges approved by the Commissioner or her designee.