

Comments of

**The New York State Alliance for
Children with Special Needs**

on the

2020-21 Executive Budget Proposal

Health

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2020-21 Executive Budget Proposal Relating to Early Intervention

INTRODUCTION

The New York State Alliance for Children with Special Needs is comprised of six regional alliances and coalitions representing approximately 150 early intervention, pre-school and school-age special education programs throughout the state - - the New York City Coalition for Children with Special Needs, the Long Island Coalition for Young Children with Special Needs, the Hudson Alliance for Children with Special Needs, the Capital Region Alliance for Children with Special Needs, the Western Central Coalition for Children with Special Needs, and the New York State Alliance for Children with Special Needs – School Age - - and the children and families served through these programs.

Alliance members and representatives are recognized partners with the State Department of Health, the State Education Department, municipalities and school districts in the successful implementation of IDEA and the development of sound public policies to assure the meaningful participation of families, clinicians and teachers in the decision making process which makes vital early intervention and special education services available to eligible families in the most cost-effective manner possible. Alliance members and representatives have, since the inception of the Early Intervention Program and the transferal of special education programming from the Family Court System, served on the State Early Intervention Coordinating Council, Local Early Intervention Coordinating Councils and innumerable special education work groups, task forces and advisory panels to inform discussions around clinical guidelines, development of the initial regulations, reimbursement, provider approval, registration of provider entities and Medicaid compliance.

We offer our comments to the Executive Budget proposals relating to the Early Intervention Program in hopes of providing additional insight to the impact decisions around education will have on the lives of infants, toddlers and young children with disabilities and on the State.

The Early Intervention Program

The Early Intervention Program for infants and toddlers with disabilities and their families, established in Title II-A of Article 25 of New York's Public Health Law, implements

the federal program provided by Part C of the Individuals with Disabilities Education Act. The mission of the Early Intervention Program is to identify and evaluate as early as possible those infants and toddlers whose healthy development is compromised and to provide for appropriate intervention to improve child and family development.

Facilitating Third-Party Reimbursement

Changes to the structure of the Early Intervention Program have presented challenges for parents, providers, municipalities and third-party payors alike. The designation of a State Fiscal Agent and the shifting of primary claiming responsibilities away from the municipalities and onto the provider of service have potentially threatened the availability or “capacity” of qualified providers while further complicating parent’s involvement in the reimbursement process. Simply stated, the early intervention provider network is ill prepared to meet the challenges presented by third-party insurers in the claiming process, lacking the sophisticated claiming infrastructure or financial reserves of other providers of health care services. Importantly, the Early Intervention Program is, at its core, an education program funded under Part C of the federal Individuals with Disabilities Education Act (IDEA) designed to meet the developmental needs of infants and toddlers with disabilities and the needs of the family to assist appropriately in such infant or toddler’s development.

The Department and the State Fiscal Agent have endeavored to work with the provider community to identify and remove obvious and subtle impediments to accessing private insurance for early intervention services. The simplicity and reliability of access to the Medicaid reimbursement system has allowed early intervention providers to claim reimbursement and receive Medicaid payments in regular and reliable intervals to the benefit of the State, municipalities and the providers.

Access to other third-party payors has proven less successful. Impediments to successful recovery against private insurance, in particular, persist. While the Alliance applauds the Executive’s efforts to address these challenges, we must strongly encourage the Department to abandon the “failed experiment” which compelled the provider community to “chase” payments from unrelinquishing payors at risk to their own financial stability.

We believe that serious consideration should be given to **eliminating the State Fiscal Agent, or replacing the current vendor with the State Comptroller**. Simply stated, there has been no “value added” by the appointment of the State Fiscal Agent (SFA), no increased access to third party recovery and no overall state or county savings. In fact, some counties have shared that their expenditures/costs have increased since the appointment of the SFA.

The Executive has acknowledged the ineffectiveness of the current approach:

“Commercial insurance funds less than 2% of total Early Intervention costs although 42% of children (in the program) have commercial insurance. This suggests that commercial insurance are approving... 15% of provider claims...”

Accordingly, the Executive advances a proposal whereunder insurers must pay claims through the State fiscal agent for network provider services where the obligation to pay is

reasonably clear, even where a disagreement may exist whether the service was medically necessary. The proposal then provides for insurer appeal of the reimbursement determination and insurer recoupment of the payment if the determination of the appeal is that the service was not medically necessary. The Executive identifies \$400,000 in anticipated annualized savings in 2021.

While we applaud the Executive recognition of the reimbursement crisis and reasoned attempt to offer a meaningful response, we are concerned that the Executive's "pay and pursue" approach, as currently proposed, may be too "narrow" in its design to provide any real relief to the parents, children and providers affected.

The non-Medicaid claiming process remains protracted with little or no incentivization of initial payment by insurers. While the Executive's proposal attempts to address one aspect of the process – the denial of claims based on lack of medical necessity – it is unclear that the "medical necessity" denial is the most prevalent basis for denial. Moreover, it is unclear whether the Executive proposal will expedite the remaining "pulse points" of the claims process which contributed to protracted delays in payment to providers.

COLA

The Alliance continues to be profoundly disappointed that the Executive has chosen providers of Early Intervention services for so disparate treatment as to continue to deny them the benefits of a multi-year COLA commitment.

Restricted Increase

Adding insult to injury, as provided in the 2019-20 State Budget, the Department of Health plans to award a profoundly inadequate 5% rate increase to only select services within the early intervention system, suggesting that 5% could approach the additional costs incurred as a result of a protracted reimbursements process and denying the established fact that the EI provider community has remained underfunded while the responsibilities and fiscal constraints have been compounded. We join our colleague advocacy groups in requesting a growth/trend increase in EI reimbursement commensurate with the growth increase in each of the educational sectors – public as well as non-public. We **oppose** any effort to "value" some practitioners over others. Early intervention providers already engage in the Herculean task of recruiting and retaining qualified professionals. To acknowledge the "value" of some professionals (occupational therapists, physical therapists and speech pathologists) while denying the equal importance of special education teachers, social workers, nurses, dieticians and nutritionists and ABA practitioners serves only to offer providers a Sophie's Choice. Such a gesture is unseemly where, as here, the capacity of each of the qualified professionals is strained.

Accordingly, we recommend a **10% increase in provider reimbursement of all evaluation, therapeutic and service coordination services.**

State Share of "Growth"

Mindful of the impact any increase in reimbursement costs may have upon our municipal partners, we propose that the State assume fiscal responsibility for any such increase.

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We commend Legislator leaders', as well as the Commissioner of Health's, publicly expressed commitment to "continuing the discussion" around reform of the current reimbursement system at the Joint Hearings and welcome the opportunity to engage in these critical conversations.

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Attachments
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