



# Advocates for Children of New York

Protecting every child's right to learn

## Testimony submitted for the Joint Legislative Public Hearing on the 2021-2022 Executive Budget Proposal: Health

### Re: Early Intervention

February 25, 2021

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Advocates for Children of New York (AFC) appreciates the opportunity to submit testimony regarding the Early Intervention proposals in the 2021-2022 Executive Budget. For 50 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York parents navigate the Early Intervention, preschool, and school-aged education systems.

With respect to Early Intervention (EI), we urge the Legislature to:

1. Reject the Executive Budget proposal to cut state funding for the program by \$13.7 million by limiting the services children can receive.
2. Include a Covered Lives assessment in the final budget to bring sorely needed additional revenue into the EI program and use the funding to strengthen services for children, including by increasing EI reimbursement rates. The assessment should be at least \$40 million this year.
3. Increase EI reimbursement rates by ten percent this year.
4. Include in the final budget a requirement for a comprehensive assessment of the methodology used to determine payment for all EI evaluations, services and service coordination.

While much attention has been given to the learning loss experienced by school-aged students, very young children with developmental delays and disabilities have also lost a tremendous opportunity to receive developmental services at a time when they can have the greatest impact. AFC issued a [recent report](#) documenting the impact of COVID-19 on Early Intervention, the program that provides evaluations and services to infants and toddlers with developmental delays and disabilities, in New York. Our analysis of available data shows that the pandemic had an immediate and significant impact on the number of young children identified as having a developmental delay or disability and the number of children receiving services. Within New York City:

- In late March and early April 2020, there was an 82% drop-off, compared to the beginning of the year, in the average number of children referred to EI each week due to concerns about their development.



- An estimated 3,000–6,000 young children in New York City were never identified as potentially having a developmental delay or disability. Instead of being evaluated to determine their eligibility for the EI program and potentially receiving services to support their healthy development, these children have simply fallen off the radar—and thus may require more intensive, and expensive, special education services later on.
- The total number of infants and toddlers receiving EI services between July and September 2020 was 15% lower than the same time period in 2019, a difference of nearly 2,900 children.

Statewide data show similar trends. Across the State, 6,000 fewer children had EI service plans in the third quarter of 2020 (July- September 2020) compared with the same period in 2019, a 12% decline. Furthermore, there was a more than 30% reduction in EI services billed statewide during the second and third quarters of 2020 compared with the same time period in 2019, suggesting that, in addition to a decline in the number of children identified as needing EI services, a significant number of children who already had EI service plans did not receive their legally mandated services during the pandemic.

Given the challenges that families, children and providers have faced during the pandemic, it is crucial to make greater investments to strengthen the program. **Instead of cutting Early Intervention funding by limiting the services children can receive, the State must ensure that the final budget invests more funding in EI by asking commercial insurers to pay their fair share.**

### **1. Reject the Executive Budget Proposed Cuts**

The EI program was immediately impacted at the start of the pandemic with a steep decline in the number of referrals made and the number of evaluations conducted. Similarly, although services quickly transitioned from in-person to teletherapy, the number of services delivered have fallen during the pandemic, meaning that children enrolled in the program have not received all the services they need and have a right to receive.

Instead of investing in EI and addressing challenges, Governor Cuomo’s proposed budget would cut state funding for the program by \$13.7 million through a series of regulatory changes that would limit the services children can receive regardless of their individualized needs and evaluation results. For example, children would no longer be able to receive back-to-back 60-minute service sessions—sessions that often help children with autism or other significant disabilities get the intensive intervention they need early in life. The regulatory changes would also include limiting the size and



scope of group visits, eliminating reimbursement for multiple group sessions in the same day, and limiting the number of children who can have a 1:1 aide in a group session. Such limits would deny many children the crucial individualized services they need at a time when thousands of children went without needed EI services due to the pandemic. In denying children these services at this important window in their development, New York wastes an opportunity to reduce their need for costly services in the future.

In addition to being harmful policy, these regulatory changes would violate federal and state law. Under the federal Individuals with Disabilities Education Act (IDEA), the law that authorizes EI, the Individualized Family Services Plan (IFSP) team is tasked with reviewing the child's evaluations and deciding on the EI services that "are necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services." 20 USC § 1436(d)(4). Taking away the options of back-to-back extended sessions and multiple group sessions in a day, and limiting the number of children in a group who can have a 1:1 aide, regardless of the individual child's needs constitutes predetermination, which is not allowed under the IDEA. *See, e.g., Deal v. Hamilton Co. Bd. of Educ.*, 392 F.3d 840, 857 (6th Cir. 2004) (holding that the decision not to offer intensive behavioral services to any child regardless of a child's individualized needs constituted predetermination—a procedural violation precluding parents from meaningful participation in development of the child's service plan and a substantive violation of the children's rights). Rather, the IFSP team must come to the table with an "open mind" and consider the services, including the duration, frequency, and intensity of each service, that will meet the child's individual needs.

We are also concerned that the Executive Budget cuts funding to EI by proposing to amend regulations to decrease the reimbursement rate for EI services provided by telehealth by setting the payment at the existing facility-based rate, a rate that is more than 20 percent lower than the rate provided for home- and community-based EI services. We were pleased that the EI program quickly transitioned from in-person to teletherapy at the start of the pandemic. It marked the first time that the EI program used the telehealth model in New York State, and the transition allowed many children to continue receiving necessary developmental therapies and services. During this initial authorization of teletherapy, EI providers were paid the same rate for providing services through telehealth as they had been paid for providing home- and community-based services before the pandemic. As the program continues to implement the telehealth model, the State should conduct a thorough analysis of the appropriate reimbursement rates for teletherapy to ensure that providers are adequately reimbursed and that the model can be used to provide high-quality services when needed and



deemed appropriate for a child. Such a cost analysis is necessary before the State decreases the reimbursement rate for teletherapy and cuts funding to the EI program.

**We urge the Legislature to reject the Executive Budget’s proposed cuts to the EI program, reject any limitations on the services children can receive, and ensure the Administration does not move forward with harmful regulatory changes.**

**2. Include the Covered Lives Assessment in the Final Budget and Reinvest the Increased Revenue in the EI Program**

Instead of cutting funding from the EI program by limiting the services that young children with developmental delays or disabilities can receive, we urge the Legislature to look for new sources of revenue that can be invested in the EI program. As an initial step, the State should ask commercial insurance companies to pay their fair share and bring much-needed revenue to the EI program.

Currently, commercial insurance plans only pay around \$12.5 million of the roughly \$80 million claimed for EI services statewide – amounting to around \$0.15 on the dollar. By comparison, Medicaid pays nearly \$0.75 on the dollar for all claims submitted. Year after year, commercial insurers have denied the vast majority of claims for EI services and failed to pay their fair share into the EI system.

By requiring state-regulated commercial insurance plans to pay a set fee for EI services, a Covered Lives assessment would add millions of dollars in sorely needed revenue into the EI system that could be used to support quality improvements to the program and strengthen services for young children. As discussed in more detail in the next section of this testimony, the funding could pay for an increase in EI provider rates, which are lower than they were in the 1990s and have led to providers leaving the EI field. Such an increase would help recruit and retain high-quality professionals to the program so that children do not have to wait for the EI services they have a right to receive. Increased funding is also needed to help address the impact of the pandemic. For example, families need technology to participate in remote services, and children have the right to compensatory services to make up for the services they missed. The Covered Lives assessment would also relieve insurance plans of the administrative burden of processing claims and relieve providers of the burden of filing claims for children insured by these plans.

Given the lost opportunity that young children have already experienced in receiving developmental services during the pandemic, the Covered Lives assessment would be pivotal in raising revenue that could be reinvested into the program.



Two years ago, the Assembly and the Senate included a Covered Lives assessment for EI in their one-house budgets. However, the proposal was not included in the final budget.

**We urge the Legislature to ensure the final budget includes a Covered Lives assessment on commercial insurance plans of at least \$40 million to ensure that commercial insurers pay their fair share for Early Intervention services and use this funding to strengthen services for young children.**

### **3. Increase the EI Reimbursement Rate by at Least Ten Percent**

Since 2010, the reimbursement rates set by the State for Early Intervention have decreased significantly. The State cut the EI service rate for home- and community-based services by ten percent in April 2010 and cut the reimbursement rate for all EI services by an additional five percent in April 2011. Although the State granted occupational, physical, and speech therapists a five percent increase in 2019, EI provider rates are still lower now than they were in the 1990s.

As a result, even before the pandemic, experienced, high-quality EI providers had to shut their doors or stopped taking referrals, making it difficult for children to access much-needed high-quality services in a timely manner in certain areas, with a [disproportionate impact](#) on communities of color. The pandemic has only added financial challenges, including the cost of personal protective equipment for in-person services, that have made it even harder for these programs to continue operating. In New York City, a non-profit organization recently announced that it would close its EI program because of financial losses it experienced during the pandemic, following years of underinvestment from the State. Restoring reimbursement rates is necessary to support recruitment and retention of high-quality professionals and to build ongoing quality improvement efforts into the program. Particularly given the potential need to serve an influx of children who may need more intensive services after going months during the pandemic without receiving needed services, the State must increase the reimbursement rate for EI providers by at least ten percent. **As noted above, the State could fund such an increase in EI reimbursement rates through a Covered Lives assessment.**

**We urge the Legislature to increase the current rates by at least ten percent this year.**

### **4. Conduct a Comprehensive Assessment of the Methodology Used to Determine Payment for EI Evaluations and Services**



While an immediate increase in the reimbursement rate is necessary to ensure that providers can stay open and children can receive timely evaluations and services, we also recommend that the State conduct a comprehensive assessment of the existing methodology used to determine payment for all EI evaluations, services and service coordination in order to ensure that the program can properly serve infants and toddlers with developmental delays or disabilities in a timely manner going forward.

Such a study can inform new reimbursement methodologies to address ongoing financial concerns providers face as well as to address disparities in evaluations and service delivery based on race, income, geographic location and other factors. Among other things, the assessment should address the cost of services provided in low-income areas, the need for bilingual and culturally competent services, areas with provider shortages, travel time reimbursement, cost of living increases, reimbursement for professional development and the rate for remote service provisions and technology.

The study would be especially timely this year, as the EI program considers making significant changes to evaluation and service delivery models by extending the use of telehealth beyond the pandemic. The State should not move forward with the proposed regulations to change the EI telehealth rate to be the same as the facility-based rate, significantly lowering the rate for EI teletherapy services, until such a cost study takes place.

**We urge the Legislature to ensure the final budget requires a comprehensive assessment of the methodology used to determine payment for EI evaluations and services so that the program can sustainably and properly serve all infants and toddlers with developmental delays or disabilities.**

Thank you for considering our testimony. If you have any questions, please contact me at 212-822-9534 or [bbaez@advocatesforchildren.org](mailto:bbaez@advocatesforchildren.org).

Respectfully submitted,

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