



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
ONE COMMERCE PLAZA
ALBANY, NEW YORK 12257

**Circular Letter No. 16 (2003)
September 16, 2003**

TO: All Health Insurers Licensed to Write Accident And Health Insurance in New York State ("Commercial Insurers"), Article 43 Corporations and Health Maintenance Organizations

RE: Health Insurer's Obligation in the Administration of Benefits for Covered Persons Receiving Services Under the New York State Early Intervention Program

STATUTORY REFERENCE: Public Health Law Title II-A; Insurance Law Section 3235-a

This letter is to advise all commercial insurers, Article 43 corporations and health maintenance organizations (HMOs) that under Chapter 428 of the Laws of 1992 and Chapter 231 of the Laws of 1993, New York State established a program intended to assure access to a comprehensive variety of needed services for children up to three years of age who are disabled or at risk of disability. The program requires that municipalities, primarily counties, identify eligible children, determine their needs and arrange for the provision of appropriate services based on close consultation and cooperation with the parents of such children.

Section 2559(3)(a) of the Public Health Law mandates that municipalities providing early intervention services maximize access to third-party reimbursement where it is available. The Public Health Law and New York State Health Department regulations authorize such municipalities to pay any deductibles or co-payments required as a pre-condition to receiving benefits for services covered under an insurance policy or health benefit plan. In addition, several statutory provisions seek to facilitate the ability of families with children eligible for early intervention services to access their coverage under an insurance policy or health benefit plan.

Section 3235-a(a) of the Insurance Law prohibits insurers from excluding coverage of services that are otherwise covered solely on the basis that they are early intervention services. Therefore, insurers must provide coverage for early intervention services that are otherwise covered services in the policy.

Under Section 3235-a(b), insurers are also prohibited from charging any benefits paid for early intervention services provided to a covered person as a part of an Individualized Family Services Plan (IFSP) pursuant to Section 2545 of the Public Health Law against any maximum annual or lifetime limits in those policies. Visits used for early intervention services shall not reduce the number of visits otherwise available under the policy or contract for such services. An example would be if a plan provides coverage for ten physical therapy visits and a child has received ten physical therapy visits as required by the child's IFSP, and the child needs physical therapy services for a condition unrelated to his or her early intervention services, the number of early intervention services that have already been covered will not reduce the number of physical therapy visits available for the unrelated condition.

Under Section 2559(3)(d) of the Public Health Law, subject to receipt by the insurer or plan administrator of prior written notice, any municipality providing access to early intervention services, or its designee, is subrogated, to the extent of its expenditures for those services, to any rights to third-party reimbursement possessed by the person receiving the early intervention services. Section 3235-a (c) of the

Insurance Law provides that any such right of subrogation shall be valid and enforceable to the extent benefits are available to the covered person under any accident and health insurance policy. These provisions require insurers to honor claims submitted by municipalities to the extent that municipalities have paid for services for children eligible for early intervention services.

Any questions regarding the Early Intervention Program may be directed to Donna Noyes of the Department of Health at (518)473-7016 or by e-mail at dmn02@health.state.ny.us. Questions regarding insurance issues related to the Early Intervention Program should be directed to Michelle Cleary of this Department by telephone at (518)486-2970 or by e-mail to mcleary@ins.state.ny.us.

Very truly yours,

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Thomas C. Zyra
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