

LAWS OF DELAWARE
VOLUME 83
CHAPTER 213
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 136

AN ACT TO AMEND TITLE 14, TITLE 16, TITLE 29, AND TITLE 31 OF THE DELAWARE CODE RELATING TO EARLY INTERVENTION SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Part I, Title 14 of the Delaware Code by creating a new Chapter 31A and by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 31A. Infants and Toddlers Early Intervention Program.

Section 2. Amend § 210 through § 218, Title 16 of the Delaware Code by transferring § 210 through § 218 of Title 16 to Chapter 31A of Title 14 and then by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 210.~~ § 3101A. Short title.

This ~~subchapter~~ chapter may be cited as the “Infants and Toddlers Early Intervention Act.”

~~§ 211.~~ § 3102A. Purpose.

(a) The General Assembly finds that early intervention services are cost-effective and effectively serve the developmental needs of eligible infants and toddlers and their families. The purpose of this chapter is to provide a comprehensive, coordinated, interagency, interdisciplinary early intervention services system for eligible infants and toddlers and their families that enhances the capacity to provide quality early intervention services, expand and improve existing services, and facilitate the coordination of payments for early intervention services from various public and private sources.

(b) The specific purposes of this subchapter chapter are as follows: to do all of the following:

(1) ~~To enhance~~ Enhance the development and of all eligible infants and toddlers in the State in order to minimize the potential for developmental delay of infants and toddlers with disabilities; and enhance individual potential for adult independence.

(2) ~~To reduce~~ Reduce the educational costs to society by minimizing the need for special education and related services after infants and toddlers reach school age; age by identifying children eligible for early intervention services at a younger age.

(3) ~~To minimize the likelihood of institutionalization and the potential for independent living of individuals with disabilities;~~ Enhance opportunities for inclusion in the community of eligible children and their families.

(4) ~~To enhance~~ Enhance the capacity of families to meet the special individual needs of infants and toddlers with disabilities; and disabilities.

(5) ~~To fully~~ Enact regulations and fully implement the infants and toddlers program established by the Individuals with Disabilities Education Act, codified at 20 U.S.C. § 1431 et seq., or any amendment or reenactment thereof. under the IDEA, including all of the following:

a. Affirm the importance of the family in all areas of the child's development and reinforce the role of the family as a participant in the decision-making processes regarding their child.

b. Identify and coordinate all available resources for early intervention within the State including those from federal, state, local, and private sources.

c. Affirm that eligible infants and toddlers with disabilities have a right to receive early intervention services to the maximum extent appropriate, in natural environments in which infants and toddlers without disabilities would participate.

~~§ 212.~~ § 3103A. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the content clearly indicates a different meaning. For purposes of this chapter:

(1) “Department” means the Department of ~~Health and Social Services.~~ Education.

(2) “Early intervention services” service” means developmental services that: a service that meets all of the following:

- a. ~~Are Is~~ provided under public ~~supervision~~; supervision.
- b. ~~Are Is~~ provided at no cost except where federal or State law provides for a system of payments by families, including a schedule of sliding ~~fees~~; fees.
- c. ~~Are Is~~ designed to meet the developmental needs of each eligible children ~~in at least 1 of the domains identified in paragraph (3)a. (4)a. of this section;~~ child with a developmental delay and the needs of the family related to enhancing the development of their child.
- d. ~~Meet~~ Meets all applicable federal and state program standards; standards.
- e. ~~Are Is~~ provided by ~~qualified personnel consistent with Department regulations;~~ an early intervention service provider.
- f. ~~Are Is~~ provided in conformity with an ~~individualized family service plan~~ Individualized Family Service Plan adopted pursuant to § 215 under § 3107A of this title; title and are selected in collaboration with the parent or guardian.
- g. ~~Are provided in conformity with a strong policy promoting service provision provided, to the maximum extent appropriate, in natural environments including the home and community settings in which children without disabilities participate.~~

h. ~~Include~~ Includes any of the following:

1. Family ~~training, counseling, and home visits~~; training.
2. Special ~~instruction~~; instruction.
3. Speech language pathology and ~~audiology services~~; audiology.
4. Occupational ~~therapy~~; therapy.
5. Physical ~~therapy~~; therapy.
6. Psychological ~~services~~; services.
7. Service coordination ~~services~~; services.
8. ~~Diagnostic or evaluative medical services~~; Medical services, but only for diagnostic or evaluation purposes.
9. Early identification, screening, evaluation, and assessment ~~services~~; services.
10. Health services specified by the lead agency as necessary to enable an eligible child to benefit from the other early intervention ~~services~~; services.
11. Social work ~~services~~; services, including counseling.
12. Vision ~~services~~; services.
13. Assistive technology devices and ~~services~~; services.
14. Transportation and related costs that are necessary to enable an eligible child or family to receive another service ~~described in this paragraph; and under this paragraph (2)h.~~
15. Nursing services.
16. Nutrition services.
17. Sign language or cued language services.
18. Other supportive services identified by the Department through regulation.

(3) ~~“Eligible children” means infants and toddlers from~~ “Collaborating agencies” means the Department of Health and Social Services, Department of Education, and Department of Services for Children, Youth and Their Families.

(4) “Developmental delay” means a significant delay in 1 or more of the following developmental domains:

- a. Cognition.
- b. Communication, expressive or receptive.
- c. Physical, including hearing or vision.
- d. Social emotional functioning.
- e. Adaptive behavior.

(5) “Early intervention service provider” means an individual who has the professional qualifications to provide an early intervention service as established by the lead agency under this chapter.

(6) “Eligible child with a disability” or “eligible child” means an individual from birth through 36 35 months of age who need early intervention services because they are: and any of the following apply:

a. ~~Experiencing developmental delays;~~ The child has a significant developmental delay, as measured by appropriate diagnostic instruments and procedures, including informed clinical opinion, in one 1 or more of the following domains:

1. ~~Cognitive development;~~ development.
2. ~~Physical development, including vision or hearing;~~ hearing.
3. ~~Communication development;~~ development.
4. ~~Social or emotional development;~~ and development.
5. ~~Adaptive development;~~ or development.

b. ~~Diagnosed as having~~ The child is diagnosed with a physical or mental condition which has a high probability of resulting in developmental delay; or delay and the condition requires 1 or more of the services under paragraph (2)h. of this section.

c. ~~At risk of developing substantial developmental delay in the absence of early intervention services, to the extent affirmatively authorized by regulations adopted pursuant to § 218 of this title.~~

(4) ~~(7) “Federal infants and toddlers program” or “IDEA” means the program established by for infants and toddlers with disabilities under Part C of the Individuals with Disabilities Education Act, eodified in pertinent part at 20 U.S.C. § 1431 et seq., or any amendment or reenactment thereof. et seq.~~

(7) “Individualized family service plan” or “IFSP” means a written plan for providing early intervention services to an eligible child with a disability and the child’s family under § 3107A of this title.

(8) “Infant or toddler” or “child” means an individual from birth through 35 months of age.

(9) “Informed clinical opinion” means both clinical observations and parental participation to determine eligibility by a consensus of a multidisciplinary team of 2 or more members based on the team members’ professional experience and expertise.

(10) “Lead agency” means the state agency responsible for administering this chapter and receiving and disbursing public funds received in accordance with state and federal law and rules.

(11) “Service coordination” means a flexible process of interaction facilitated by a service coordinator to assist the family of an eligible child with a disability within a community to identify and meet the child’s needs. Service coordination must not duplicate any case management services which an eligible child with a disability or the child’s family are already receiving or eligible to receive from another source.

~~§ 213.~~ § 3104A. Powers and duties.

~~In furtherance of the purposes of this subchapter, the Department shall have the following powers and duties:~~

~~(a) The Department shall do all of the following:~~

(1) ~~Develop and implement a statewide, comprehensive, coordinated, multi-disciplinary, interagency system which ensures that appropriate early intervention services based on scientifically-based research, to the extent practicable, are available to all eligible children and families;~~ families.

(2) ~~Clarify system eligibility consistent with § 212(3) of this title, including adoption of regulatory guidelines defining “developmental delay”; A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed assessment of the needs of each family of each infant or toddler, to assist appropriately in the development of the infant or toddler.~~

(3) ~~Promote public awareness to all primary referral sources and ensure prompt identification and evaluation of eligible children and their families;~~ families.

(4) ~~Develop and implement individualized family service plans~~ Individualized Family Service Plans for eligible children and their families ~~in accordance with § 215 of this title;~~ under § 3107A of this title.

(5) ~~Serve as a clearinghouse for~~ Maintain a central directory that includes information on early intervention services, resources, ~~experts~~ experts, and research and demonstration projects in the ~~State;~~ State.

(6) ~~Adopt and implement a comprehensive system of personnel development and qualifications;~~ qualifications.

(7) ~~Serve as the State’s lead agency to implement the federal infants and toddlers program, for early intervention services, including providing a single line of responsibility to carry out all the following:~~

a. ~~The general administration and supervision of programs and activities receiving assistance under the Act;~~
IDEA.

b. ~~The monitoring of programs and activities used to implement this State system;~~ system.

c. ~~The assignment of financial responsibility among applicable agencies; and~~ Identifying and coordinating all available resources within the State from federal, state, local, and private sources.

d. ~~The development and adoption of interagency agreements that define~~ ensure meaningful cooperation and coordination, including the financial responsibility for each agency; ~~agency and procedures to resolve disputes, disputes, and procedures to ensure timely provision of early intervention services pending resolution of disputes among public agencies or service providers; and~~

e. The development of procedures to ensure that services are provided to eligible children with disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers.

(8) A system for compiling data regarding early intervention services provided under this chapter that aligns with the Department's system for children ages 3 through 21 and includes all of the following:

a. The number of eligible children in this State in need of appropriate early intervention services.

b. The number of children served.

c. The types of services provided, including a referral tracking and monitoring system.

(9) A policy pertaining to the contracting or making of other arrangements with public and private service providers to provide early intervention services in this State, consistent with the provisions of this chapter, including the contents of the application used and the conditions of the contract or other arrangements.

~~(8)~~ (10) Otherwise meet and implement funding and eligibility requirements of the federal infants and toddlers program. IDEA.

(11) Make all reports prepared regarding work under this chapter available on the Department website.

(b) The Department may charge a fee for services under this chapter to cover the cost of the program.

~~§ 244.~~ § 3108A. Cooperation of participating agencies.

(a) All state agencies and contractors participating in the provision of early intervention services under this subchapter shall cooperate with the Department and Interagency Coordinating Council to ensure effective system implementation, coordination, and nonduplication of activities. In furtherance of this duty, the individualized family service plan shall serve

(b) The IFSP under § 3107A of this title serves as the primary comprehensive service plan for all such cooperating agencies and contractors and must be accorded deference in determining the developmental, educational, and medical necessity of included early intervention services.

§ 3105A. Early intervention service providers; requirements.

(a) The Department shall promote the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services.

(b)(1) To provide early intervention services under this chapter, an individual must be licensed under Title 24 or licensed or certified under Subchapter I of Chapter 12 of this title, to provide the specific service.

(2) In addition to meeting the requirement under paragraph (b)(1) of this section, an early intervention service provider must participate annually in the Department's child abuse detection and prevention training under § 4163 of this title.

(c) The Department shall assign a unique identification number to each early intervention service provider providing early intervention services under this chapter. The Department shall use the early intervention service provider's unique identification number to track licensure, certification, employment, and professional development.

(d) The Department shall maintain an online, public database of early intervention service providers that can be searched by an individual's name and provides all of the following information:

(1) Education history.

(2) Current licensure or certification.

(3) Current place of employment.

(e) Ensure that early intervention service providers complete the background checks required under § 309 of Title 31. § 3106A. Child Find.

(a) The Department shall conduct Child Find activities to ensure early identification and assessment of children who may be eligible for services under this chapter. Child Find must include the opportunity for all children from birth through 35 months, who have not already been found eligible for services under this chapter, to receive annual developmental screening.

(b) Child Find must include online developmental screening and collaboration with home visiting programs and child care providers, including school districts and Head Start.

~~§ 245. § 3107A.~~ Individualized family service plan.

The ~~Department's system shall~~ Department must ensure that eligible children and their families annually receive an IFSP that includes all of the following in a timely manner: following:

(1) A multi-disciplinary assessment of the unique strengths and needs of each eligible child and identification of services appropriate to meet ~~such needs; those needs.~~

(2) A family-directed assessment of the resources, ~~priorities~~ priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the eligible ~~child; and child.~~

(3) A written ~~individualized family service plan, whose format shall be~~ IFSP in the format specifically prescribed by regulation, developed and approved as follows:

a. The ~~plan shall~~ IFSP must be prepared by a multi-disciplinary team which includes the child's ~~parents;~~ parents.

b. The contents of the ~~individualized family service plan shall~~ IFSP must be fully explained to the parents and informed written consent obtained prior to providing the provision of services described in the ~~plan; and~~ IFSP.

c. If parental consent to a particular service is withheld, ~~then~~ the early intervention services to which consent is obtained ~~shall~~ must be provided.

(4) Services under the IFSP must be provided, to the maximum extent appropriate, in the natural environment.

(b) An IFSP must be reviewed every 6 months, or more often when appropriate based on the needs of the child and family.

(c) The initial evaluation, assessment, and Plan meeting must be held within 45 calendar days after the initial referral to the early intervention program, except under exceptional family circumstances as allowed under the IDEA.

(d) An IFSP must provide for the child to smoothly transition from services provided under this chapter as required under the IDEA.

~~§ 246. § 3109A.~~ Procedural safeguards.

The ~~Department's system shall include~~ Department shall provide procedural safeguards which ~~include, at a minimum,~~ include all of the following:

(1) ~~Availability of~~ Provide the opportunity for a parent to resolve complaints through mediation and an impartial, timely administrative ~~hearing, in which hearing~~ hearing where the burden of proof ~~and persuasion~~ rests with the respondent ~~agency, to resolve parental complaints; agency.~~

(2) ~~Confidentiality~~ Maintain the confidentiality of personally identifiable ~~information; information.~~

(3) ~~Parental~~ Provide the option to accept or decline early intervention services without jeopardizing eligibility for other early intervention ~~services; services.~~

(4) ~~Parental~~ Provide a parent the opportunity to examine and obtain copies of relevant records either without charge, or, if authorized by departmental regulation, at a fee not to ~~that does not exceed actual cost; cost.~~

(5) ~~Procedures to ensure~~ Ensure the appointment of a surrogate decision-maker if the State has custody of an eligible child ~~is the ward of the State or the child's parents~~ parent cannot be identified or ~~located; located.~~

(6) ~~Prior~~ Provide prior written ~~parental~~ notice ~~whenever~~ to a child's parent if a participating agency or service provider proposes to initiate or change or refuses to initiate or change the identification, ~~evaluation~~ evaluation, or placement of an eligible child or the provision of early intervention ~~services; services.~~

(7) Procedures to ensure that notice required under paragraph (6) of this section fully and effectively informs parents of the procedural safeguards ~~identified in this section; and~~ under this section.

(8) Procedures to ensure, in the absence of contrary agreement, the continuation of early intervention services during the pendency of any proceeding or action involving a ~~parental~~ complaint by a parent or, in the context of initial application, provision of services not in dispute.

§ 3110A. Compulsion prohibited.

Nothing in this chapter may be construed to compel any person to submit to any medical or public health examination, treatment, or supervision.

~~§ 247.~~ § 3111A. Interagency Coordinating Council.

(a) There is hereby established the Interagency Coordinating Council ~~whose members shall be appointed by the Governor.~~ Council (Council).

(b) The Council shall advise and assist the Department and the Delaware Early Childhood Council with implementation of this ~~subchapter~~ chapter and otherwise fulfill any requirements of an advisory council under the ~~federal infants and toddlers program.~~ IDEA. The Department shall ensure that the Council is provided with sufficient staff and other supports to effectively meet its obligations.

(c)(1) The Council ~~shall be~~ is composed of 23 members appointed by the Governor. ~~shall be appointed for 3-year terms.~~ Members shall be eligible to The term of a member is 3 years and a member may serve more than 1 term. Appointments ~~shall~~ must be made to ensure that membership reasonably represents the geographical diversity of the State and meets composition requirements of the advisory council under the ~~federal infants and toddlers program.~~ IDEA.

(2) The Governor shall designate a member of the Council to serve as the chair of the Council. A member of the Council who is a representative of the lead agency may not serve as the chair of the Council.

(3) A majority of the total membership of the Council constitutes a quorum. A quorum is required for the Council to take official action. A vacant position is not counted for quorum purposes.

(4) The Council may adopt rules and bylaws necessary for its operation.

(d) Members of the Council ~~shall~~ serve without compensation, except that ~~they~~ members may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(e) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term ~~shall be~~ is filled for the remainder of the term.

(f) The Council shall hold at least 1 joint meeting with the Governor's Advisory Council for Exceptional Citizens each calendar year.

~~§ 248.~~ § 3112A. Regulations.

(a) The Department shall ~~prescribe such~~ promulgate regulations ~~as may be necessary to carry out this subchapter~~ chapter and to ensure full funding eligibility and compliance with the ~~federal infants and toddlers program.~~ IDEA.

(b) Regulations prepared by the Department under this ~~subchapter~~ chapter are subject to review and comment by the Council ~~and shall otherwise be promulgated in conformity with the Administrative Procedures Act, Chapter 101 of Title 29.~~ Council. The Department shall provide the Council with proposed regulations, including proposed revisions, before publication for public comment under Chapter 101 of Title 29.

Section 3. Amend Subchapter I, Chapter 2, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 201. Purpose.

The intent of the General Assembly is ~~to provide financial assistance for the treatment of children with congenital disabilities and~~ to require the establishment and maintenance of a congenital disabilities surveillance system and registry for the State.

(1) Surveillance system and registry. — Responsibility for establishing and maintaining the system and registry is delegated to the Department of Health and Social Services, along with the authority to exercise certain powers to implement the system and registry. To ensure an accurate and continuing source of data concerning congenital disabilities, the General Assembly by this subchapter requires certain health care practitioners and all hospitals and clinical laboratories to make available to the Department of Health and Social Services information contained in the medical records of patients who have a suspected or confirmed congenital disability diagnosis. All confirmed congenital disabilities shall be classified and coded using the medically recognized system of International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), as well as the 6-digit modified British Pediatric Association system (BPA/ICD-9), and all subsequent revisions to these publications which are used by the Centers for Disease Control and Prevention. It is intended that the product of these efforts will be a central data bank of accurate, precise and current information regarding all congenital disabilities diagnosed or treated, or both, in this State.

(2) Treatment.— The cost of treating children for congenital disabilities can be prohibitive and impose a substantial burden upon the children’s families beyond the resources of those families and beyond the resources of state, federal or private agencies. The treatment of such children is in the best interest and welfare of the people and the State. It is the intent of this subchapter to provide assistance with the cost of treatment for children so afflicted.

Treatment paid for under this Program shall be provided, insofar as possible, within the State. The Secretary of the Department of Health and Social Services shall establish rules and regulations for the eligibility of persons requesting services under this subchapter, including the ability of those persons to pay for services, and for the disbursement of funds appropriated for this Program. However, this This subchapter will in no way affect affects the rights, liabilities liabilities, or duties of the Secretary of the Department of Health and Social Services or of persons or guardians of persons requesting services under this subchapter from the operation of laws or prior existing laws and, in particular, § 7940 of Title 29.

§ 203. Congenital Disabilities Surveillance and Registry Program.

(a) The Department may adopt, promulgate, ~~amend~~ amend, and repeal any rules and regulations necessary to accomplish the purpose of this subchapter. These rules and regulations may include ~~provisions for:~~ the following provisions:

(1) The establishment and maintenance of an up-to-date registry that shall document every diagnosis or treatment, or both, of any congenital disability in any child under age 5 in this ~~State;~~ State.

(2)a. The establishment of a procedure for reporting to the Department, within 30 days of initial diagnosis or treatment, every occurrence of a congenital disability in any child under age 5 in this State. The procedure ~~shall~~ must include the reporting of specified information, through a combined system of active and passive surveillance, on every child under age 5 with 1 or more congenital disabilities. Specified information ~~shall be~~ is deemed necessary and appropriate to accomplish the purpose of this subchapter and in accordance with the recommendations from the Centers for Disease Control and Prevention, for any of the following reasons:

1. To identify risk factors for congenital ~~disabilities;~~ disabilities.
2. To investigate the causes and prevalence of congenital ~~disabilities;~~ disabilities.
3. To develop preventive strategies to decrease occurrences of congenital ~~disabilities;~~ disabilities.
4. To analyze incidences, prevalence and trends of congenital disabilities through epidemiological ~~studies;~~ or studies.
5. To investigate the morbidity and mortality rates resulting from congenital ~~disabilities;~~ disabilities.

b. Those required to report to the Department occurrences of congenital disabilities ~~shall include:~~ include all of the following:

1. Any physician, surgeon, dentist, ~~podiatrist~~ podiatrist, or other health-care practitioner who diagnoses or provides treatment, or both, for children under age 5 with congenital ~~disabilities;~~ disabilities.
2. The designated representative of any hospital, ~~dispensary~~ dispensary, or other similar public or private institution that diagnoses or provides treatment, or both, for children under age 5 with congenital ~~disabilities;~~ and disabilities.
3. The designated representative of any clinical laboratory that performs any test which identifies children under age 5 with congenital ~~disabilities;~~ disabilities.

(3) The establishment of a procedure for the publication and distribution of forms, ~~instructions~~ instructions, and notices required by this subchapter or necessary to accomplish the purpose of this ~~subchapter;~~ subchapter.

(4) The establishment of a procedure to obtain follow-up information from those required to report occurrences of congenital disabilities ~~pursuant to~~ under this subchapter. Any follow-up information, including family, physician, ~~hospital~~ hospital, or laboratory contact deemed necessary by the Department, ~~shall~~ must be submitted to the Department at least 1 time each year by those required to report occurrences of congenital disabilities.

(5) The establishment of a procedure to refer the parent, custodian, or guardian of a child under age 3 who is reported to the registry under this subsection to the Department of Education for services under Chapter 31A of Title 14.

(b) The provisions of this subchapter and any rules or regulations issued ~~pursuant to~~ under this subchapter ~~shall~~ do not apply to any person or private institution that, as an exercise of religious freedom, treats the sick or suffering by spiritual means through prayer alone.

(c) A parent, ~~eustodian~~ custodian, or guardian of an infant having any congenital disability may refuse disclosure to the surveillance system and registry of the infant's name and identifying information on the grounds that such congenital disability identification is contrary to the religious tenets and practices of the infant's parent, ~~eustodian~~ custodian, or guardian.

§ 204. Confidentiality of reports.

(a) Any report of the diagnosis or treatment, ~~or both~~, of a congenital disability made ~~pursuant to~~ under this subchapter ~~shall may~~ not be divulged nor made public in any way that might tend to disclose the identity of the person or family of the person to whom it relates. However, patient-identifying information may be exchanged with the Department of Education and among authorized agencies as approved by the Department and upon receipt by the Department of satisfactory assurances by those agencies of the preservation of the confidentiality of such information.

(b) No individual or organization providing information to the Department in accordance with this subchapter ~~shall may~~ be deemed to be liable for or held liable for divulging confidential information.

§ 205. Compulsion prohibited.

Nothing in this subchapter ~~shall may~~ be construed to compel any person to submit to any medical or public health examination, ~~treatment~~ treatment, or supervision.

§ 207. Early intervention services; collaborating agency.

The Department, as a collaborating agency, shall provide vision services to children who are eligible for early intervention services under Chapter 31A of Title 14.

Section 4. Amend § 3003, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3003. Organization and composition.

(a) ~~The Governor shall appoint the members of the Delaware Early Childhood Council (ECC) shall be appointed by the Governor upon recommendation by~~ based upon recommendations from the Interagency Resource Management Committee and shall: Committee. The members of the ECC must meet the following criteria:

(1) Represent the racial, ~~economie~~ economic, and geographic diversity of the ~~State; State.~~

(2) Serve for staggered, renewable terms of 3 years, except in the case of public employees continuing in the same designated ~~position; and position.~~

(3) Consist of the following members:

a. Two center-based early care and education ~~providers; providers.~~

b. One family-home-based early care and education ~~provider; provider.~~

c. One parent whose child participates in early childhood ~~services; services.~~

d. One Delaware Head Start/Early Childhood Assistance Program Association ~~representative; representative.~~

e. One representative of a statewide early care and education resource and referral ~~agency; agency.~~

f. Two representatives from advocacy organizations focused on children's health and ~~well-being; well-being.~~

g. One representative of the Delaware Association for the Education of Young ~~Children; Children.~~

h. One public school district ~~superintendent; superintendent.~~

i. One higher education representative who also serves on the P-20 ~~Council; Council.~~

j. One business community ~~representative; representative.~~

k. Two community ~~members; members.~~

l. One representative of the General ~~Assembly; Assembly.~~

m. The State Director of Head Start ~~Collaboration; Collaboration.~~

n. A representative of the Delaware Department of Health and Social Services, representing children's ~~health, child care subsidy, and Part C of Individuals with Disabilities Education Act (IDEA) [20 U.S.C. § 1431 et seq.];~~ health and child care subsidy.

o. A representative of the Delaware Department of Services to Children, Youth and Their Families, representing child mental health, ~~child care licensing, and family services; services.~~

p. A representative of the Delaware Department of Education, representing early childhood professional development, § 619 of the IDEA [20 U.S.C. § 1419], child care licensing, and State early learning guidelines; and guidelines.

q. The chair of the Interagency Coordinating Council, representing Part C of the Individuals with Disabilities Education Act (IDEA) [20 U.S.C. § 1431 et seq.].

~~Ex officio, nonvoting~~ r. Nonvoting members shall ~~must~~ include the director of the ~~Early Development and Learning Resource Center of the Department of Education, Office of Early Learning,~~ the chair of the Family Support Coordinating Council, and the director of the State's Institute for Excellence in Early Childhood Education. The ECC may appoint ~~ex officio~~ nonvoting members and advisors to assist them in meeting their responsibilities.

Section 5. Amend § 3111, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3111. Advisory council for exceptional citizens.

(a) The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by ~~the~~ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq..

(b) The council shall hold at least 1 joint meeting with the Interagency Coordinating Council each calendar year.

Section 6. Amend § 4162, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4162. Child safety awareness, prevention, and other nonacademic trainings.

(f) The Department shall require early intervention service providers to receive 3 hours of a child abuse and child safety awareness, prevention, detection, and reporting training program established under § 4163(b)(1) of this title.

Section 7. Amend § 7904, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7904. Division of Public Health; Department of Health and Social Services.

(g) The Division is authorized to operate the following programs for which a fee for service is charged to cover the cost of the program: Child Health, Vanity Birth Certificate, Public Water, Medicaid Enhancements, Infant Mortality, Medicaid Aids Waiver, Children with Special Needs, Family Planning, Newborn, Indirect Costs, Vaccines, Food Inspection, Medicaid Contractors/Lab Testing and Analysis, Tuberculosis (TB), Sexually Transmitted Diseases (STD), ~~Child Development Watch,~~ Preschool Diagnostic and Development Nursery (PDDN), Home Visits, Food Permit, Water Operator Certification, Long-Term Care Prospective Payment, Long-Term Care IV Therapy, and Health Statistics. Notwithstanding the provisions of § 6102 of this title, the Division shall be allowed to collect and expend fees from the aforementioned accounts except that the Children with Special Needs and Child Health programs shall continue to deposit 30 percent of program collections to the General Fund.

Section 8. Amend § 309, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 309. Background checks for child-serving entities.

(b) Definitions. — ~~The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~ For purposes of this section:

(4) "Child-serving entity" ~~as used in this section shall mean:~~ means:

a. ~~The DSCYF;~~ DSCYF, which includes any employee or volunteer of DSCYF or 1 of its contractors who have regular direct access to children ~~and/or~~ or adolescents under the age of 18, but who do not provide child-care services at a facility ~~as referred to in~~ under paragraph (b)(4)b. of this ~~section;~~ section.

b. Residential child-care facilities in Delaware which are under contract with or operated directly by ~~DSCYF;~~ DSCYF.

c. Public and private schools, including employees of the Department of ~~Education;~~ Education.

d. Child-care providers as defined in § 3002A of Title 14; ~~or~~ 14.

e. Youth camps or summer schools that are exempt from child-care licensing ~~requirements;~~ requirements.

f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant funds through the Delaware Department of Health and Social Services.

g. Early intervention service providers as defined under § 3103A of Title 14.

(5) "Contractor" means a person, not an employee, providing services or seeking a contract to provide services within a child-serving entity and ~~who:~~ any of the following apply to the person:

a. Has regular direct access to ~~children, or~~ children.

b. Provides services directly to a child or children.

(c) Except as provided in paragraph (c)(4) of this section, all child-serving entities are required to obtain criminal and Child Protection Registry checks for prospective employees, ~~volunteers~~ volunteers, and contractors.

(1) The SBI shall furnish information pertaining to the identification and criminal history record of prospective employees, ~~volunteers~~ volunteers, and contractors of child-serving entities, except as otherwise allowed or required, provided that the prospective employee, ~~volunteers~~ volunteer, or contractor submits to a reasonable procedure established by standards set forth by the Superintendent of State Police to identify the person whose record is sought. ~~Such~~ This procedure ~~shall~~ must include the fingerprinting of the ~~prospective employee~~, individual subject to a criminal background check and the provision of such other information as may be necessary to obtain a report of the ~~person's~~ individual's entire criminal history record from SBI and a report of the ~~person's~~ individual's entire federal criminal history record ~~pursuant to~~ under the FBI appropriation of Title II of Public Law 92-544. Notwithstanding any provision to the contrary, the information to be furnished by SBI shall include child sex abuser information. The Division of State Police shall be the intermediary for purposes of this section.

(2) Any ~~employer~~ person who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the prospective employee, volunteer, or contractor wherein the ~~person~~ individual authorizes a full release for the ~~employer~~ person to obtain the information provided ~~pursuant to such~~ as a result of a check. The DSCYF will process a Child Protection Registry check of the individual upon receipt of the ~~above-mentioned~~ signed statement which shall be attached to the request from the ~~employer~~ person for the Child Protection Registry check.

(5) Costs associated with obtaining said criminal history information and Child Protection Registry information ~~shall be~~ are borne by the applicant, except for ~~those~~ applicants designated in paragraph (b)(4)d. of this section, whose costs ~~shall be~~ are borne by the State. Notwithstanding the foregoing, public schools may use funds other than state funds to pay for criminal background check costs and may enter into consortia of school districts to pay such costs for persons covered by this ~~aet~~ section who work in more than 1 school district during the course of a year.

(6) All employees, ~~volunteers~~ volunteers, and contractors shall inform their employer of any criminal conviction or entry on the Child Protection Registry which would lead to a prohibition ~~pursuant to~~ under subsection (d) of this section.

(e) Upon completion of the criminal background and Child Protection Registry checks:

(1) Where the child-serving entity is a public or private ~~school~~: school, a contractor with a school district or the Department of Education, or an employee of a contractor who is an early intervention service provider:

a.1. The SBI shall provide the criminal background information and DSCYF shall provide the Child Protection Registry check information to the individual and the employing or contracting school or ~~district, which~~ school district or if applicable, a contractor employing the individual.

2. The school, school district, or employing contractor shall determine whether the individual is prohibited from being employed by ~~the school or district, pursuant to~~ or contracting with the school, school district, or contractor under subsection (d) of this section. If the individual is not prohibited from employment by subsection (d) of this section but the individual has a criminal conviction or is on the Child Protection Registry, the school or district shall make a determination regarding suitability for employment or contracting using the factors in paragraph (d)(3) of this section.

3. Information obtained under ~~this~~ (e) of this section is confidential and may only be disclosed to any of the following, as applicable: the

A. The chief school ~~officer~~ or officer.

B. The head of ~~school and the~~ school.

C. The employing contractor.

D. The chief personnel officer of the ~~school and~~ school or school district.

E. One person in each school or school district who ~~shall be~~ is designated to assist in the processing of criminal background checks, receive training in ~~confidentiality and be~~ confidentiality, and is required to sign an agreement to keep such information confidential.

b. Upon making its determination of suitability, the public school shall forward the determination to the person seeking ~~employment~~: employment or a contract. If a determination is made to deny the person ~~from~~ employment or a

contract based on the criminal history of the person, the person shall have an opportunity to appeal to the chief school officer ~~and/or~~ or head of school or designee for reconsideration.

(g) The ~~State~~ Department of Education shall, in the manner provided by law, promulgate regulations necessary to implement this section. These regulations shall ~~include:~~ include all of the following:

(1) Establishment, in conjunction with SBI, of a procedure for fingerprinting persons seeking employment with a public school or as an early intervention service provider and providing the reports and certificate obtained ~~pursuant to~~ under subsection (c) of this ~~section;~~ section.

(2) Establishment of a procedure to provide confidentiality of information obtained ~~pursuant to~~ under subsection (c) of this section.

(3) Establishment of a procedure for determining other job-related prohibitions for employees, ~~volunteers~~ volunteers, and contractors, ~~pursuant to~~ under paragraph (d)(3) of this section.

Section 9. This Act is effective immediately and is to be implemented on July 1, 2023.

Section 10. This Act is known as the “Infants and Toddlers Early Intervention Act”.

Approved September 30, 2021