



SPONSOR: Sen. Sturgeon & Sen. Poore & Rep. Griffith &
Rep. K. Williams
Rep. Brady

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

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):

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

3 Chapter 31A. Infants and Toddlers Early Intervention Program.

4 Section 2. Amend § 210 through § 218, Title 16 of the Delaware Code by transferring § 210 through § 218 of Title
5 16 to Chapter 31A of Title 14 and then by making deletions as shown by strike through and insertions as shown by
6 underline as follows:

7 ~~§ 210.~~ § 3101A. Short title.

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

9 ~~§ 211.~~ § 3102A. Purpose.

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

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

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

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

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

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

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

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

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

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

37 § 212. § 3103A. Definitions.

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

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

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

43 a. ~~Are~~ Is provided under public ~~supervision~~; supervision.

44 b. ~~Are~~ Is provided at no cost except where federal or State law provides for a system of payments by
45 families, including a schedule of sliding ~~fees~~; fees.

46 c. ~~Are~~ Is designed to meet the developmental needs of each eligible ~~children in at least 1 of the domains~~
47 ~~identified in paragraph (3)a. (4)a. of this section;~~ child with a developmental delay and the needs of the family
48 related to enhancing the development of their child.

49 d. ~~Meet~~ Meets all applicable federal and state ~~program standards~~; standards.

50 e. ~~Are Is~~ provided by qualified personnel consistent with Department regulations; an early intervention
51 service provider.

52 f. ~~Are Is~~ provided in conformity with an individualized family service plan Individualized Family Service
53 Plan adopted pursuant to § 215 under § 3107A of this title; title and are selected in collaboration with the parent or
54 guardian.

55 g. ~~Are provided in conformity with a strong policy promoting service provision provided, to the~~
56 maximum extent appropriate, in natural environments including the home and community settings in which
57 children without disabilities participate.

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

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

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

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

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

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

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

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

- 96 1. ~~Cognitive development;~~ development.
- 97 2. ~~Physical development, including vision or hearing;~~ hearing.
- 98 3. ~~Communication development;~~ development.
- 99 4. ~~Social or emotional development; and~~ development.
- 100 5. ~~Adaptive development; or~~ development.

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

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

106 (4) (7) “Federal infants and toddlers program” or “IDEA” means the program established by for infants and
107 toddlers with disabilities under Part C of the Individuals with Disabilities Education Act, codified in pertinent part at
108 20 U.S.C. § 1431 et seq., or any amendment or reenactment thereof. et seq.

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

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

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

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

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

121 ~~§ 213.~~ § 3104A. Powers and duties.

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

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

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

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

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

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

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

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

- 139 (7) Serve as the State's lead agency to implement the federal infants and toddlers program, for early
140 intervention services, including providing a single line of responsibility to carry out all the following:
- 141 a. The general administration and supervision of programs and activities receiving assistance under the
142 Act; IDEA.
 - 143 b. The monitoring of programs and activities used to implement this State ~~system~~; system.
 - 144 c. ~~The assignment of financial responsibility among applicable agencies; and~~ Identifying and coordinating
145 all available resources within the State from federal, state, local, and private sources.
 - 146 d. The development and adoption of interagency agreements that ~~define~~ ensure meaningful cooperation
147 and coordination, including the financial responsibility for each agency, agency and procedures to resolve
148 disputes, disputes, and procedures to ensure timely provision of early intervention services pending resolution of
149 disputes among public agencies or service providers; and
 - 150 e. The development of procedures to ensure that services are provided to eligible children with disabilities
151 and their families in a timely manner pending the resolution of any disputes among public agencies or service
152 providers.

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

- 155 a. The number of eligible children in this State in need of appropriate early intervention services.
- 156 b. The number of children served.
- 157 c. The types of services provided, including a referral tracking and monitoring system.

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

161 (8) (10) ~~Otherwise meet and implement funding and eligibility requirements of the federal infants and toddlers~~
162 ~~program; IDEA.~~

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

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

165 ~~§ 214.~~ § 3108A. Cooperation of participating agencies.

166 (a) All state agencies and contractors participating in the provision of early intervention services under this
167 ~~subchapter~~ chapter shall cooperate with the Department and Interagency Coordinating Council to ensure effective system

168 implementation, ~~coordination~~ coordination, and nonduplication of activities. ~~In furtherance of this duty, the individualized~~
169 ~~family service plan shall serve~~

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

173 § 3105A. Early intervention service providers; requirements.

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

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

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

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

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

186 (1) Education history.

187 (2) Current licensure or certification.

188 (3) Current place of employment.

189 (e) Ensure that early intervention service providers complete the background checks required under § 309 of Title
190 31.

191 § 3106A. Child Find.

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

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

198 § 215. § 3107A. Individualized family service plan.

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

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

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

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

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

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

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

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

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

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

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

221 § 216. § 3109A. Procedural safeguards.

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

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

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

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

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

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

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

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

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

242 § 3110A. Compulsion prohibited.

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

245 ~~§ 217.~~ § 3111A. Interagency Coordinating Council.

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

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

252 (c)(1) The Council ~~shall be~~ is composed of 23 members appointed by the Governor. ~~shall be appointed for 3-year~~
253 ~~terms. Members shall be eligible to~~ The term of a member is 3 years and a member may serve more than 1 term.

254 Appointments ~~shall~~ must be made to ensure that membership reasonably represents the geographical diversity of the State
255 and meets composition requirements of the advisory council under the ~~federal infants and toddlers program.~~ IDEA.

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

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

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

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

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

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

267 ~~§ 218.~~ § 3112A. Regulations.

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

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

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

276 § 201. Purpose.

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

280 (1) Surveillance system and registry. — Responsibility for establishing and maintaining the system and
281 registry is delegated to the Department of Health and Social Services, along with the authority to exercise certain
282 powers to implement the system and registry. To ensure an accurate and continuing source of data concerning
283 congenital disabilities, the General Assembly by this subchapter requires certain health care practitioners and all
284 hospitals and clinical laboratories to make available to the Department of Health and Social Services information
285 contained in the medical records of patients who have a suspected or confirmed congenital disability diagnosis. All
286 confirmed congenital disabilities shall be classified and coded using the medically recognized system of International
287 Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), as well as the 6-digit modified British

288 Pediatric Association system (BPA/ICD-9), and all subsequent revisions to these publications which are used by the
289 Centers for Disease Control and Prevention. It is intended that the product of these efforts will be a central data bank of
290 accurate, precise and current information regarding all congenital disabilities diagnosed or treated, or both, in this
291 State.

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

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

302 § 203. Congenital Disabilities Surveillance and Registry Program.

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

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

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

- 314 1. To identify risk factors for congenital ~~disabilities;~~ disabilities.
- 315 2. To investigate the causes and prevalence of congenital ~~disabilities;~~ disabilities.
- 316 3. To develop preventive strategies to decrease occurrences of congenital ~~disabilities;~~ disabilities.

317 4. To analyze incidences, prevalence and trends of congenital disabilities through epidemiological
318 ~~studies; or studies.~~

319 5. To investigate the morbidity and mortality rates resulting from congenital ~~disabilities; disabilities.~~

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

322 1. Any physician, surgeon, dentist, ~~podiatrist~~ podiatrist, or other health-care practitioner who
323 diagnoses or provides treatment, or both, for children under age 5 with congenital ~~disabilities; disabilities.~~

324 2. The designated representative of any hospital, ~~dispensary~~ dispensary, or other similar public or
325 private institution that diagnoses or provides treatment, or both, for children under age 5 with congenital
326 ~~disabilities; and disabilities.~~

327 3. The designated representative of any clinical laboratory that performs any test which identifies
328 children under age 5 with congenital ~~disabilities; disabilities.~~

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

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

335 (5) The establishment of a procedure to refer the parent, custodian, or guardian of a child under age 3 who is
336 reported to the registry under this subsection to the Department of Education for services under Chapter 31A of Title
337 14.

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

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

345 § 204. Confidentiality of reports.

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

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

353 § 205. Compulsion prohibited.

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

356 § 207. Early intervention services; collaborating agency.

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

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

361 § 3003. Organization and composition.

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

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

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

368 (3) Consist of the following members:

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

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

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

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

373 representative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

401 § 3111. Advisory council for exceptional citizens.

402 (a) The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education,
403 the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall

404 provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by
405 the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq..

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

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

409 § 4162. Child safety awareness, prevention, and other nonacademic trainings.

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

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

414 § 7904. Division of Public Health; Department of Health and Social Services.

415 (g) The Division is authorized to operate the following programs for which a fee for service is charged to cover the
416 cost of the program: Child Health, Vanity Birth Certificate, Public Water, Medicaid Enhancements, Infant Mortality,
417 Medicaid Aids Waiver, Children with Special Needs, Family Planning, Newborn, Indirect Costs, Vaccines, Food
418 Inspection, Medicaid Contractors/Lab Testing and Analysis, Tuberculosis (TB), Sexually Transmitted Diseases (STD),
419 ~~Child Development Watch~~, Preschool Diagnostic and Development Nursery (PDDN), Home Visits, Food Permit, Water
420 Operator Certification, Long-Term Care Prospective Payment, Long-Term Care IV Therapy, and Health Statistics.
421 Notwithstanding the provisions of § 6102 of this title, the Division shall be allowed to collect and expend fees from the
422 aforementioned accounts except that the Children with Special Needs and Child Health programs shall continue to deposit
423 30 percent of program collections to the General Fund.

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

426 § 309. Background checks for child-serving entities.

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

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

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

- 434 b. Residential child-care facilities in Delaware which are under contract with or operated directly by
435 ~~DSCYF~~; DSCYF.
- 436 c. Public and private schools, including employees of the Department of ~~Education~~; Education.
- 437 d. Child-care providers as defined in § 3002A of Title ~~14~~; or 14.
- 438 e. Youth camps or summer schools that are exempt from child-care licensing ~~requirements~~; requirements.
- 439 f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant
440 funds through the Delaware Department of Health and Social Services.
- 441 g. Early intervention service providers as defined under § 3103A of Title 14.

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

- 444 a. Has regular direct access to ~~children~~, or children.
- 445 b. Provides services directly to a child or children.

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

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

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

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

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

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

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

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

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

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

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

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

488 C. The employing contractor.

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

490 E. One person in each school or school district who ~~shall be~~ is designated to assist in the

491 processing of criminal background checks, receive training in ~~confidentiality and be~~ confidentiality, and

492 is required to sign an agreement to keep such information confidential.

493 b. Upon making its determination of suitability, the public school shall forward the determination to the
494 person seeking ~~employment~~: employment or a contract. If a determination is made to deny the person ~~from~~
495 employment or a contract based on the criminal history of the person, the person shall have an opportunity to
496 appeal to the chief school officer ~~and/or~~ or head of school or designee for reconsideration.

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

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

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

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

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

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

SYNOPSIS

This Act transfers responsibility for early intervention services for children ages birth to age 3 from the Department of Health and Social Services to the Department of Education and revises the Code to be consistent with federal law. The Individuals with Disabilities Education Act (IDEA) requires states to provide a comprehensive, coordinated, interagency, interdisciplinary early intervention services system for eligible infants and toddlers and their families. This Act requires that early intervention services be provided in compliance with all of the requirements of the IDEA, improves coordination between advisory bodies, and requires early intervention service providers to receive the same training on child abuse and the same background checks as school employees.

Specifically, this Act does all of the following:

Section 1. Creates a new Chapter 31A in Title 14 for the Infants and Toddlers Early Intervention Program.

Section 2. Transfers responsibility for the Infants and Toddlers Early Intervention Program from the Department of Health and Social Services (DHSS) under Subchapter II, Chapter 2 of Title 16 to the Department of Education (DOE) under the new Chapter 31A of Title 14, and revises the Code as follows:

1. Aligns the Code with the requirements under the federal infants and toddlers program known as Part C of the IDEA.

2. Creates duplicate sections in Title 14 regarding the confidentiality of reports and prohibiting compulsory participation in the program consistent with existing sections in Title 16.

3. Adds standard organizational language for the Interagency Coordinating Council (ICC).

4. Requires the ICC to hold at least 1 joint meeting each calendar year with the Governor’s Advisory Council for Exceptional Citizens (GACEC) because the ICC and the GACEC are the 2 Delaware agencies that advise the Department of Education on implementation of the IDEA.

Section 3. Makes corresponding changes to Subchapter I, Chapter 2 of Title 16 to reflect the transfer of responsibility for the Infants and Toddlers Early Intervention Program to DOE.

Section 4. Adds the chair of the ICC as a member of the Early Childhood Council (ECC) and makes corresponding changes to the membership of the ECC to reflect the transfer of responsibility for the Infants and Toddlers Early Intervention Program.

Section 5. Requires the GACEC to hold at least 1 joint meeting each calendar year with the ICC because the ICC and the GACEC are the 2 Delaware agencies that advise the Department of Education on implementation of the IDEA.

Section 6. Requires early intervention service providers to receive the same child abuse and child safety awareness, prevention, detection, and reporting training as school employees.

Section 7. Makes corresponding changes to § 7904 of Title 29 reflecting the transfer of the authority to charge a fee for a service provided by Child Development Watch from DHSS to DOE.

Section 8. Requires early intervention service providers to receive the same background checks as other child-serving entities and makes corresponding revisions to the procedures to obtain and review the information received from these background checks.

Section 9. Delays the implementation of this Act until July 1, 2023 to provide time for the transfer of the program, including the promulgation of regulations.

Section 10. Provides that this Act is known as the “Infants and Toddlers Early Intervention Act”.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Act requires a greater than majority vote for passage because § 11(a) of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose a fee.

Author: Senator Sturgeon