

Early Intervention Program

Effective date: 11/30/16

### **SUMMARY OF EXPRESS TERMS**

This notice of proposed rulemaking amends 10 NYCRR Subpart 69-4, which governs the Early Intervention Program (EIP), to begin to conform to federal regulations issued by the U.S. Department of Education (34 CFR Parts 300 and 303) and to conform to recent amendments to Title II-A of Article 25 of the Public Health Law (PHL).

Section 69-4.1(b) is revised to include “initial” procedures in the definition of “assessment”; the current definition only refers to “ongoing” procedures. The term “dominant language,” as defined in § 69-4.1(j), is amended to provide that when used with respect to an individual who is limited English proficient, “dominant or native language” means the language or mode of communication normally used by the individual; or, in the case of a child, the language normally used by the child’s parent. New paragraphs (1) and (2) are added to § 69-4.1(j), to clarify that: for evaluations and assessments of the child, dominant or native language means the language normally used by the child, if determined developmentally appropriate by qualified personnel conducting the evaluation and assessment; and that when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, “dominant or native language” means the mode of communication normally used by the individual.

The regulation amends the definition of “early intervention services” at subdivision (l)(1)(i) of § 69-4.1, by adding new clauses (a) through (e) that establish the five developmental domains to be addressed in individualized family service plans (IFSPs).

The definitions of “assistive technology” in § 69-4.1(1)(2)(i) and “health services” in § 69-4.1(1)(2)(xviii)(c)(5) are amended to exclude devices that are surgically implanted. Section 69-4.1(1)(2)(xviii)(c)(5)(i) and (ii) are added to clarify that: the exclusion of surgically implanted devices from the definition of assistive technology devices does not limit the child’s right to receive early intervention services that are identified in the child’s IFSP; and that the exclusion does not prohibit a provider from routinely checking that a hearing aid or external components of a surgically implanted device of a child with a disability are functioning properly.

A definition for “sign language and cued language services” is added at § 69-4.1(1)(2)(xiii). The definition of IFSP in § 69-4.1(w)(1)-(3) is amended to include the early intervention official in the team developing the IFSP, to add a reference to § 69-4.8 which sets forth procedures for evaluation and assessment, and to indicate that the IFSP must include matters specified in § 69-4.11 related to IFSP procedures and requirements. A new paragraph (4) is added to incorporate the timeliness requirement from federal regulations for implementation of the IFSP.

Subdivision (ao) of § 69-4.1 is amended to clarify the term “personally identifiable information” means the same as the term as defined in the federal Family Educational Rights and Privacy Act (FERPA), except that the term “student” and “school” as used in FERPA means “child” and “early intervention service providers,” respectively.

Section 69-4.2, regarding the Early Intervention/Public Health Official's role in the Child Find System, is modified to add a new subdivision (b) to clarify that the Early Intervention Official (EIO) is not required to provide a multidisciplinary evaluation and assessment, or convene an IFSP meeting, for a child referred to the Early Intervention Program fewer than 45 days before his or her third birthday. Under these circumstances, the EIO must refer the child directly to the Committee on Preschool Special Education (CPSE) of the local school district in which the child resides. Section 69-4.3(a) is amended to add new primary referral sources included in federal regulation (including public agencies and staff in the child welfare system, domestic violence shelters and agencies, and homeless family shelters).

Service coordination responsibilities are amended in § 69-4.6(b) and (c) to conform to federal regulations. Section 69-4.6(b)(1) is amended to clarify that the responsibility to assist families in accessing services includes referring families to providers for needed services identified in the IFSP and making appointments for early intervention and other services. Section 69-4.6(b)(3) is amended to clarify that service coordinators are responsible for coordinating services provided to the family, and to add educational and social services as examples of the types of services requiring coordination. Section 69-4.6(b)(4) is amended to establish that written parental consent for services initiates the timeline within which services must be delivered. Section 69-4.6(c)(3) and (c)(4) are amended to clarify that service coordinators are responsible for referral and other activities to assist families in identifying available service providers, and for coordinating, facilitating, and monitoring early intervention services to ensure services are delivered timely.

New paragraphs (5), (6), and (9) are added to § 69-4.6(c), to require service coordinators to conduct follow-up activities to ensure services are provided, inform families of their rights and procedural safeguards, and coordinate the funding sources for services.

Multiple revisions are made to § 69-4.11, regarding IFSPs. More specifically, subparagraphs (i) and (ii) are added to § 69-4.11(a)(1) to identify the exceptional family circumstances under which the 45-day timeline from referral to initial IFSP meeting does not apply, including unavailability of the child or family or lack of parental consent to conduct the initial evaluation and assessment after documented repeated attempts. Clarification is provided in § 69-4.11(a)(7) and (9), consistent with federal requirements, that all members of the IFSP team, which includes the EIO, the parent, and other members specified in regulation, must agree on the IFSP for the plan to be deemed final.

Consistent with federal regulation, § 69-4.11(a)(10)(iv) is amended to require that the IFSP includes pre-literacy, language, and numeracy skills, as developmentally appropriate for the child. Section 69-4.11(a)(10)(viii) is amended to require the IFSP to include, to the extent appropriate, a statement of other services, including medical services, that the child and family needs or is receiving through other sources but are not required or funded by the early intervention program, and a description of the steps the service coordinator or family may take to assist the child and family in securing those other services. To comply with federal regulation and PHL § 2545(10), § 69-4.11(a)(10)(x) is amended to indicate that the projected dates for initiation of services must be as soon as possible, but no later than 30 days after the parent provides written consent for the services. The language further provides that if the parent and

other members of the IFSP team determine that IFSP services must be initiated more than 30 days after the written parental consent is obtained, the services must be delivered no later than 30 days after the projected date of initiation of those services in the IFSP.

Section 69-4.11(a)(10)(xiii)(a), which governs transition activities is amended. Section 69-4.11(a)(10)(xiii) is amended to conform with federal regulations by specifying that the transition plan is a component of the IFSP and must include the services needed to facilitate the child's transition to other services. Section 69-4.11(a)(10)(xiii)(a)(1) and (2) are revised to reflect amendments to PHL § 2548 that place upon the service coordinator the responsibility to notify CPSE of a child's potential eligibility for services under Education Law § 4410, unless the parent objects; and to refer the child to CPSE, with parental consent. Section 69-4.11(a)(10)(xiii)(a)(4) is revised to reflect amendments to PHL § 2548 which require the service coordinator to convene a transition conference, with parental consent, to discuss services and program options and to establish a transition plan.

Regulations governing the systems complaint process at § 69-4.17 are amended to conform to federal regulations with respect to the filing of complaints. Section 69-4.17(i)(1)(i) clarifies that complaints must be submitted in writing. Section 69-4.17(i)(1)(ii) adds a new limitation of one year in which to file a complaint. Section 69-4.17(i)(1)(iii) requires a complainant to forward a copy of the complaint to the early intervention official, to any providers who are the subject of the complaint, and to the child's service coordinator, at the same time that the complaint is submitted to the Department. New subparagraph (iv) is added to § 69-4.17(i)(1) to delineate new required contents of a complaint, including: a statement of the alleged violation of a requirement

of federal Part C regulations of the Individuals with Disabilities Education Act or the Public Health Law or regulations that govern the Early Intervention Program; the factors on which the complaint is based; and the signature and contact information of the complainant.

Section 69-4.17(i)(1)(v) is added to require that a complaint alleging a violation with respect to a specific child must include the name, date of birth and address of the child; the name of the provider, service coordinator and municipality serving the child; a description of the nature and facts surrounding the complaint; and a proposed resolution to the extent known at the time the complaint is filed. Section 69-4.17(i)(2) is amended to replace the term “allegation” with “complaint” for consistency.

Amendments to § 69-4.17(i)(3) are to help ensure complainants are informed of the opportunity to submit additional information regarding the complaint; the option to engage in mediation; the right of the complainant to receive a written decision; and the opportunity for the subject of the complaint to respond to the complaint. Federal regulations, at 34 CFR 303.434(b)(3), require the complaint to include the signature and contact information for the complainant; for conformance, language regarding confidentiality for the complainant is removed from § 69-4.17(i)(3)(iii).

New § 69-4.17(i)(4) is added to permit extension of the complaint investigation timeline under certain conditions. Renumbered § 69-4.17(i)(5)(i) affords the subject of a complaint the opportunity to respond to the complaint. Section 69-4.17(i)(5)(ii) allows the Department to conduct an on-site investigation of the complaint, if necessary. Section 69-4.17(i) is also amended to remove the requirement to provide justification if the Department does not complete

an on-site component of the complaint investigation. Section 69-4.17(i)(6) is amended to specify that the corrective action that the Department may require in response to an investigation of a complaint may include technical assistance or other actions described by the Department. New § 69-4.17(i)(7)-(9) specify procedures when a written complaint received is also the subject of an impartial hearing. New § 69-4.17(i)(10) clarifies that all parties, including parents, may request assistance from the Department in resolving concerns or problems related to the delivery of early intervention services, provided that the party is notified of the availability of complaint procedures upon receipt of the request by the Department.

Section 69-4.20, which sets forth procedures for the transition of children from the Early Intervention Program to other early childhood services, is amended to conform to amendments to PHL § 2548 by transferring the responsibility for transition of a child from the EIP to preschool special education programs and services from the EIO to the child's service coordinator. Section 69-4.20 is also amended to conform with federal regulations. Specifically, section 69-4.20(a) is amended to clarify that a transition plan is developed as part of the IFSP for every child exiting the EIP. Section 69-4.20(a)(1) specifies the timeframes for convening a transition conference for a child potentially eligible for preschool services under Education Law § 4410. Section 69-4.20(a)(2) adds a new requirement that reasonable efforts be made to convene a transition conference for a child not potentially eligible for preschool services to discuss other appropriate services the child may receive. Section 69-4.20(a)(3) clarifies that all meetings to develop the transition plan must meet the requirements for IFSP meetings in § 69-4.11(a)(2)-(5). Section 69-4.20(a)(4) requires the IFSP be developed with the child's family and specifies the required contents of the transition plan.

New § 69-4.20(b)(1)(iv) is added to require the service coordinator to confirm the transmission of the notification of a child's potential eligibility for services under Education Law § 4410.

Section 69-4.20(b)(4) is amended to clarify timelines for the transition conference for a child potentially eligible for services under Education Law § 4410.

Section 69-4.30(c)(3), on reimbursement for early intervention services, is amended to authorize a service coordination rate methodology on a per month, per week, and/or service component basis with prior written notice to Early Intervention Officials.



Pursuant to the authority vested in the New York State Department of Health by Public Health Law Section 2559-b, Subpart 69-4 of Chapter II of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective immediately upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (b) of section 69-4.1 is amended to read as follows:

(b) Assessment means initial and ongoing procedures used to identify: (1) the child's unique needs and strengths and the services appropriate to meet those needs; and, (2) the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant and toddler with a disability.

Subdivision (j) of section 69-4.1 is amended and new paragraphs (1) and (2) are added to read as follows:

(j) Dominant or native language, when used with respect to an individual who is limited English proficient, means the language or mode of communication normally used by that individual, or in the case of the child, the language normally used by the parent of an eligible or potentially eligible child, [including braille, sign language, or other mode of communication.] except that:

(1) For evaluations and assessments conducted pursuant to section 69-4.8 of this Subpart, dominant or native language means the language normally used by the child, if determined

developmentally appropriate for the child by qualified personnel conducting the evaluation and assessment.

(2) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, dominant or native language means the mode of communication that is normally used by the individual.

Subdivision (l)(1)(i) of section 69-4.1 is amended to add new clauses (a) - (e) as follows:

(l) Early Intervention Services means:

(1) services that are:

(i) designed to meet the developmental needs of children eligible under this program and the needs of the family related to enhancing the child's development in accordance with the functional outcomes specified in the individualized family service plan[;], in one or more of the following areas of development, including:

(a) physical;

(b) cognitive;

(c) communication;

(d) social or emotional; or

(e) adaptive;

Subparagraph (i) of section 69-4.1(1)(2) is amended to read as follows:

(i) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. This does not include a

medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

Subparagraphs (xiii) – (xviii) of section 69-4.1(1)(2) are renumbered to be (xiv) – (xix), a new subparagraph (xiii) is added to section 69-4.1(1)(2), and a new subclause (5) is added to renumbered section 69-4.1(1)(2)(xviii)(c), as follows:

(xiii) Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

[(xiii)] (xiv) Social work services, including:

(a) making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(b) preparing a social/emotional developmental assessment of the child within the family context;

(c) providing individual and family-group counseling with parents and other family members, and appropriate social skill building activities with the child and parents;

(d) working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(e) identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

[(xiv)] (xv) Special instruction, including:

(a) the design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(b) curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(c) providing families and any primary caregivers (e.g., child care providers) with information, skills, and support related to enhancing the skill development of the child; and

(d) working with the child to enhance the child's development.

[(xv)] (xvi) Speech-language pathology, including:

(a) identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(b) referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

(c) provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

[(xvi)] (xvii) Vision services, including:

(a) evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(b) referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(c) communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

[(xvii)] (xviii) Health Services means services necessary to enable a child to benefit from the other early intervention services during the time that the child is receiving other early intervention services. The term includes:

(a) such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(b) consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(c) The term health services does not include the following:

(1) services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); [or]

(2) services that are purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose)[.];

(3) devices necessary to control or treat a medical condition[.];

(4) medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children[.]; or

(5) services that are related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.

(i) Nothing in this Subpart shall limit the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.

(ii) Nothing in this Subpart shall prevent the provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly.

[(xviii)] (xix) Transportation and related costs includes the cost of travel (e.g., mileage or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable an eligible child and the child's family to receive early intervention services.

Paragraphs (1) - (3) of section 69-4.1(w) are amended, and a new paragraph (4) is added as follows:

(w) Individualized family service plan (IFSP) means a written plan for providing early intervention services to a child eligible for the Early Intervention Program and the child's family.

The plan must:

(1) be developed jointly by the family, [and] appropriate qualified personnel involved in the provision of early intervention services, and the early intervention official;

(2) be based on the evaluation and assessment described in section 69-4.8 of this Subpart; [and]

(3) include matters as specified in section 69-4.11 of this Subpart[.]; and

(4) be implemented as soon as possible once written parental consent for the early intervention services in the IFSP is obtained.

Subdivision (ao) of Section 69-4.1 is amended as follows:

(ao) Personally identifiable information shall mean the same as “personally identifiable information” as defined in 34 CFR 99.3 of the Family Educational Rights and Privacy Act (FERPA), except that the term “student” and “school” as used in FERPA shall mean “child” and “early intervention service provider”, respectively, as used in this Subpart, and includes:

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Section 69-4.2 is amended to add a new subdivision (b) as follows:

(b) If a child is referred to the early intervention program fewer than 45 days before the child’s third birthday and is potentially eligible for services under section 4410 of the Education Law, the early intervention official, with parental consent, shall refer the child to the committee on preschool special education (CPSE) of the local school district in which the child resides and, is not required to conduct an evaluation, assessment, or initial IFSP meeting for the child.

Subdivision (a) of section 69-4.3 is amended as follows:

(a) The following primary referral sources shall, within two working days of identifying an infant or toddler who is less than three years of age and suspected of having a disability or at risk of having a disability, refer such infant or toddler to the official designated by the municipality, unless the child has already been referred or unless the parent objects: all individuals who are qualified personnel; all approved evaluators, service coordinators, and providers of early

intervention services; hospitals; child health care providers; day care programs; local health units; local school districts; local social service districts including public agencies and staff in the child welfare system; public health facilities; early childhood direction centers; domestic violence shelters and agencies; homeless family shelters; and, operators of any clinic approved under article 28 of Public Health Law, article 16 of the Mental Hygiene Law, or article 31 of the Mental Hygiene Law.

Paragraphs (1), (3) and (4) of section 69-4.6(b) are amended as follows:

(b) Service coordination shall be an active ongoing process that involves:

(1) assisting parents of eligible infants and toddlers in gaining access to the early intervention services and other services identified in the individualized family service plan, including making referrals to providers for needed early intervention services and other services identified in the IFSP, and scheduling appointments for infants and toddlers with disabilities and their families;

(2) ensuring the individualized family service plan outcomes and strategies reflect the family's priorities, concerns and resources, and that changes are made as the family's priorities, concerns and resources change;

(3) coordinating the provision of early intervention services and other services (such as educational, social, and medical services for other than diagnostic and evaluation purposes) that the infant or toddler and the family needs or is receiving;

(4) facilitating the timely delivery of [available] early intervention services as soon as possible after written parental consent for the services in the IFSP is obtained; and



(5) continuously seeking the appropriate services and situations necessary to benefit the development of the child for the duration of the child's eligibility.

Paragraphs (3) and (4) of section 69-4.6(c) are amended and new paragraphs (5) and (6) are added, paragraphs (5) – (6) are renumbered to be (7) – (8), new paragraph (9) is added, and paragraph (7) is renumbered to be (10) as follows:

(c) Specific service coordination activities shall include:

(1) coordinating the performance of evaluations and assessments;

(2) facilitating and participating in the development, review and evaluation of individualized family service plans;

(3) conducting referral and other activities to assist [assisting] families in identifying available early intervention program service providers;

(4) coordinating, facilitating, and monitoring the delivery of early intervention services to ensure that the services are provided and in a timely manner;

(5) conducting follow-up activities to determine that appropriate early intervention services are being provided and in a timely manner;

(6) informing families of their rights and procedural safeguards;

[(5)] (7) informing families of the availability of advocacy services;

[(6)] (8) coordinating with medical and health care providers, including a referral to appropriate primary health care providers as needed; [and]

(9) coordinating the funding sources for services required under this Subpart; and

[(7)] (10) facilitating the development of a transition plan to preschool services if appropriate or to other available supports and services.

Paragraph (1) of Section 69-4.11(a) is amended and new subparagraphs (i) – (iii) are added as follows:

(1) If the evaluator determines that the infant or toddler is an eligible child, the early intervention official shall convene a meeting of the IFSP team within 45 days of the receipt of the child's referral, to develop the initial IFSP, [except under exceptional circumstances, including illness of the child or parent.] provided however that such timeline does not apply for any period when:

(i) the child or parent is unavailable to complete the initial evaluation and assessment of the child and family or is unavailable for the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records and the multidisciplinary evaluation, and the initial evaluation and assessment and the initial IFSP meeting are completed as soon as possible after the exceptional family circumstances no longer exist; or

(ii) the parent has not provided timely consent for the initial evaluation and assessment of the child despite documented repeated attempts by the evaluator to obtain parental consent, and the initial evaluation and assessment and the initial IFSP meeting are completed as soon as possible after parental consent has been obtained for the initial evaluation and assessment of the child.

Paragraph (a)(7) of section 69-4.11 is amended as follows:

(7) If the IFSP team members, including the early intervention official and the parent, agree on the initial or subsequent IFSPs, the IFSP shall be deemed final and the ongoing service coordinator shall be authorized to implement the plan.

Paragraph (a)(9) of section 69-4.11 is amended as follows:

(9) If the IFSP team members, including the early intervention official and the parent, do not agree on an IFSP, the service coordinator shall implement the sections of the proposed IFSP that are not in dispute, and the parent may exercise his or her due process rights to resolve the dispute.

Subparagraph (a)(10)(iv) of section 69-4.11 is amended as follows:

(iv) a statement of the measurable results or measurable outcomes expected to be achieved for the child and the family (including pre-literacy and language and numeracy skills, as developmentally appropriate for the child), including timelines, and the criteria and procedures that will be used both to determine whether progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services is necessary;

Subparagraph (a)(10)(viii) of section 69-4.11 is amended as follows:

(viii) to the extent appropriate, a statement of other services, including medical services, [that are not required under this program but are needed by the child and family and the payment mechanism for these services (listing of non-required services does not constitute responsibility for payment of those services on the part of the municipality);] that the child and family needs or is receiving through other sources, but that are neither required nor funded by the program. If

such services are not currently being provided, the IFSP shall include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services;

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Subparagraph (a)(10)(x) of section 69-4.11 is amended as follows:

(x) the projected dates for initiation of services, which date must be as soon as possible but no later than 30 days after the parent provides written consent for the services in the IFSP or any subsequent amendments to the IFSP, [as soon as possible after the IFSP meeting] and the anticipated duration of these services[;], provided however that: if the parent and other members of the IFSP team determine that one or more types of service(s) included in the IFSP must appropriately be initiated more than 30 days after the parent provides written consent for the services in the IFSP, such service(s) must be delivered no later than 30 days after the projected date of initiation of such service(s) as set forth in the IFSP.

Subparagraph (a)(10)(xiii) of section 69-4.11 is amended as follows:

(xiii) if applicable, establishment of a transition plan with the steps and services to be taken supporting the potential transition of the toddler with a disability to services provided under section 4410 of the Education Law, or to other services, including:

(a) discussions with and education of parents regarding potential options and other matters related to the child's transition, including:

(1) [the early intervention official] if the child is potentially eligible for services under section 4410 of the Education Law, the service coordinator shall notify the Committee on

Preschool Special Education (CPSE) of the local school district in which the child resides of the child's potential transition for services under section 4410 of the Education Law, unless the parent objects to such notification orally or in writing. The [early intervention official] service coordinator shall explain to the parent the procedures by which the parent may object to notification of the CPSE of the child's potential transition and the deadline for such objection;

(2) if the child is potentially eligible for services under section 4410 of the Education Law, the parent must timely refer, or provide consent for the [early intervention official] service coordinator to refer, the child to the CPSE of the local district in which the child resides for an evaluation to determine the child's eligibility for such services;

(3) the child's eligibility for services under section 4410 of the Education Law must be determined by the CPSE prior to the child's third birthday in order to continue receiving services in the early intervention program after the child's third birthday. If the CPSE has not made a determination of eligibility prior to the child's third birthday, early intervention services will end the day before the child turns three years of age;

(4) the requirement for the [early intervention official] service coordinator to convene, with the approval of the parent, a conference among the [service coordinator] early intervention official, the parent, and the chair or designee of the CPSE [at least] no fewer than 90 days before the child's third birthday[,], or the date on which the child is first eligible for services under section 4410 of the Education Law, and at the discretion of all parties, no more than nine months prior to the child's third birthday, to discuss any services the child may receive under the Education Law, review the child's program options and establish a transition plan [if that date is earlier than the child's third birthday]; and

\* \* \*

Subdivision (i) of section 69-4.17 is amended as follows:

(i) Availability of Complaint Procedures.

(1) All complaints alleging violations of laws, rules and regulations by a State early intervention service agency, early intervention official, or provider approved to deliver early intervention services shall be submitted by a parent, representative of the parent or any other individual or entity to the department of Health for investigation and resolution. For the purpose of this section, *provider* refers to evaluators, service providers and service coordinators.

(i) Complaints shall be submitted in writing to the department [, unless a person or entity has just cause for submitting an oral complaint].

(ii) The complaint shall allege a violation of laws, rules or regulations that occurred not more than one year prior to the date that the complaint is received.

(iii) The party filing the complaint must forward a copy of the complaint to the early intervention official, any provider who is the subject of the complaint, and to the service coordinator of the child named in the complaint, at the same time the party files the complaint with the Department.

(iv) The complaint shall include:

(a) a statement that the Department, municipality, or provider has violated a requirement of Part C, Title 34 of the Code of Federal Regulations, Title II-A of Article 25 of the Public Health Law; or Subpart 69-4: Early Intervention Program regulations;

(b) the facts on which the complaint is based; and

(c) the signature and contact information for the complainant.

(v) If alleging violations with respect to a specific child, the complaint shall also include:

(a) the name, date of birth, and address of the residence of the child;

(b) the name of the provider(s), service coordinator, and municipality serving the child;

(c) a description of the nature of the problem associated with the child, including facts relating to the problem; and

(d) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(2) All investigations shall be completed within 60 calendar days of the receipt of [the allegation] the complaint by the department of Health.

(3) Upon receipt of a complaint the complainant shall be informed of the following:

(i) the procedures governing the investigation;

(ii) the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(iii) the opportunity for a parent who has filed a complaint to voluntarily engage in mediation, in accordance with section 69-4.17(g) of this Subpart;

[(ii)] (iv) the right of the complainant to receive a [copy of the final report and to appeal the findings and decision of the report to the United States Secretary of Education] written decision that addresses each allegation in the complaint, contains findings of fact and conclusions, and describes the reasons for the final decision; and

[(iii)] (v) that the subject of the complaint shall have the opportunity to respond to the complaint [the right to confidentiality of all personally identifying information unless the complainant provides written consent for its release].

(4) The Department may permit an extension of the time limit of the issuance of a written decision under paragraph (2) of subdivision (i) of this section only if:

(i) exceptional circumstances exist with respect to a particular complaint; or

(ii) the parent (or individual or organization) and the Department, municipality, or provider involved agree to extend the time to engage in mediation pursuant to subparagraph (i)(3)(iii) of this section.

[(4)] (5) The investigation of any complaint shall include:

(i) [a determination of the need for conducting an on-site investigation.] the opportunity for the subject of the complaint to respond to the complaint;

(ii) an on-site investigation, if the Department determines it is necessary;

[(a) In the event of a determination that an on-site investigation is unnecessary, the State early intervention service agency shall document the reasons and include a justification for such decision in its final report.

(ii) (iii) provision for an interview of the complainant; any person named in the allegation; and, any person who is likely to have relevant information pertaining to the allegation; and

[(iii)] (iv) provision for the receipt of any documentation which may confirm or deny the substance of the allegation.

[(5)] (6) Upon completion of an investigation a determination shall be made by the department as to whether the allegation is substantiated and the complainant and subject of the investigation shall be notified in writing of such determination.

(i) Upon completion of [a complaint] an investigation resulting in substantiation of one or more allegations, the department may require corrective action be taken by the subject of the investigation and, where the subject is an approved individual or agency, may take such other



actions, including but not limited to actions in accordance with section [69-4.5(a)] 69-4.24 of this Subpart.

(ii) Written notification shall include:

(a) the findings and determination of the merit of each allegation; and

(b) where applicable, corrective actions to be taken which may include participation in technical assistance or other actions prescribed by the Department.

(iii) Corrective action plans developed by the subject of an investigation shall be submitted for approval to the department.

(a) At a minimum, the corrective action plan shall specify the date by which the plan shall be implemented and procedures for implementation.

(7) If a written complaint is received and it is the subject of an impartial hearing, or it contains multiple issues of which one or more are part of such a hearing, the Department shall set aside any part of the complaint that is being addressed in the impartial hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the impartial hearing shall be resolved using the time limit and procedures described in this section.

(8) If an issue raised in a complaint filed under this section has previously been decided in an impartial hearing involving the same parties, the impartial hearing decision shall be binding on that issue.

(9) A complaint alleging the Department, a municipality, service coordinator, or provider's failure to implement an impartial hearing decision shall be resolved by the Department.

(10) Nothing herein regarding the filing of complaints shall prohibit the Department or any party, including a parent, representative of the parent, or any other individual or entity, from

communicating with the Department orally or in writing, from responding to requests for assistance in resolving any concerns or problems related to the delivery of early intervention services; provided, however, that such parties shall be informed by the Department of the availability of complaint procedures.

Section 69-4.20 is amended as follows:

(a) A transition plan shall be [developed] established in the IFSP to ensure a smooth transition for every child [transitioning from] exiting the Early Intervention Program [to programs under Education Law, section 4410, and/or to other early childhood services].

(1) If the child may be eligible for preschool services under section 4410 of the Education Law, the service coordinator, with parental consent, shall convene a conference among the early intervention official, the parent, and the chairperson of the CPSE or designee, not fewer than 90 days, and at the discretion of all parties, not more than nine months before the child's third birthday to discuss any services the child may receive under education law.

(2) If the child is not potentially eligible for preschool services under section 4410 of Education Law, the service coordinator, with parental consent, shall make reasonable efforts to convene a conference among the early intervention official, the parent, and providers of other appropriate services for the toddler to discuss appropriate services that the child may receive, including early education, Head Start, Early Head Start, child care programs or other appropriate services.

[ (1) ] (3) All meetings to [discuss] develop the transition plan, including the transition conference, must be at a time and place mutually convenient to all participants and must meet all requirements pertaining to IFSP meetings in section 69-4.11(a)(2)-(5) of this Subpart.

[2)] (4) The transition plan established in the IFSP must be developed with the child's family and shall include procedures to prepare the child and family for changes in service delivery, including:

(i) a review of program and service options for the child from the child's third birthday through the remainder of the program year, if appropriate;

(ii) steps for the child and his or her family to exit from the Early Intervention Program;

(i) (iii) steps and services to help the child adjust to and function in a new setting;

(ii) (iv) procedures to prepare program staff or individual qualified personnel who will be providing services to the child to facilitate a smooth transition; and

(iii) (v) transition services and other activities that the IFSP participants determine are needed by the child and family to support the transition of the child [with parental consent, the service coordinator shall incorporate the transition plan into the individualized family service plan].

(b) [At least 120] For children thought to be eligible for services under section 4410 of the Education Law, not fewer than 90 days prior to the child's potential eligibility for services under the Education Law, section 4410, the [early intervention official] service coordinator shall provide written notification to the committee on preschool special education of the local school district in which an eligible child resides of the potential transition of the child.

(1) The [early intervention official] service coordinator shall ensure the parent is informed in accordance with procedures in subdivision 69-4.11(a)(10)(xiii) of this Subpart of the opportunity to object to such notification prior to providing notice to the CPSE of the child's potential [transmittal] transition.

(i) The parent shall be afforded at least 30 calendar days to object, either orally or in writing, to written notification to the CPSE of the child's potential transition.

(ii) If the parent objects to such notification, the notification shall not be made, and the parent's objection shall be documented in the child's record.

(iii) If the parent does not object to such notification, the [early intervention official] service coordinator shall include the following information in the written notice to the CPSE of the child's potential transition:

(a) the child's name;

(b) the child's date of birth and date of referral to the early intervention program;

(c) the method by which the parent may be contacted, including the parent's name, address, and telephone number; and

(d) [with parent consent, such notification may also include] the name and contact information for the child's [ongoing] service coordinator who is transmitting the notification.

(iv) if notification in subdivision (b)(1)(iii) of this section is required the service coordinator must confirm, in written documentation, the transmission of the notification to the CPSE and include such documentation in the child's and family's transition plan established under section 69-4.11(a)(10)(xiii).

(2) For children in the care and custody or custody and guardianship of the commissioner of the local social services district, the [early intervention official] service coordinator shall notify the local commissioner of social services or designee of the child's potential transition.

(3) The service coordinator shall review information concerning the transition procedure with the parent and obtain parental consent for the transfer of appropriate evaluations, assessments, individualized family service plans, and other pertinent records.

(4) With parent consent, the [early intervention official] service coordinator shall convene a transition conference with the parent, service coordinator, and the chairperson of the CPSE or designee, at least 90 days prior to the child's eligibility for services under Education Law, section 4410, or no [later] fewer than 90 days before the child's third birthday, whichever is first, provided, however, that such conference shall not be held more than nine months prior to the child's third birthday, to review program options and if appropriate, establish a transition plan.

(i) The local social services commissioner may participate in the conference for children in the care and custody or custody and guardianship of the social services commissioner.

(ii) The conference may be combined with:

(a) the initial meeting of the CPSE pertaining to the child, provided, however, that such initial meeting must [convened] convene within the required timeframes for the transition conference; or

(b) the IFSP review or annual meeting that occurs closest to the child's second birthday, provided that such meeting is convened no more than nine months before the child's third birthday.

(iii) The parent may decline a transition conference; provided, however, that the parent shall be informed that the child's eligibility for services under section 4410 of the Education Law must be determined by the child's third birthday to continue receiving early intervention services after the child's third birthday and that if a determination of eligibility for services under section

4410 of the Education Law has not been made by the CPSE prior to the child's third birthday, eligibility for early intervention services will end on the day before the child's third birthday.

(a) Declination of a transition conference by the parent shall be documented in the child's record.

(b) The [early intervention official] service coordinator shall explain to the parent that if the parent declines a transition conference, the parent may refer the child to the CPSE for determination of eligibility for Education Law section 4410 services and shall provide information on how the parent may make such referral.

(c) For children thought not to be eligible for programs under Education Law, section 4410, the service coordinator shall assist the parent in the development of a transition plan to other appropriate early childhood and supportive services. The service coordinator shall assist the parent in identifying, locating, and accessing such services.

(d) With parental consent, the [early intervention official] service coordinator shall notify the committee on preschool special education of those children potentially eligible for transition to the Preschool Special Education Program but whose parents have selected to continue with early intervention services for the specified period of eligibility for the Early Intervention Program.

Paragraph (c)(3) of section 69-4.30 is amended as follows:

(3) *Service coordination* as defined in section [69-4.1(k)(2)(xi)] 69-4.1(l)(2)(xii) of this Subpart. Service coordination shall be provided by appropriate qualified personnel and billed in 15 minute units that reflect the time spent providing services in accordance with sections 69-4.6 and 69-4.7 of this Subpart, or billed under a capitation or other rate methodology as may be

established by the commissioner subject to the approval of the Director of the Budget and as specified in prior written notice provided by the Commissioner to Early Intervention Officials. Such written notice shall specify that any newly established rate methodology shall apply only to initial IFSPs and IFSP amendments made on or after the effective date of such written notice by the Commissioner. The rate methodology may be established on a per month, per week, and/or service component basis for providing service coordination services. When units of time are billed, the first unit shall reflect the initial five to 15 minutes of service provided and each unit thereafter shall reflect up to an additional 15 minutes of service provided. Except for child/family interviews to make assessments and plans, contacts for service coordination need not be face-to-face encounters; they may include contacts with service providers or a child's parent, caregiver, daycare worker or other similar collateral contacts, in fulfillment of the child's IFSP.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Early Intervention Program (EIP) is established in Title II-A of Article 25 of the Public Health Law (PHL) and implements Part C of the federal Individuals with Disabilities Education Act (IDEA). Title 34 of the Code of Federal Regulation (CFR), Part 303, regulates the implementation of Part C of IDEA and provides standards to ensure compliance with IDEA.

PHL § 2550(1) establishes the Department of Health (Department) as the lead agency responsible for the general administration and supervision of providers and services under the EIP. PHL § 2550(2) authorizes the Department to establish standards for evaluators, service coordinators, and providers of early intervention services and requires the Department to monitor agencies, institutions, and organizations providing early intervention services to ensure compliance with such standards. PHL § 2559-b authorizes the Commissioner of Health (Commissioner) to adopt regulations necessary to carry out the EIP.

### **Legislative Objectives:**

The legislative objectives of the EIP include providing a coordinated, comprehensive array of services that enhance the development of infants and toddlers with disabilities, and minimize the need for later special education services for children served under the program, in compliance with federal and state laws.



**Needs and Benefits:**

In particular, revisions to 10 NYCRR Subpart 69-4 are needed to ensure that early intervention services are delivered consistent with the PHL and federal statutes and regulations. Revisions to federal regulation, to implement the 2004 reauthorization of IDEA, at 34 CFR Part 303, adopted October 28, 2011, require conforming changes in state regulation. In addition, amendments to the PHL enacted as part of the 2012-2013 State Budget require conforming revisions to EIP regulations. The proposed rule will conform state regulations to federal regulations governing definitions, referral, service coordination, individualized family service plans (IFSP), state complaint procedures, and transition; and where applicable, with amendments to the PHL relevant to these sections. The proposed rule to allow for per month, per week, and/or service event billing for service coordination will result in efficiencies in that service coordinators would no longer be required to track billable service coordination activities.

**Costs to Regulated Parties:**

No additional cost for providers of EIP services or service coordination is anticipated to result from the proposed rule.

The proposed rule to allow for per month, per week, and/or service event billing for service coordination should result in a cost savings to regulated parties by eliminating the current requirement to track billable service coordination activities.

**Costs to the Agency, the State and Local Governments for the Implementation of and Continuing Compliance with the Rule:**

The proposed rules will result in no costs for the agency or state and local governments for implementation.

The proposed rule to allow for per month, per week, and/or service event billing for service coordination should result in a cost savings to regulated parties by eliminating the current requirement to track billable service coordination activities.

**Local Government Mandates:**

The proposed rule does not impose any new duty upon any county, city, town, village, school district, fire district, or other special district.

**Paperwork:**

Paperwork burden will be substantially reduced by revising service coordination reimbursement from a 15 minute increment to a fixed payment methodology. Providers will be required to report activities in order to receive payments, but in a manner that is more efficient than the current system of tracking each minute spent.

Paperwork requirements will be increased for complainants who file systems complaints, as complainants will be required to copy and send the complaint to several parties. The procedures for submission of complaints are consistent with requirements in federal regulations.

**Duplication:**

The proposed rules do not duplicate, overlap, or conflict with relevant rules and other legal requirements of the state and federal government.

**Alternatives:**

There are no alternatives for sections of the proposed rule pertaining to definitions, referral, service coordination, IFSPs, state complaint procedures, and transition. Amendments to these sections are necessary to comply with recently adopted federal regulations and amendments to state law.

The Department presented the proposed regulations to the Early Intervention Coordinating Council (EICC) on June 9, 2014. The EICC recommended alternative procedures to state complaint procedures to make clear that any party, including a parent, may communicate with the Department to request assistance in resolving a concern without formally filing a complaint. The proposed rule includes these alternative procedures.

The Department completed a review of current reimbursement methodology through a contract with the State Fiscal Agent and with the advice and assistance of a Reimbursement Advisory Panel of the EICC during the period 2009-2011. The Department has selected the proposed methodology best suited to achieve efficient and effective delivery of service coordination services, reduce the administrative burden to regulated parties, and maintain the quality of the program.

**Federal Standards:**

The proposed rules do not exceed any minimum standards of the federal government and will continue to keep the state in compliance with federal standards.

**Compliance Schedule:**

The sections of the proposed rules pertaining to definitions, referral, service coordination, IFSPs, state complaint procedures, and transition will be effective immediately upon adoption. These sections conform current regulation to existing requirements in federal regulations and federal and state statutes.

The Department anticipates implementing the proposed reimbursement methodology for service coordination upon approval by the Division of Budget of service coordination rates and Centers for Medicare and Medicaid Services (CMS) approval of the Medicaid State Plan Amendment (SPA). A SPA is required by CMS when the Department seeks to revise the reimbursement methodology of Early Intervention Program services provided to Medicaid recipients.

**Contact Person:** Katherine Ceroalo  
New York State Department of Health  
Bureau of House Counsel, Regulatory Affairs Unit  
Corning Tower Building, Rm 2438  
Empire State Plaza  
Albany, NY 12237  
(518) 473-7488  
(518) 473-2019 (FAX)  
[REGSQNA@health.ny.gov](mailto:REGSQNA@health.ny.gov)

## **Statement in Lieu of Regulatory Flexibility Analysis**

No Regulatory Flexibility Analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping, or other compliance requirements on small businesses or local governments.

### **Statement in Lieu of Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping, or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

## SUMMARY OF ASSESSMENT OF PUBLIC COMMENT

**Comment:** One commenter recommended further changes be made to the regulations as necessary to comply with federal regulations issued September 28, 2011.

**Response:** The Department will take this recommendation under advisement in a future regulatory amendment.

**Comment:** One commenter requested the definition of dominant language eliminate the term “dominant” and specify how native language applies to evaluation of children who are acquiring more than one language.

**Response:** The proposed amended definition is consistent with federal regulation. Current provisions in 10 NYCRR § 69-4.8(a)(14) addresses non-discriminatory evaluation and assessment procedures.

**Comment:** One commenter proposed amending the definitions for assistive technology and health services to add “or of an external component of the surgically implanted device”, consistent with federal rules pertaining to Part B of the Individuals with Disabilities Education Act (IDEA).

**Response:** The current definitions are consistent with Part C of IDEA, with operates differently from Part B.

**Comment:** One commenter disagreed with including “cued language” in the definition of early intervention services.

**Response:** The addition of “cued language” complies with federal regulations.

**Comment:** One commenter recommended the Department provide procedural guidance to municipalities and Early Intervention Program (EIP) providers when a child has been referred to EIP fewer than 45 days before his or her third birthday.

**Response:** The Department will issue procedural guidance to municipalities and EIP providers.

**Comment:** One commenter noted that the proposed rules do not address when a child is referred to EIP 45 to 90 days before the child's third birthday.

**Response:** Department guidance provides that if a child is referred to EIP but is also age-eligible for services under Education Law § 4410, and the child has a disability or developmental delay that may impact the child's education, the early intervention official (EIO) may recommend to the parent that the parent refer the child directly to the Committee on Preschool Special Education (CPSE). The initial service coordinator must also explain to the parent that to ensure that the child continues to receive services when the child turns three, either through EIP or preschool special education programs and services, the child must also be referred to CPSE and be determined eligible for services under Education Law § 4410 by the child's third birthday.

**Comment:** One commenter suggested that the complete list of referral sources included in 34 Codes of Federal Regulation (CFR) § 303.303, as well as McKinney Vento liaisons be included in 10 NYCRR Subpart 69-4.

**Response:** Nothing in regulation or statute prevents unnamed referral sources from referring a child to EIP.



**Comment:** One commenter requested clarification regarding whether service coordinators are required to schedule appointments for families for EIP services and with other service providers. Several commenters were concerned the proposed rule adds new responsibilities to service coordinators by requiring service coordinators to coordinate provisions of early intervention services and other services, including educational and social, being received by the family.

**Response:** The proposed rule conforms to revisions to a federal regulation, at 34 CFR § 303.34(b)(1).

**Comment:** One commenter recommended adding “but no later than 30 days” after “as soon as possible” in 10 NYCRR § 69-4.6(b)(4) to ensure consistency with the proposed language in 10 NYCRR § 69-4.11(a). The commenter also recommended “at the frequency and intensity authorized by the Individualized Family Service Plan” be added to this provision.

**Response:** Consistent with the new language, service coordinators are required to implement the individualized family service plan (IFSP) not later than 30 days, as agreed upon by the team and consented to by the parent, including frequency and intensity. Service coordinators should be aware of procedures set forth in regulations regarding timeframes for timely delivery of services.

**Comment:** One commenter requested clarification regarding the responsibility of service coordinators to determine appropriate early intervention services are being provided and in a timely manner.

**Response:** The Department made this clarification to the proposed amendment.

**Comment:** One commenter requested clarification regarding proposed responsibility to coordinate funding sources for services. One commenter recommended amendments to 10 NYCRR § 69-4.6(c)(9) to include “such as Medicaid enrollment, collection of insurance information, and entry of Medicaid and insurance information into the New York Early Intervention System.”

**Response:** There is no expectation service coordinators must interface with third party payers beyond current EIP regulatory requirements. Current regulation, at 10 NYCRR § 69-4.6(d), requires initial service coordinators to obtain, and parents to supply, any information and documentation to establish and periodically update an eligible child’s third party payer information.

**Comment:** One commenter expressed concern the proposed revisions maintain a separate notification and referral process for children potentially eligible for services under Education Law § 4410.

**Response:** Federal regulation 34 CFR §303.209(b)(i) requires the Department to notify the state and local education agencies of the potential transition of children. The New York State Education Department (SED) requires a separate referral, which is permitted under federal law.

**Comment:** One commenter expressed concern the proposed revisions do not address the federal requirement for State-level notification by the Department to SED.

**Response:** The comment is outside the scope of the proposed rule.

**Comment:** One commenter recommended restructuring 10 NYCRR § 69-4.11(a)(1)(i)-(iii).

**Response:** The Department has made the requested amendments.

**Comment:** One commenter recommended the Department consider that the federal regulations may not have contemplated the municipality involvement as the EIO and payer when requiring agreement on the IFSP. A recommendation was made to provide guidance to EIOs on their role with the IFSP process in developing consensus and fostering agreement.

**Response:** The Department will take these recommendations under advisement.

**Comment:** One commenter found the new language allowing for an additional 30 days for initiation of services for those services that may take more than 30 days to initiate to be confusing and unnecessary.

**Response:** The Department views the proposed regulation as necessary since, as there are a variety of circumstances when an IFSP team may decide a service appropriately be initiated later than 30 days from the parent's consent to the IFSP.

**Comment:** One commenter stated the proposed regulations on complaint procedures are more burdensome to parents than what is required by federal regulations. One commenter noted the requirement that a complaint include a statement that there has been a violation to Part C of IDEA does not mirror federal regulation, expressing concern that requiring a statement on violation of State law and regulation would be difficult for parents to understand.

**Response:** The Department finds the proposed rule to be consistent with federal requirements under 34 CFR § 303.434(b)(1).

**Comment:** One commenter requested that the Department offer assistance to families who wish to utilize the systems complaint process. The commenter also proposed requiring collection of data on informal complaints and report the data to the public.

**Response:** The Department agrees there will be a need to produce materials and information and to provide support to families and others in the systems complaint process. The Department will examine the feasibility of collection of data on informal complaints.

**Comment:** Commenters expressed concern that revising the notification timeline, from 120 days to “not fewer than 90 days prior to the child’s potential eligibility for services under the Education Law, section 4410” will negatively impact timely completion of the child’s transition. One commenter expressed concern regarding conflicting timelines for convening of the transition conference contained within proposed regulations.

**Response:** The proposed regulations align with federal requirements under 34 CFR § 303.209(b) and are consistent with the current timelines required for a child’s transition from EIP to services under Education Law § 4410. Additionally, there is nothing to prohibit earlier notification, but no sooner than nine months prior to the child’s third birthday, to CPSE.

**Comment:** One commenter suggested the Department withdraw proposed regulations on transition.

**Response:** The proposed regulations are required to comply with federal regulations for Part C.

**Comment:** One commenter recommended the State notify CPSE of the potential transition of children to services under Education Law § 4410 by directly supplying lists of potentially eligible children.

**Response:** Due to the high volume of children exiting EIP each year statewide, it would not be feasible to create timely and complete lists, and securely transmit such lists from the Department to many different CPSEs.

**Comment:** One commenter noted current and proposed regulations that allow parents to orally object to notification to CPSE of a child's potential eligibility for services under Education Law § 4410 is not consistent with federal requirements.

**Response:** Consistent with federal regulations, a parent's oral objection, when documented, is equivalent to objecting in writing.

**Comment:** One commenter noted the proposed regulations do not include federal requirements that provide an option for parents to extend EIP services beyond a child's third birthday.

**Response:** The federal requirements referenced apply only to those states that participate in the Birth to Six option. New York has not elected to participate in this option.

**Comment:** One commenter noted the responsibility has shifted from the EIO to the service coordinator to explain that if the parent declines a transition conference, the parent may refer the child to CPSE for determination of eligibility. The commenter noted that a parent who declines a transition conference may not object to notification or referral of the child by the EIO to the CPSE for preschool special education evaluations.

**Response:** Under Part C of IDEA, the Department is required to notify the state education agency and ensure local education agencies are notified of potential transitions. SED requires a separate referral, which is permitted under federal law.

**Comment:** One commenter expressed concern that CPSE's required participation in transition conferences will result in a compliance problem.

**Response:** Under 34 CFR §§ 303.209(c)(1) and 300.124(c), CPSE is required to be invited to, and to attend, the transition conference.

**Comment:** One commenter recommended explicitly requiring documentation of transition activities in service coordination notes and the New York Early Intervention System (NYEIS).

**Response:** Current regulation, at 10 NYCRR § 69-4.26, requires documentation in NYEIS. The Department will issue further guidance on documentation in service coordination notes and in NYEIS.

**Comment:** One commenter stated the service coordinator should attend the transition conference.

**Response:** The proposed rule requires all meetings to develop the transition plan must meet the requirements in 10 NYCRR § 69-4.11(a)(2)-(5), which requires the service coordinator to participate in the meeting.

**Comment:** One commenter asked whether EIOs, therapists, and other team members must be present in all meetings to discuss the transition plan.

**Response:** The Department has clarified that required attendees at IFSP meetings must only attend meetings to develop the transition plan.

**Comment:** One commenter asked how a fixed payment for service coordination services would work.

**Response:** The fixed rates will be based on the child and family's participation from referral to initial IFSP and on monthly rates for ongoing service coordination.

**Comment:** One commenter stated parents are concerned that a capitated service coordination rate may provide an incentive for providers to deliver the least intensive and less expensive care possible.

**Response:** The Department will monitor the impact of this rate change on timeliness of IFSP and IFSP services and other factors.

**Comment:** Commenters recommended the Department consider a number of factors and align fees with new responsibilities in setting new service coordination rates, including: intensity of child and family needs, caseloads, task-based activities, agency administrative costs, service coordinator administrative responsibilities, travel time and costs, establishment of a mechanism to assess the adequacy of rates, and supervision. A cap on caseloads was recommended and provider involvement in the development of a plan for transitioning to a fixed payment system was requested.

**Response:** In establishing new service coordination rates, the Department will take factors into consideration to ensure adequate funding for these services and will monitor implementation.

The proposed regulation requires notice to EIOs of the new rate methodology and will only apply to initial IFSPs and IFSP amendments on or after the date of such notice. The advice and assistance of the Early Intervention Coordinating Council will be sought in planning for implementation of new service coordination rates.

**Comment:** One commenter requested the Department publish service coordination rates in a proposed regulation amendment and another commenter requested the opportunity to review the methodology used by the Department.

**Response:** The Department has authority under Public Health Law § 2550 and 10 NYCRR § 69-4.30 to establish rates for EIP subject to the approval of the Division of Budget.

**Comment:** One commenter requested clarification to 10 NYCRR § 69-4.30(c)(3).

**Response:** The proposed provision allows the Commissioner to use a rate methodology, subject to the approval of the Director of the Budget, for providing service coordination services. The Commissioner must also provide prior written notice to EIOs on the rate methodology.



## **Statement in Lieu of Job Impact Statement**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

## **ASSESSMENT OF PUBLIC COMMENT**

Public comment was received from nine commenters, including the New York City Department of Health and Mental Hygiene, Agencies for Children's Therapy Services (ACTS), the New York State Alliance for Children with Special Needs, Advocates for Children of New York, Public Health Solutions, Liberty Post, Just Kids Learning Center/Family Initiatives Coordination Services Project, WonderWorld Occupational Therapy, and one individual practitioner.

To comply with federal requirements under the Individuals with Disabilities Education Act (IDEA), the New York State Department of Health (Department) also convened public hearings in Albany, New York on December 21, 2015 and statewide by webinar on December 22, 2015. Two individuals presented testimony and two representatives of organizations attended the public hearing on December 21, 2015. Ninety-seven organizations and individuals participated in the public hearing convened by webinar on December 21, 2015 (32 municipalities, one member of the New York State Senate, one parent of a child with a disability, and 63 early intervention (EI) provider agencies). No testimony was presented by attendees of the webinar. One comment was received from a participant in writing via the chat function.

All comments received during the comment period were reviewed and assessed in accordance with the provisions of the State Administrative Procedures Act. The comments are summarized below with responses.

**Comment:** One commenter expressed disappointment that the proposed regulations include only a subset of the changes that New York must make to comply with federal regulations that were issued September 28, 2011 and recommended that further changes be made within the next year.

**Response:** The Department will take this recommendation under advisement in a future regulatory amendment.

**Comment:** One commenter supported the proposed revision to the definition of dominant language, 10 NYCRR § 69-4.1(j), to include “native language” but also requested that the term “dominant” be eliminated. In addition, the commenter recommended the definition specify how the concept of native language be applied to children who are acquiring more than one language, including use of non-discriminatory procedures by evaluators when evaluating such children.

**Response:** The proposed amended definition is consistent with federal regulation. The term “dominant” language is synonymous with “native” language and appears throughout 10 NYCRR Subpart 69-4 and is being retained in the definition. With respect to the recommendation to add language related to use of non-discriminatory procedures when evaluating a child, this requirement is currently included in 10 NYCRR § 69-4.8(a)(14).

**Comment:** One commenter supported the clarification in 10 NYCRR § 69-4.1(l)(2)(xviii)(c)(5) that states surgically implanted devices are not covered under the definitions of assistive technology and health services. This commenter also proposed to add “or of an external component of the surgically implanted device” at the end of these definitions, which is included in 34 CFR § 300.113(b)(2) of the federal rules pertaining to Part B of IDEA.

**Response:** The current definition is consistent with rules applicable to Part C of IDEA in 34 CFR § 303.13(b)(1)(i), assistive technology devices, and 34 CFR § 303.16(c)(1)(iii)(B), health services. The Part C early intervention program under IDEA operates differently from the Part B special education program under IDEA. The United States Department of Education, in comments regarding 34 CFR § 303.16(c)(1)(iii)(B) published in Volume 76, No. 188 of the Federal Register (September 28, 2011), stated that “nothing in Part C of the Act or these regulations prevents an early intervention service provider from routinely checking that external components of a cochlear implant of an infant or toddler with a disability are functioning properly.”

**Comment:** One commenter disagreed with including “cued language” in the definition of early intervention services under 10 NYCRR § 69-4.1(1)(2)(xiii), on the basis that “cued language” is not a language.

**Response:** The addition of “cued language” complies with federal regulations for Part C of IDEA, 34 CFR § 303.13(b)(12).

**Comment:** One commenter fully supported the clarification to 10 NYCRR § 69-4.2(b), providing that municipalities are not required to provide an initial evaluation and assessment or convene an individualized family service plan (IFSP) meeting for a child referred to the Early Intervention Program (EIP) fewer than 45 days before his or her third birthday. A recommendation was made to provide procedural guidance to municipalities and EIP providers in implementation of this proposed rule, to ensure appropriate referrals of children for services under Education Law § 4410.

**Response:** The Department concurs with this recommendation and will issue procedural guidance on implementation of this regulation.

**Comment:** One commenter noted that the proposed rules do not address the situation in which the child is referred to EIP in the period of time from 45 to 90 days before the child's third birthday.

**Response:** Under current statute, children referred to EIP from 45 to 90 days before the child's third birthday must be determined eligible for preschool special education programs and services (PSEPS) by the date of the child's third birthday, otherwise early intervention services end the day before the child's third birthday. The Department has issued guidance that if a child is referred to EIP when the child is age-eligible for services under Education Law § 4410, and the child has a disability or developmental delay that may impact the child's education, the early intervention official (EIO) may recommend to the parent that the parent refer the child directly to the Committee on PreSchool Special Education (CPSE), rather than continue with the referral to EIP. The initial service coordinator must also explain to the parent that to ensure that the child continues to receive services when the child turns three – either through EIP or PSEPS – the child must also be referred to CPSE and be determined eligible for services under Education Law § 4410 by the child's third birthday. These requirements and guidance are consistent with federal regulations in 34 CFR § 303.209.

**Comment:** One commenter suggested that the proposed revision to 10 NYCRR § 69-4.3(a) be revised to include the complete list of referral sources included in 34 CFR § 303.303, as well as McKinney Vento liaisons.

**Response:** The current regulation and proposed revision includes broad categories of referral sources that incorporate aspects of the more specific list included in federal regulation. In addition, nothing prevents unnamed referral sources from referring a child to EIP.

**Comment:** A number of comments were received regarding proposed changes to the responsibilities of an ongoing service coordinator. These comments include:

- One commenter requested clarification regarding whether the intent of the proposed revision to 10 NYCRR § 69-4.6(b)(1) was to require service coordinators to schedule appointments for families for EIP services and with other service providers.
- Several commenters were concerned that the proposed amendment to 10 NYCRR § 69-4.6(b)(3) extends the responsibilities of service coordinators beyond the federal requirements in 34 CFR § 303.34(b)(2) and that it adds a new requirement to coordinate the provisions of early intervention services and other services, including educational and social, being received by the family.

**Response:** The proposed rule conforms to revisions to a federal regulation, at 34 CFR §303.34(b)(1), which requires that service coordinators assist families in the scheduling of appointments, and not schedule the appointments for the families. The proposed language is also consistent with current state and federal requirements for EIP service coordination services. Service coordinators are responsible for facilitating coordination of early intervention services and other services being delivered to the child and the family to promote and enhance the child's development. In this context, other services mean services, other than EIP services, that are needed by the child and the child's family in order to support the family's capacity to promote and support their child's development.

**Comment:** One commenter recommended clarifying 10 NYCRR § 69-4.6(b)(4) by adding “but no later than 30 days” after “as soon as possible” to ensure consistency with the proposed language in 10 NYCRR § 69-4.11(a). The commenter is concerned that the proposed language omits the requirement that service coordinators ensure that services are provided at the frequency and intensity authorized by the IFSP. The commenter also recommended that “at the frequency and intensity authorized by the Individualized Family Service Plan” be added to this provision.

**Response:** The current language is clear in the requirement for timely delivery of EIP services. Service coordinators are required to implement the IFSP not later than 30 days, as agreed upon by the team and consented to by the parent, including frequency and intensity. Service coordinators should be aware of the procedures set forth in regulations regarding the timeframes for timely delivery of services.

**Comment:** One commenter requested clarification on 10 NYCRR § 69-4.6(c)(5), regarding the responsibility of service coordinators to determine that appropriate early intervention services are being provided and in a timely manner.

**Response:** The Department made this clarification to the proposed amendment.

**Comment:** One commenter requested clarification regarding the proposed responsibility to coordinate funding sources for services required under 10 NYCRR § 69-4.6(c)(9). One commenter supported inclusion of language in 10 NYCRR § 69-4.6(c)(9) to maximize revenue for EIP and recommends that language be revised to be more specific, as follows: “such as

Medicaid enrollment, collection of insurance information, and entry of Medicaid and insurance information into the New York Early Intervention System.”

**Response:** This proposed revision is being made to conform with 34 CFR § 303.34. There is no expectation that service coordinators must interface with third party payers beyond current EIP regulatory requirements. Additionally, current regulations, at 10 NYCRR § 69-4.6(d), require initial service coordinators to obtain, and parents to supply, any information and documentation to establish and periodically update an eligible child’s third party payer information, including the medical assistance program, and promptly transmit the information and documentation to the EIO.

**Comment:** One commenter expressed concern that the proposed revisions to 10 NYCRR § 69-4.11(a)(10)(xiii)(a)(1)-(2) maintain a separate notification and referral process for children potentially eligible for services under Education Law § 4410.

**Response:** Federal regulation 34 CFR § 303.209(b)(i) requires the Department, as lead agency, to notify the state and local education agencies of children’s potential transition. The New York State Education Department (SED) requires a separate referral, which is permitted under federal law.

**Comment:** One commenter expressed concern that the proposed revisions to 10 NYCRR § 69-4.11(a)(10)(xiii)(a)(1) require notification to the local CPSE but do not address the federal requirement for State-level notification by the Department to SED.

**Response:** The comment is outside of the scope of the proposed rule.



**Comment:** One commenter recommended restructuring 10 NYCRR § 69-4.11(a)(1)(i)-(iii), which require the evaluation and assessment and initial IFSP be completed as soon as possible after the impediments to timely completion are removed.

**Response:** The Department has made the requested amendments.

**Comment:** One commenter indicated that the proposed revision to 10 NYCRR § 69-4.11(a)(7) is consistent with federal requirements, and recommended that the Department consider that the federal scheme, which requires agreement on the IFSP, may not have contemplated the involvement of the municipality as the Early Intervention Official and payer. A recommendation was made to provide guidance to EIOs on their role with the IFSP process in developing consensus and fostering agreement.

**Response:** The Department will take these recommendations under advisement.

**Comment:** One commenter found the new language in 10 NYCRR § 69-4.11(a)(10)(x)(a), allowing for an additional 30 days for initiation of services for those services that may take more than 30 days to initiate, to be confusing and unnecessary.

**Response:** The Department views this proposed regulation as necessary since there are a variety of circumstances when an IFSP team may decide a service appropriately be initiated later than 30 days from the parent's consent to the IFSP. Examples include supplemental evaluations, services that are delivered periodically (e.g., co-visits by two or more professionals), and services that are to be initiated later at the request of the family (such as due to absence from the county of residence during vacations, etc.).

**Comment:** Comments were received on proposed revisions to regulations on complaint procedures. The comments included:

- One commenter stated the proposed regulations in 10 NYCRR § 69-4.17(i) are more burdensome to parents than the federal requirement, which only requires parents to forward a copy of the complaint that they submit to the lead agency to the “public agency or EIS provider serving the child.” Under the proposed rule, the systems complaint must be forwarded to the early intervention official, any provider who is the subject of the complaint, and to the service coordinator of the child named in the complaint, at the same time the party files with the Department.
- One commenter noted that 10 NYCRR § 69-4.17(i), which requires a complaint to include “a statement that the early intervention services agency, municipality, or provider has violated a requirement of Part C . . .,” does not mirror federal regulations. The commenter expressed concern that parents would not understand the additional references to State law and regulations.

**Response:** The Department finds the proposed rule to be consistent with federal requirements under 34 CFR § 303.434 and consistent with the federal intent that systems complaints be resolved as expeditiously as possible. The Department notes that the proposed rule explicitly states that nothing regarding the filing of complaints shall prohibit any party, including a parent or representative of the parent, from communicating with the Department, orally or in writing, or from the Department responding to requests for assistance resolving any concerns or problems related to the delivery of early intervention services. Federal regulations, 34 CFR 303.434(b)(1), requires the complaint include a statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of IDEA. The Department views this to include state laws

and regulations necessary to ensure compliance with federal requirements for the EIP.

Complaints may be filed by any party, including parents, with respect to a violation of either federal or State law or regulations pertaining to Part C of IDEA.

**Comment:** One commenter expressed concern that these proposed changes to the systems complaint process will act as a barrier to families of infants and toddlers with disabilities from using the complaint process to address issues or concerns they experience. The commenter requested that the Department offer assistance to families who wish to utilize the systems complaint process, including use of materials developed by the National Center on Dispute Resolution in Special Education. The commenter also voiced support for 10 NYCRR § 69-4.17(i), which permits an individual to contact the Department on an informal basis to obtain assistance in resolving any concerns or complaints related to EI services. A request was made to strengthen this provision by including additional regulatory language that would require the Bureau of Early Intervention to collect data on these informal requests, particularly from families, and report the data to the public.

**Response:** The Department remains committed to ensuring families receive immediate assistance in resolving concerns about their children's early intervention services through the informal process. The Department agrees that implementation of the new federal requirements will present a need to produce materials and information, as well as provide support to families and others in the systems complaint process. The Department is committed to providing guidance, forms, technical assistance, and training to families on the systems complaint process. The Department will examine the feasibility of collection of data on informal complaints.

**Comment:** The Department received a number of comments on proposed revisions to 10 NYCRR §§ 69-4.11 and 69-4.20 on the timeline for transition from EIP to services under Education Law § 4410. Specifically, commenters expressed concern that revising the notification timeline, from 120 days to the proposed “not fewer than 90 days prior to the child’s potential eligibility for services under the Education Law, section 4410” will negatively impact timely completion of the child’s transition. In addition, a commenter expressed similar concern regarding conflicting timelines for convening of the transition conference contained within proposed regulations.

**Response:** Federal requirements under 34 CFR § 303.209(b)(1) require notification to be not fewer than 90 days if the toddler may be eligible for services under Part B of IDEA. The proposed regulations align with this federal requirement. Furthermore, the proposed revisions are consistent with and do not conflict with current timelines required for children’s transition from EIP to services under Education Law § 4410. Under the proposed timelines, all required actions related to a child’s potential transition to services under Education Law § 4410 must occur between at least 90 days prior to the child’s third birthday and no more than nine months prior to the child’s third birthday. As such, there is nothing to prohibit notification to CPSE 120 days, or earlier, prior to the date the child is first eligible for services under Education Law § 4410. Department guidance will continue to encourage implementation of all transition requirements as early as possible and within the federally-required timeframe.

**Comment:** One commenter suggested the Department withdraw proposed regulations with respect to transition and form a short-term work group to study the federal requirements and determine how to develop the most effective transition process in New York.

**Response:** The proposed regulations, including the provisions on transition, are required to comply with federal regulations for Part C of IDEA.

**Comment:** One commenter recommended that the State should fulfill the obligation in 10 NYCRR § 69-4.20(b) to notify CPSE of the potential transition of children to services under Education Law § 4410 by directly supplying lists of potentially eligible children.

**Response:** Due to the very high volume of children exiting EIP each year statewide (approximately 17,000 toddlers), it would not be feasible to create timely and complete lists of children potentially eligible for services at the state level, and securely transmit such lists from the Department to many different CPSEs.

**Comment:** One commenter noted that current and proposed regulations in 10 NYCRR § 69-4.20(b)(1)(i) that allow parents to orally object to notification to CPSE of a child's potential eligibility for services under Education Law § 4410 is not consistent with federal requirements in 34 CFR §303.401(e).

**Response:** Current regulation in 10 NYCRR § 69-4.20(b)(1)(ii) requires that if the parent objects to notification to CPSE of the child's potential eligibility for services under Education Law § 4410, the parent's objection must be documented in the child's record. This is equivalent to objecting in writing. New York State's "opt out" policy was reviewed and accepted by the United States Department of Education, Office of Special Education programs prior to incorporation in this proposed regulation.

**Comment:** One commenter noted that the proposed regulations do not include key requirements outlined in federal law and regulations for Part C lead agencies, such as the Department, that provide an option for parents to extend EIP services beyond a child's third birthday.

**Response:** The Department notes that the requirements in 34 CFR § 303.211(b) apply only to those states that participate in the Birth to Six option. New York State has not elected to participate in the Birth to Six option, and therefore these requirements do not apply.

**Comment:** One commenter noted that under proposed revisions to 10 NYCRR § 69-4.20(b)(4)(iii)(b), the responsibility has shifted from the EIO to the service coordinator to explain that if the parent declines a transition conference, the parent may refer the child to CPSE for determination of eligibility. The commenter acknowledged that this is only a shift in the party responsible for fulfilling this requirement. The commenter noted that a parent who declines a transition conference may not object to notification or referral of the child by the EIO to the CPSE for preschool special education evaluations.

**Response:** The Department notes that the proposed and current regulations in 10 NYCRR § 69-4.20(b) allow for the circumstance where a parent declines a transition conference, but does not object to notifying CPSE of the child's potential eligibility for services under Education Law § 4410. It is important to retain the requirement that parents be informed about the CPSE referral process, to ensure timely eligibility determinations and continuation of services for the child and family. Under Part C of IDEA, the Department is required to notify the state education agency and ensure local education agencies are notified of children's potential transition. SED requires a separate referral, which is permitted under federal law.

**Comment:** One commenter fully supported the clarification of transition requirements and their alignment with federal regulations in proposed revisions to 10 NYCRR § 69-4.20. The commenter expressed concern that the requirement that transition conferences include CPSE will result in a compliance problem, since CPSE members are frequently unable to attend these meetings.

**Response:** The Department notes that under 34 CFR §§ 303.209(c)(1) and 300.124(c), CPSE is required to be invited to, and to attend, the transition conference convened for a child and family transitioning from Part C of IDEA to Part B of IDEA.

**Comment:** One commenter recommended that the proposed regulations be revised to explicitly require documentation of all transition activities in service coordination notes and the New York Early Intervention System (NYEIS).

**Response:** Current regulation on Content and Retention of Child Records, at 10 NYCRR § 69-4.26, is sufficiently detailed to require documentation in NYEIS. The Department will issue further guidance on documentation in service coordination notes and in NYEIS on transition activities.

**Comment:** One commenter stated that the proposed regulation should be clarified to state that the service coordinator, who is responsible for convening a transition conference, must attend the transition conference.

**Response:** Proposed regulation 10 NYCRR § 69-4.20(a)(3) requires that all meetings to develop the transition plan, including the transition conference, must meet the requirements in 10

NYCRR § 69-4.11(a)(2)-(5). 10 NYCRR § 69-4.11(a)(2)(iv) requires the service coordinator to participate in the meeting.

**Comment:** One commenter asked whether proposed amendments to 10 NYCRR § 69-4.20(a)(3), which clarifies that all meetings to discuss the transition plan, including the transition conference must meet all requirements pertaining to IFSP meetings in 10 NYCRR § 69-4.11(a)(2)-(5), means that the EIO must be present, as well as therapists and other team members any time the transition is discussed.

**Response:** Under federal regulations, required attendees at IFSP meetings must only attend meetings to develop the transition plan. The Department made this clarification to the proposed amendment.

**Comment:** A commenter indicated that a fixed payment for service coordination services would be ideal because it is difficult to track time spent on these activities and asked how it would work.

**Response:** The Department's proposal is to set fixed rates for initial service coordination based on the child's and family's participation from referral to initial IFSP and based on monthly rates for ongoing service coordination. The intent is to reduce the administrative burden on providers for billing these services in 15 minute increments.

**Comment:** One commenter stated that parents are concerned that a capitated rate for service coordination services may provide an incentive for providers to deliver the least intensive and less expensive care possible.



**Response:** The Department will closely monitor the impact of this rate change on timeliness of IFSP and IFSP services, and other indicators associated with the quality of service coordination services. The Department surveys families exiting the program using highly reliable scales that measure family-centered services and family outcomes. The data will also be used to monitor the impact of rate changes on services to children and families.

**Comment:** Commenters recommended that the Department consider a number of factors in setting new rates. These comments included:

- One commenter recommended that for service coordination rates methodology, the Department should consider a number of factors, including intensity of child and family needs and attention to task-based rather than time-based activities. The commenter also recommended the Department establish a cap on caseloads for service coordinators.
- One commenter recommended the Department consider a number of factors in setting the new rates, including agency overhead; administrative costs related to billing; service coordinator administrative responsibilities; travel time and costs; establishment of a mechanism to assess the adequacy of rates; and appropriate supervision.
- One commenter noted that the proposed rules governing transition meetings include new responsibilities for service coordinators that were not contemplated when the current reimbursement fees were developed.
- One commenter requested assurances from the Department that fees for service coordinator services will be enhanced and aligned with the additional activities and responsibilities.

- Another commenter urged the Department to include the provider community in the development of a plan for transitioning from unit-billing to a fixed payment system.

**Response:** In developing and finalizing the rates, the Department will take a number of factors into consideration to ensure adequate funding for service coordination services and for early intervention services and will closely monitor implementation. The proposed rule, 10 NYCRR § 69-4.30, specifies the Commissioner will provide written notice of a change to the rate methodology, and that such notice must specify that any newly established rate will apply only to initial IFSPs and IFSP amendments made on or after the date of such written notice. The Department will seek the advice and assistance of the Early Intervention Coordinating Council (EICC) in planning for implementation of new service coordination rates. Additionally, the Department has conducted a number of analyses on the issue of intensity of child and family needs and has presented and discussed these analyses with an EICC Reimbursement Advisory Panel. No relation was found between intensity of child and family needs and utilization of service coordination services.

**Comment:** Several commenters supported the proposed change to 10 NYCRR § 69-4.30(c)(3), which allows the Commissioner to establish a rate methodology on a per month, per week, and/or service component basis for providing service coordination services. Additionally, requests were made, including:

- A commenter requested the Department publish actual rates in a subsequent proposed regulation amendment.
- A commenter requested the opportunity to review the methodology to ensure the appropriate use of tax dollars.

**Response:** The Department has the authority under Public Health Law § 2550(1) and 10 NYCRR § 69-4.30 to establish rates for EIP subject to the approval of the Division of Budget. There is no requirement to include the specific rates for EIP in regulation or to publish the methodology used.

**Comment:** A commenter requested clarification to “service coordination rate methodology on a per month, per week, and/or service component basis with prior written notice to Early Intervention Officials” under 10 NYCRR § 69-4.30(c)(3).

**Response:** The quoted text by the commenter does not exist in the proposed regulation for 10 NYCRR § 69-4.30(c)(3). The proposed provision allows the Commissioner to use a rate methodology for providing service coordination services that may be established on a per month, per week, and/or service component basis. Such rate methodology is subject to the approval of the Director of the Budget. The Commissioner must also provide prior written notice to EIOs on the rate methodology.