



New York State Occupational Therapy Association

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Memorandum of Opposition

Early Intervention Article VII Proposal

The New York State Occupational Therapy Association opposes the executive proposal in Part C of the Health and Mental Hygiene Article VII bill.

The executive proposal creates a pay and chase system in an effort to hold commercial insurance plans responsible to pay for their share of early intervention services. We agree with the intent of this legislation, commercial insurance plans in New York should be held responsible for covering the health care needs of the enrollees and their families that they collect premiums from. However, the proposed language in this legislation will not succeed in affecting greater cooperation from plans.

The proposed legislation includes payments to providers who are participating in the insurer's provider network. However, the legislation does nothing to address the current lack of providers in networks. Future proposed regulations may or may not attempt to address the resistance from insurance plans to enroll an adequate list of providers. However, at present, we should not put a payment system in place that assumes that those efforts would meet with success.

The proposed legislation provides that insurance coverage for early intervention services will ultimately hinge on external appeal agent or independent third-party review agent determinations of medical necessity. The problem with this proposal is that the state provides no definition for medically necessary. Occupational therapy and other early intervention providers repeatedly experience inappropriate denials based on determinations that services were not medically necessary. This may partly be due to health insurance plans' efforts to use a medical model to judge early intervention services grounded in developmental interventions.

NYSOTA recommends that the legislature adopt legislation that recognizes the Individualized Family Service Plan (IFSP) for each child as establishing medical necessity in the early intervention program. The IFSP represents the work of a team of experts, including the child's parents and professionals with first-hand knowledge of the child.

We were very pleased to see in the Governor's briefing book that the executive is now recognizing the extent of the current disastrous efforts to collect insurance coverage for early intervention services. In the Governor's words, "Commercial Insurance funds LESS than 2% of total Early Intervention costs although 42% of children (in the program) have commercial insurance. This suggests that commercial insurers are approving (only) 15% of provider claims (submitted to commercial insurance)." A 15% payment rate is no better than the rate of success that the counties had years ago, and it represents an astounding failure.

The resultant administrative burden and financial hardship on providers from this failure has caused many therapists to reduce their participation in the early intervention program by accepting fewer early intervention cases. This reduction in provider participation has created a shortage of therapists and in turn places our most vulnerable and neediest children at risk.

The New York State Occupational Therapy Association recognizes that there are systemic problems in New York with insurance plans avoiding their responsibility to cover early intervention services. We would prefer that the systemic problems in commercial insurance be addressed, however, over the years that has not happened.

NYSOTA recommends that the Assembly and the Senate include the Early Intervention Program in the Covered Lives policy. Covered Lives is an assessment on commercial insurance instead of direct billing of individual claims. The assessment is that amount of reimbursement that the industry should be paying if they were fairly adjudicating claims. This approach will have commercial insurance plans paying their fair share and reduce the costs to the state and counties at a time when we have a large looming deficit.

Occupational therapy in Early Intervention is based on the belief that purposeful activity, or occupation, may be used to promote healthy development and generate adaptive skills of children with developmental dysfunction.

Occupational therapy wants to keep its commitment to caring for vulnerable children in need of services. We know that the legislature wants to do the same.