WEST VIRGINIA CODE CHAPTER 16 ARTICLE 5K

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§16-5K-1. Legislative findings and statement of purpose.

The Legislature hereby finds and declares that early intervention services for children who are developmentally delayed is essential in helping to maximize each child's potential and is in the best interest of the state. These early intervention services will reduce future educational costs, minimize the likelihood of having to provide institutional care and enhance the capacity of families to meet the special needs of the children. In order to meet this important need, a statewide comprehensive, coordinated, interagency program of early intervention services is required for children and the families of children from birth to thirty-six months of age who are developmentally delayed. By facilitating coordination of payment for early intervention services from various public and private sources, enhancing the capacity to provide quality early intervention services, and expanding and improving existing services, the interagency program will ensure that children who are developmentally delayed will receive necessary services which are cost effective.

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§16-5K-2. Definitions.

Unless the context clearly otherwise indicates, as used in this article:

(a) "Bureau" means the Bureau for Children and Families Public Health.

(b) "Council" means the Governor's Early Intervention Interagency Coordinating Council.

(c) "Department" means the Department of Health.

(d) "Early intervention services" means developmental services which:

(1) Are designed to meet the developmental needs of developmentally delayed infants and toddlers and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided under public supervision in conformity with an individualized family service plan;

(4) Are provided either at no charge, fees based on a sliding scale, or charges to third party payers and do not restrict access or services because of a client's financial limitations;

(5) Meet the state's early intervention standards, as established by the department with the assistance of the Governor's Early Intervention Interagency Coordinating Council;

(6) Include assistive technology, audiology, audiology case management, family training, counseling and home visits, health services necessary to enable a child to benefit from other early intervention services, medical services only for diagnostic or evaluation purposes, nursing services, nutrition services, occupational therapy, physical therapy, psychological services, social work services, special instruction, speech-language pathology, vision and transportation; and

(7) Are provided by licensed or otherwise qualified personnel, including audiologists, family therapists, nurses, nutritionists, occupational therapists, orientation and mobility specialists, physical therapists, physicians, psychologists, social workers, special educators, speech-language pathologists and paraprofessionals appropriately trained and supervised.

(e) "Infants and toddlers with developmental delay" means children from birth to thirty-six months of age who need early intervention services for any of the following reasons:

(1) They are experiencing developmental delays, as measured by appropriate methods and procedures, in one or more of the following areas: Cognitive, physical, including visual and hearing, communicative, adaptive, social, language and speech, or psycho-social development or self-help skills; or

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(2) They have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or

(3) They are at risk of having substantial developmental delays if early intervention services are not provided.

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§16-5K-3. Responsibilities of the Department of Health.

(a) The department is the administering agency for the development of a statewide, comprehensive, coordinated, interagency system of early intervention services.

(b) Consistent with the provisions of Public Law 99-457, as enacted by the Congress of the United States, the department has the following responsibilities:

(1) To carry out the general administration, supervision and monitoring of early intervention programs and activities;

(2) To resolve complaints regarding the requirements of Public Law 99-457;

(3) To identify and coordinate all available resources within the state from federal, state, local and private sources;

(4) To enter into formal interagency agreements with other state agencies involved in early intervention;

(5) To resolve intraagency and interagency disputes and to ensure that early intervention services are provided in a timely manner pending the resolution of such disputes; and

(6) To coordinate and implement a comprehensive system of personnel development, including the certification and credentialing of qualified personnel pursuant to federal regulations or requirements.

(c) The department may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to carry out the purposes of this article.

(d) The department and the Department of Education shall enter into a formal interagency agreement regarding early intervention services. The agreement shall define the financial responsibility of each agency, describe the transition of services to children and their families between service systems, and establish procedures for resolving disputes.

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§16-5K-4. Interagency coordinating council.

(a) The Governor's Early Intervention Interagency Coordinating Council is continued. The council is composed of at least fifteen members appointed by the Governor with additional ex officio members representing specific agencies serving infants and toddlers with developmental delays.

(b) The membership of the council shall consist of the following:

(1) At least three parents of children, ages birth through six years of age, who have developmental delays;

(2) At least three persons representative of the public or private service providers;

(3) At least one member of the House of Delegates recommended by the Speaker of the House of Delegates and one member of the Senate recommended by the Senate President;

(4) At least one person from higher education involved in training individuals to provide services under this article; and

(5) A representative of each of the agencies involved in the provision of or payment for early intervention services to infants and toddlers with developmental delays and their families.

(c) The council shall meet at least quarterly and in such place as it considers necessary.

(d) The council is responsible for the following functions:

(1) To advise and assist the department in the development and implementation of early intervention policies;

(2) To assist the department in achieving the full participation of all relevant state agencies and programs;

(3) To collaborate with the Bureau for Children and Families in the coordination of early intervention services with other programs and services for children and families;

(4) To assist the department in the effective implementation of a statewide system of early intervention services;

(5) To assist the department in the resolution of disputes;

(6) To advise and assist the department in the preparation of grant applications; and

(7) To prepare and submit an annual report to the Governor, the Legislature and the United States Secretary of Education on the status of early intervention programs within the state.

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§16-5K-5. Provision of early intervention services.

(a) The department may enter into contracts with public or private providers of early intervention services who meet state early intervention standards.

(b) Within available resources, as determined by the department, appropriate early intervention services shall be made available to eligible children and their families.

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§16-5K-6. West Virginia Birth-to-Three Fund.

(a) There is created in the state Treasury a fund to be known as the "West Virginia Birth-to-Three Fund" that shall be an interest-bearing account established and maintained to pay costs, fees and expenses incurred, or to be incurred, for early intervention services for children who are developmentally delayed.

(b) Funds deposited into this account shall be derived from the following sources:

(1) Any appropriations by the Legislature;

(2) Fund transfers from any fund of the divisions of the Department of Health that, in whole or in part, supports early intervention services;

(3) All public funds transferred by any public agency as permitted by applicable law;

(4) Any private funds contributed, donated or bequeathed by corporations, individuals or other entities; and

(5) All proceeds from fees paid by the client or third party payers; and

(6) All interest or return on investments accruing to the fund.

(c) Moneys deposited in this fund shall be used exclusively to provide early intervention services to accomplish the purposes of this article. Expenditures of moneys deposited in this fund are to be made in accordance with appropriation by the Legislature and in accordance with article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code: *Provided*, That for the fiscal year ending June 30, 2003, expenditures are authorized from deposits rather than pursuant to appropriation by the Legislature.

(d) Any balance remaining in this fund at the end of any state fiscal year shall not revert to the state Treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

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§16-5K-7. Early intervention services for adopted children.

(a) Effective July 1, 2023, a child or children adopted on and after that date whose adoptive parent or parents are residents of West Virginia shall be eligible for any early intervention services provided for families which may be offered by the Department of Health and Human Resources. These services shall include, but are not limited to, Right From the Start, Drug Free Moms and Babies, and Birth to Three.

(b) If an early intervention program has federally approved mandated eligibility requirements as a condition of the receipt of federal funds, an adoptive parent or parents and their newly adopted child or children may be required to meet those federally mandated eligibility requirements for participation in the program.

(c) The Department of Health and Human Resources shall recruit additional sites to expand the Drug Free Moms and Babies program and report back to the Legislature if additional funding becomes necessary to operate these sites.

(d) The Bureau for Medical Services shall seek approval of and implement a Medicaid state plan amendment to meet the requirements of this section if the program is offered through or funded by the state Medicaid program and a state Medicaid plan amendment would be necessary to effectuate the purposes of this section.

(e) Use of early intervention services are optional to an adoptive parent or parents and nothing in this section should be construed to require an adoptive parent or parents to use any early intervention service as provided in this section.

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