

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 2/18/87

HOUSE BILL 1383

By: Representative Mahony

AS ENGROSSED 3/30/87

"AN ACT TO AUTHORIZE AN EARLY INTERVENTION PROGRAM FOR
INFANTS AND TODDLERS WITH HANDICAPS AND THEIR FAMILIES;
AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Findings and Policy. (a) Findings. The Arkansas Legislature finds that there is an urgent and substantial need:

(1) to enhance the development of infants and toddlers with handicaps and to minimize their potential for developmental delay;

(2) to reduce the educational costs to our society, including our State's schools, by minimizing the need for special education and related services after the infants and toddlers with handicaps reach school age;

(3) to minimize the likelihood of institutionalization of individuals with handicaps and maximize the potential for their independent living in society; and

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps.

(b) Policy. It is therefore the policy of this State:

(1) to develop and implement a statewide, comprehensive, coordinated, multi-disciplinary interagency program of early intervention services for infants and toddlers with handicaps and their families;

(2) to coordinate payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); and

(3) to provide quality early intervention services and to expand and improve existing early intervention services being provided to infants and toddlers with handicaps, and their families.

SECTION 2. Definitions. (1) The term "infants and toddlers with handicaps" means individuals from birth through age 2, inclusive, who need early intervention services because they:

(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psycho-social development, or self-help skills, or,

(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay or are at risk of having substantial delays if early intervention services are not provided.

(2) "Early intervention services" are developmental services which:

(A) are provided under public supervision through licensure and/or for accreditation by the appropriate State agency;

(B) are provided at no cost except where Federal or State law or regulations provide for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet a handicapped infant's or toddler's developmental needs in any one or more of the following areas:

- (i) physical development,
- (ii) cognitive development,
- (iii) language and speech development,
- (iv) psycho-social development, or
- (v) self-help skills;

(D) meet the standards of the State, including the requirements herein;

(E) include:

- (i) family training, counseling, and home visits,
- (ii) special habilitation and education instruction,
- (iii) speech pathology and audiology,
- (iv) occupational (for example, fine motor skills) therapy,
- (v) physical therapy,
- (vi) psychological services;
- (vii) case management services at the service delivery level,
- (viii) medical services for diagnostic or evaluation purposes,
- (ix) early identification, screening and assessment services, and
- (x) health services necessary to enable the infant or toddler to benefit from other early intervention services;

(F) are provided by qualified personnel, including:

- (i) certified special educators or training technicians supervised by special educators,
- (ii) speech and language pathologists and audiologists,
- (iii) occupational therapists,
- (iv) physical therapists,
- (v) psychologists,
- (vi) social workers,
- (vii) nurses, and
- (viii) nutritionists, and
- (ix) physicians; and

(G) are provided in conformity with an Individualized Family Service Plan adopted in accordance with this Act.

(3) The term "developmental delay" means a child is delayed in any one or more of the following areas:

- (i) physical development,
- (ii) cognitive development,
- (iii) language and speech development,
- (iv) psycho-social development, or
- (v) self-help skills.

(4) The term "Council" means the State Interagency Coordinating Council established under this Act.

(a) First Two Years. The State shall apply, during each of the first two years after the effective date of this Act, to the Secretary of Education for a Federal Grant authorized by Public Law 99-457. These funds shall be used to assist in the planning, development and implementation of a statewide system required by that Law. In addition, the State shall provide at least the same amount of State, Title XIX, Title XX, and other funds to provide early intervention services to infants and toddlers with handicaps, as were provided in the 1986-87 fiscal year, and, in addition, shall use at least ninety percent (90%) of federal grant money received under Public Law 99-457 for services to infants and toddlers with handicaps; provided however that the agency designated by the Governor to administer the grant funds available pursuant to Public Law 99-457 shall have the authority to use less than ninety percent (90%) of said funds for services after seeking the advice of the Joint Interim Committee on State Agencies and Governmental Affairs, should the designated

State Agency determine that federal regulations promulgated pursuant to Public Law 99-457 mandate activities other than direct services to handicapped infants and toddlers. Priority where reasonable shall be given to those currently on waiting lists and their families.

(b) Third and Fourth Year. (1) The State shall apply in the third and fourth years after the effective date of this Act, and shall include in its application under Public Law 99-457 for that year information and assurances demonstrating to the satisfaction of the Secretary that:

(1) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with Public Law 99-457 or obtained a waiver from the Secretary,

(2) funds will be used to plan, develop, and implement the statewide system required by Public Law 99-457 and at least fifty percent (50%) of infants and toddlers who are identified and eligible for early intervention services shall be served in addition to those added in (a) above during the third year, and the remaining fifty percent (50%) shall be added during the fourth year,

(3) the statewide system will be in effect no later than the beginning of the fourth year of the State's participation with the following required components:

(i) a multi-disciplinary assessment conducted on each child in the system,

(ii) an individualized family service plan on each child served, and

(iii) case management services.

SECTION 3. Requirements for Statewide System. (a) In General. A statewide system of coordinated, comprehensive, multi-disciplinary, interagency programs providing appropriate early intervention services to all handicapped infants and toddlers and their families shall include the minimum components under subsection (b).

(b) Minimum Components. The statewide system required by subsection (a) shall include, at a minimum:

(1) a definition of the term "developmentally delayed" that will be used by the State in carrying out programs under this part,

(2) timetables for ensuring appropriate early intervention

services available to all handicapped infants and toddlers in the State before the beginning of the fifth year of a State's participation under P.L. 99-457,

(3) a timely, comprehensive, multi-disciplinary evaluation of the functioning of each handicapped infant and toddler in the State and the needs of the families to appropriately assist in the development of the handicapped infant or toddler,

(4) for each handicapped infant and toddler in the State, an individualized family service plan in accordance with federal regulations under Public Law 99-457, including case management services in accordance with such service plan,

(5) a comprehensive child find system, consistent with federal requirements, including a system for making referrals to service providers that includes timelines and provides for the participation by primary referral sources,

(6) a public awareness program focusing on early identification of handicapped infants and toddlers,

(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

(8) a comprehensive system of personnel development,

(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out:

(i) the general administration, supervision, and monitoring of programs and activities receiving assistance under Public Law 99-457, and monitoring other Federal and State funds to ensure compliance with this part,

(ii) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

(iii) the assignment of financial responsibility to the appropriate agency,

(iv) the development of procedures to ensure that services are provided to handicapped infants and toddlers and their families in a timely manner pending the resolution of any disputes between public agencies or service providers,

(v) the resolution of intra- and interagency disputes, and

(vi) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

(11) a procedure for securing timely reimbursement of funds,

(12) procedural safeguards with respect to programs and,

(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this Act are appropriately and adequately prepared and trained, including:

(i) the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

(ii) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

(14) a system for compiling data on the numbers of handicapped infants and toddlers and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the number of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary of Education.

SECTION 4. Individualized Family Service Plan. (a) Assessment and Program Development. Each handicapped infant or toddler and the infant's or toddler's family shall receive:

(1) multi-disciplinary assessment of unique needs and the identification of services appropriate to meet such needs, and

(2) a written individualized family service plan developed by a multi-disciplinary team, including the parent or guardian, as required by subsection (d).

(b) Periodic Review. The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at six-month intervals (or more often where appropriate, based on infant or toddler and family needs).

(c) Promptness After Assessment. The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a) (1) is completed. With the parent's or guardian's consent, early intervention services may commence prior to the completion of such assessment.

(d) Content of Plan. The individualized family service plan shall be in writing and contain:

(1) a statement of the infant's or toddler's present level of physical development, cognitive development, language and speech development, psycho-social development, and self-help skills, based on acceptable objective criteria,

(2) a statement of the family's strengths and needs relating to enhancing the development of the family's handicapped infant or toddler,

(3) a statement of the major outcomes expected to be achieved for the infant and toddler and the family, and the criteria, procedures, and timeliness used to determine the degree to which progress toward achieving the outcomes are being made, and whether modifications or revisions of the outcomes are necessary,

(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,

(5) the projected dates for initiation of services and the anticipated duration of such services,

(6) the name of the case manager from the profession most immediately relevant to the infant's and toddler's or family's needs who will be responsible for the implementation of the plan and coordination with the other agencies and persons, and

(7) the steps to be taken supporting the transition of the handicapped toddler to services provided to three to five year olds to the extent such services are considered appropriate.

SECTION 5. Uses of Funds. In addition to using funds provided under this Act to plan, develop, and implement the statewide system required by Public Law 99-457, the State shall use these funds:

(1) for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources, and

(2) to expand and improve on services for handicapped infants and toddlers that are otherwise available.

A maximum of ten percent (10%) of these funds may be used during the first year for central agency and Council expenses.

SECTION 6. Procedural Safeguards. The procedural safeguards shall be the same as required under Public Law 94-142 and Public Law 99-457 and shall provide, at a minimum the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding a complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally-identifiable information shall be protected through procedures such as appropriate access lists, sign-offs, and procedures for handling records.

(3) The opportunity for parents and/or guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(4) Procedures to protect the rights of the handicapped infants and toddlers whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

(5) Written prior notice to the parents or guardian of the handicapped infant or toddler whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of appropriate early intervention services to the handicapped infant or toddler.

(6) Procedures designed to assure that the notice required by paragraph (5) fully informs the parents or guardian, in the parent's or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this Section.

(7) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided, or if applying for initial services, shall receive the services not in dispute.

SECTION 7. Payor of Last Resort. Nonsubstitution. Funds provided under the Public Law 99-457 Grant may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source, but for the enactment of Public Law 99457, except that whenever considered necessary to prevent the delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under this Act may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility

for the payment.

Reduction of Other Benefits. Nothing in this Act shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to maternal and child health) or Title XIX of the Social Security Act (relating to Medicaid for handicapped infants and toddlers) within the State.

SECTION 8. State Interagency Coordinating Council. (a) Establishment.

(1) A State Interagency Coordinating Council composed of fifteen (15) members shall be established within three (3) months of the enactment of this law.

(2) The Council and the chairperson of the Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(b) Composition. The Council shall be composed of:

(1) at least three (3) parents of handicapped infants or toddlers or handicapped children aged 3 through 6, inclusive,

(2) at least three (3) public or private providers of early intervention services,

(3) at least one (1) representative from the State Legislature,

(4) at least one (1) person involved in personnel preparation, and

(5) other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers and their families and others selected by the Governor.

(c) Meetings. The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly-announced, and, to the extent appropriate, open and accessible to the general public.

(d) Functions of Council. The Council shall:

(1) advise and assist the lead agency designated under Section 3 (b) (9) in the performance of the responsibilities set out in Public Law 99-457, and in preparation of the budget required, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

(2) advise and assist the lead agency in the preparation of applications

and amendments thereto, and

(3) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for handicapped infants and toddlers, and their families operated within the State.

(e) Conflict of interest. No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.

/s/Jody Mahony

