

**PA12-044**

SB0205

House	6116-6119	4
Insurance	450-453, 566-576	15
Senate	882-885, 924-925	<u>6</u>
		<b>25</b>

**H – 1140**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2012**

**VOL.55  
PART 18  
5829 – 6187**

smj/law/djp/gbr  
HOUSE OF REPRESENTATIVES

358  
May 4, 2012

all the members have voted the machine will be locked.  
The Clerk will take a tally. The Clerk will announce  
the tally.

THE CLERK:

Senate Bill 258 in concurrence with the Senate.

Total Number voting	138
Necessary for adoption	70
Those voting Yea	92
Those voting Nay	46
Those absent and not voting	13

DEPUTY SPEAKER ARESIMOWICZ:

The bill is passed in concurrence. Will the  
Clerk please call calendar 326.

THE CLERK:

On page 15, calendar 326 substitute for Senate  
Bill number 205, AN ACT CONCERNING INSURANCE COVERAGE  
FOR THE BIRTH TO THREE PROGRAM. Favorable report by  
the committee on insurance.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Johnson of the 49th, you have the  
floor, Madam.

smj/law/djp/gbr  
HOUSE OF REPRESENTATIVES

359  
May 4, 2012

REP. JOHNSON (49th):

Good evening, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Good evening, Madam.

REP. JOHNSON (49th):

I move passage of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER ARESIMOWICZ:

The question is on acceptance of the joint committee's favorable report and passage of the bill. Representative Johnson, you have the floor, Madam.

REP. JOHNSON (49th):

Thank you, Mr. Speaker. This bill provides some simple changes to the -- to our insurance laws to make them in conformance with federal rules so that we'll be able to use insurance payments for maintenance of effort and have that in our calculation and then we'll be able to receive our federal funding. I move adoption.

DEPUTY SPEAKER ARESIMOWICZ:

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HOUSE OF REPRESENTATIVES

360  
May 4, 2012

Will you remark further on the bill before us?

Representative Sampson of the 80th district, you have the floor, Sir.

REP. SAMPSON (80th):

Thank you, Mr. Speaker. Good evening.

DEPUTY SPEAKER ARESIMOWICZ:

Good evening, Sir.

REP. SAMPSON (80th):

This -- this bill as was just described by the proponent is a noncontroversial bill that basically allows us to get the appropriate credit as far as federal money goes. It passed out of the insurance committee unanimously and I encourage the support of my colleagues. Thank you, Mr. Speaker. Thank you.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, Sir. Will you remark further on the bill before us? Will you remark further on the bill before us? The board being clear, nobody's standing for recognition. Staff and guests to the well of the House. Members take your seats. The machine will be open.

smj/law/djp/gbr  
HOUSE OF REPRESENTATIVES

361  
May 4, 2012

THE CLERK:

The House of Representatives is voting by roll  
call. Members to the Chamber. The House is taking a  
roll call vote. Members to the Chamber please.

DEPUTY SPEAKER ARESIMOWICZ:

Have all the members voted? Have all the  
members voted? If all the members have voted please  
check the board to ensure that your vote's been  
properly cast. If all the members have voted the  
machine will be locked. The Clerk will take a tally.  
The Clerk will announce the tally.

THE CLERK:

Senate Bill 205 in concurrence with the Senate.

Total Number voting	135
Necessary for adoption	68
Those voting Yea	135
Those voting Nay	0
Those absent and not voting	16

DEPUTY SPEAKER ARESIMOWICZ:

The bill is passed in concurrence.

Representative Robles, for what purpose do you rise,  
Sir?

CHAIRMEN: Senator Crisco  
Representative Megna

MEMBERS PRESENT:

SENATORS: Kelly

REPRESENTATIVES: Alberts, Aldarondo,  
Altobello, Aresimowicz,  
Crawford, D'Amelio,  
Dargan, Hoydick, Nardello,  
Noujaim, Roldan, Sanchez,  
Schofield, Yaccarino

REP. MEGNA: Just let me remind everybody when you give your testimony you have three minutes to give your testimony. We have your written testimony. You don't necessarily have to read it if it's going to exceed the three minutes because we have it to read and we have copies of it and it gets posted.

You will hear the time at the end of the three minutes, at which time we can ask you questions and keep you in the seat and keep the discussion going. Also legislators will be in and out of this room during this public hearing because of other obligations with other meetings and legislative business throughout the building.

With that we'll begin on Senate Bill 205 with Commissioner Macy.

COMMISSIONER TERRENCE W. MACY: Good afternoon, Representative Megna and members of the Insurance and Real Estate Committee. I am Dr. Macy, Commissioner of the Department of Developmental Services, and I'm here to testify in support of Raised Bill Number 205, an act concerning insurance coverage for the

Birth to Three program.

With me today is Linda Goodman, our director of the Connecticut Birth to Three Program. Under the Administration of DDS, the Connecticut Birth to Three Program, Birth to Three Program system offers developmental evaluations and early intervention services to infants and toddlers under the age of three who have disabilities or developmental delays, including autism.

This is administered under the Federal Individuals with Disabilities Education Act, IDEA, Part C, in its regulations. Each year the state receives approximately \$4 million in IDEA Part C funding to help support the administration of the Birth to Three Program and related service delivery. Approximately half of that amount is used toward administration; a half goes to direct services. Excuse me.

The state also appropriates nearly \$36 million to pay for direct services. The IDEA states that the federal funding is to supplement, not supplement the state and local funding for early intervention. In order to received this funding, the IDEA requires each state to equally assure that there is a, quote, "maintenance of effort," end of quote, which is defined as the state spending as much or more from state and local funds for early intervention in one year as it did previous - in the previous year.

The definition of state and local funds has always excluded reimbursement from commercial health insurance plans. As a federal agency it administrators IDEA, the U.S. Department of Education has the authority to determine

whether or not a state has met its obligation for maintenance of effort. If the U.S. Department of Education determines that a state has not met this obligation, it has the right to require the state to make up the difference by refunding the equivalent state money to the federal government.

In recent revisions to the IDEA Part C, regulations that become effective July 1, 2012, there is a new provision that says a state may establish a new baseline to include annual health insurance reimbursements and the state may then count future health insurance reimbursement toward maintenance of effort.

If the state has enacted statutory language regarding commercial health insurance coverage that one, protects annual and lifetime caps, two, insures the billing for early intervention services alone, will not cause a family to be denied health insurance coverage, and three, insures that the billing for early intervention services alone will not be the basis for increasing the family's health insurance premiums.

If Connecticut enacts this language, it would be implemented when we received our next IDEA part C grant in July of 2012. State funding for Birth to Three Program was reduced in fiscal years 2012 and 2013 by 1.6 million and 3.2 million dollars respectively in anticipation of the ability to collect greater amounts of insurance reimbursement due to changes made in the 2011 legislative session to CGS Section 38A-516A that went into effect January 1, 2012.

Insurance reimbursements for (inaudible) services was almost \$4 million in fiscal year

'11. It is expected to increase in fiscal years 2012 and 2013. Currently CGS Sections 38A-490, A and 38A-516 A already cover the first IDEA requirement, which is to protect the annual and life fund texts. However, those statutes are salient on the other two -- are silent, I'm sorry, on the other two required items related to billing for Birth to Three services with a protection causing the denial of coverage or premium increase.

This proposed legislation would amend CGS Sections 38A, 190A and 38A 516A, to require that individual and family plans meet the last two IDEA insurance requirements, enabling the state to acknowledge the contributions of insurance companies and the funding of the Birth to Three Program system. We have a tax and letter from the Office of Special Education programs, dated May 4th, 2011 to a state which inquired about the implications and the maintenance about the requirement on funding.

The letter provides informal guidance so the state who fails to maintain effort in a particular fiscal year would be subject to liability and could not take a pass on the portion of forthcoming Part C funds to remedy the situation. Passage of Senate Bill 2005, 205, would help Connecticut towards meeting maintenance of effort requirements going forward. Thank you for raising Senate Bill 205, and I urge your support for this bill, and I and our staff would be happy to answer any questions that you may have. Thank you.

REP. MEGNA: Thank you, Commissioner. Are there any questions of Commissioner Macy? No? Thank you very much, Commissioner.

February 28, 2012

Senator Joseph J. Crisco, Co-Chair  
 Representative Robert W. Megna, Co-Chair  
 Senator Joan V. Hartley, Vice Chair  
 Representative Susan M. Johnson, Vice Chair

*JTR*

Dear Chairs of the Insurance and Real Estate Committee:

On behalf of the State Interagency Coordinating Council, we are writing in support of **Raised Bill #205**, An Act Concerning Insurance Coverage for the Birth to Three Program.

This Bill addresses two critical issues for the Birth to Three Program:

1. The federal government requires maintaining a consistent level of state funding in order to capture federal funding, and
2. The Bill will now allow the state to count all Birth to Three insurance revenue toward the state funding of the Birth to Three program

In light of the fact that the current biennial budget has already reduced state funding in anticipation of increased insurance revenue, this legislation will allow us to count those insurance revenues, thus avoiding a significant federal financial penalty.

We applaud your ongoing support of the Connecticut Birth to Three program and our efforts to provide quality early intervention for Connecticut families.



Mark Greenstein, M.D., Chair  
 Developmental Pediatrician and Geneticist

Mark A. Greenstein, M.D.  
 ICC Chair/Pediatrician  
 Patrick Ruddy ICC Vice Chair  
 Parent  
 Mary Ann Dayton Fitzgerald  
 Commission on the Deaf and  
 Hearing Impaired  
 Cortinne Griffin  
 Parent  
 Laurel Ross  
 Abilis  
 Rita Esposito  
 REACHOUT, Inc.  
 Lynn Skene Johnson  
 Dept. of Developmental Services  
 Minam Martinez  
 Parent  
 Stephen DeAngelis  
 Insurance Dept  
 Tierny Giovanni, alternate  
 Center for Excellence  
 Cynthia Jackson  
 Children's Therapy Services  
 Rob Kelly, alternate  
 State Senator Anthony Musto  
 Robert LaCamera, M.D.  
 American Academy of Pediatrics  
 Miriam Martinez  
 Parent  
 Ginny Mahoney  
 Dept. of Social Services  
 Joe McLaughlin  
 McLaughlin and Associates  
 Deborah Pagano  
 Parent  
 Lorna Quilas-Dilan  
 Office of Protection and Advocacy  
 John Reilly  
 BESEB  
 Marla Synodi  
 State Dept. of Education  
 Louis Tallanta  
 SDE-Homeless Children  
 Rep. John W. Thompson  
 State Representative  
 Robin Tousey-Ayers  
 Dept. of Public Health  
 Myra Watnick  
 Rehabilitation Associates, Inc  
 Vacant  
 Early Head Start  
 Vacant  
 Parent  
 Vacant  
 Dept. for Children and Families





*Quality is Our Bottom Line*

FTIR

**Insurance & Real Estate Committee Public Hearing**

**Tuesday, February 28, 2012**

**Connecticut Association of Health Plans**

**Testimony regarding SB 205 AAC Insurance Coverage for the Birth-to-Three Program**

The Connecticut Association of Health Plans has reservations regarding some elements of SB 205 AAC Insurance Coverage for the Birth-to-Three Program. As you may recall, the industry has worked in cooperation with the Department of Developmental Services for many years as this mandate has evolved and been implemented and we look forward to working with the Department once again to address our concerns with this proposed legislation. We respectfully ask for the Committee's indulgence as we work through issues at hand which could have a number of unintended consequences if not addressed.

Many thanks for your consideration.

*The Arc*  
Connecticut

FTR  
The Arc of Connecticut  
43 Woodland Street  
Suite 260  
Hartford, CT 06105  
T 860 246-6400  
www.thearcct.org

February 28<sup>th</sup>, 2012  
Testimony to THE INSURANCE AND REAL ESTATE COMMITTEE  
Support for Raised Bill Number 205:  
An Act Concerning Insurance Coverage for the Birth to Three Program  
By Nora Duncan, Executive Director

The Arc Connecticut is a 60-year old advocacy organization committed to protecting the rights of people with intellectual and developmental disabilities and to promoting opportunities for their full inclusion in the life of their communities.

The Arc Connecticut supports Raised Bill Number 205 proposed legislation because policies and state budget cuts that impact the biennial budget reduced state spending on Birth to Three programs, vitally important to so many families, in anticipation of increased private insurance reimbursements. While there is an increase in reimbursements expected, there is more that Connecticut must do to increase reimbursements and be compliant with federal IDEA regulations that permit states to establish a new baseline that includes annual health insurance reimbursements which can be applied to the "maintenance of effort" that is required in order to receive supplemental federal funding.

The changes made to Connecticut General Statutes Section 38a-516a, effective 1/1/12, protected annual and lifetime caps, but were silent on two other measures that IDEA Part C regulations now require for the new baseline. Passage of this bill will require the following of private and group insurance policies and meet the new federal requirements in time for Connecticut to receive it's next IDEA grant in July: (1) ensure that billing for early intervention services alone will not cause a family to be denied health insurance coverage; and (2) ensure that the billing for early intervention services alone will not be the basis for increasing the family's health insurance premiums.

Your support for this bill is appreciated. It will help provide much needed services that strengthen the capacity of families to meet the developmental and health-related needs of their infants and toddlers who have delays or disabilities.

Please do not hesitate to contact me for more information or to be put in touch with Birth to Three providers within The Arc network.

Written testimony of  
The Connecticut Society of Eye Physicians  
The Connecticut ENT Society

**Support S.B. No. 205 AN ACT CONCERNING INSURANCE COVERAGE FOR THE BIRTH-TO-THREE PROGRAM.**  
**In the Insurance and Real Estate Committee**  
**February 28, 2012**

Birth to Three is an effective, important program supporting children with developmental delays and neurologic problems during their most vulnerable and crucial stages of early development. Developmental gains made from early, ongoing intervention can reap a lifetime of benefits, improving functional levels even as an adult. Ensuring every child who needs Birth to Three support has a chance to receive it is therefore a benefit not just to those children and their families, but to the state as a whole.

Early detection of children at risk is important in making sure that every qualified child has access to the program. Since many children who qualify for Birth to Three have either hearing or vision impairments as a cause or contributor to their delay, encouraging early screening for these deficits would be helpful in identifying cases for referral for further evaluation. Since most children have a source of medical care, the pediatric care provider is the best venue for early, recurrent screening. While other ways of outreach would be necessary to ensure universal access, these providers offer an easy way to reach the bulk of eligible children.

A significant incentive for more widespread and effective very early screening would be to provide adequate reimbursement to those providing that screening. To that end, we request that language be added to the Birth to Three statutes that requires plans offering pediatric coverage in Connecticut provide adequate reimbursement for vision and hearing screening by pediatric providers.

Although we support pediatric vision screenings as the best method of early detection because it offers a wide net, we also believe that there are some kids who should skip the screening and go straight to a comprehensive exam. These are children already known to be at high risk of developmental delays, such as a known family history of significant childhood eye or hearing problems, those born prematurely, those with neurologic deficits and early developmental problems, certain genetic syndromes, and similar cases. For children already identified to be at risk based on other findings, a full vision and hearing evaluation should be a provided benefit and fully covered as a medical necessity by payers.

A way to achieve this is by adding language to the revised statute that requires coverage and adequate payment for these services. We ask that you consider adding a new subsection to section 17a-248g to incentivize early screening. An example of what might work is adding a new subsection 17-248g (i):  
[New]. Sec. 17a-248g (i). All necessary and appropriate screenings for identifying children who qualify for Birth to Three programs, including vision, hearing and physical development or ability shall be covered benefits for all insurers offering health insurance in the state of Connecticut under section [xxx] and shall be reimbursed at generally accepted RBRVS levels and index value similar to other examination and management codes. All children eligible for Birth to Three services shall be provided a comprehensive eye examination by an ophthalmologist or optometrist.

Thank you for your consideration in improving access to this program by adding the above amendment to SB S.B. No. 205 AN ACT CONCERNING INSURANCE COVERAGE FOR THE BIRTH-TO-THREE PROGRAM.



CONNECTICUT BUSINESS &amp; INDUSTRY ASSOCIATION

FTR

TESTIMONY  
BEFORE THE  
INSURANCE AND REAL ESTATE COMMITTEE  
LEGISLATIVE OFFICE BUILDING  
FEBRUARY 28, 2012

My name is Eric George and I am Associate Counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents approximately 10,000 businesses throughout Connecticut and the vast majority of these are small companies employing less than 50 people.

While the federal government has passed health care reform and Connecticut has begun the process of establishing its federally-required health insurance exchange, more still needs to be done to lower costs and more needs to be done to improve the health of our citizens. Employers find health care costs rising faster than other input costs. Some providers are unable to generate sufficient patient revenue to cover costs. Some patients cannot get timely access to optimal care. And too many individuals remain without health insurance, engage in unhealthy behaviors and live in unhealthy environments.

For the business community, the issues of health care quality, cost and access are critical. After numerous years of double-digit and near-double-digit increases, health insurance has quickly become a product that many people and companies find they can no longer afford. In addition, the cost of health care directly affects businesses' ability to create new jobs.

Therefore, CBIA asks this committee to reject **SB 205, AN ACT CONCERNING INSURANCE COVERAGE FOR THE BIRTH-TO-THREE PROGRAM**. As Connecticut moves towards developing its new health insurance exchange, CBIA asks you to refrain from making the already high cost of health care even more unaffordable for the state's companies and residents.

Please note that the federal government has all but closed the door on new mandates this year. Specifically, the Federal Centers for Medicare and Medicaid Services (CMS) issued regulatory guidance about requirements for the essential benefits package (EHP) under federal healthcare reform. The EHP is the level of benefit coverage that health plans must meet in order to be offered through the states' health insurance exchanges.

Earlier, the federal government ruled that each state is responsible for setting its own EHP level. However, the rules have changed significantly. Instead of the

states taking most of this year to determine their EHP, the CMS has closed the mandates door--as of Dec. 31, 2011 From the latest CMS Frequently Asked Questions Bulletin:

**Q:** Could a state add state-mandated benefits to the state-selected EHB benchmark plan today without having to defray the costs of those mandated benefits?

**A:** No... any state-mandated benefits enacted after Dec. 31, 2011 could not be part of EHB for 2014 or 2015

What if state lawmakers pass new or expanded mandates this session? Who would be responsible for paying their cost? CMS says the State of Connecticut would have to pay the extra costs.

Specifically, "The [federal health reform law] requires States to defray the costs of State-mandated benefits in [health plans sold through the exchange] that are in excess of the EHB."

This decision has enormous implications for all states—but especially Connecticut—that historically have passed more mandates than others. If lawmakers adopt any new or expanded mandates this year, then they have to be prepared to pay for them through the state's General Fund.

Moreover, every health benefit mandate, while providing a benefit to the individuals who utilize those services, increases health insurance premiums for all state-regulated group and individual policies. Several groups, including the Connecticut Department of Insurance, have analyzed Connecticut's mandates to determine their impact on premium.

It is noteworthy that the Council for Affordable Health Insurance (CAHI) has reported that health benefit mandates increase health insurance premiums between less than 20% to more than 50%. According to CAHI, Connecticut's mandates increase group and individual health insurance premiums by as much as 65%.

Connecticut's employers are already struggling to afford health insurance for their employees. The hardest hit among these companies are small employers whose revenues and operating budgets make affording employee health insurance extremely difficult. However, when the legislature adopts new health insurance mandates, it makes affording health insurance particularly difficult for these small employers. This is because state mandated benefits only impact plans that are subject to state regulation. If a company has the financial ability to self-insure, then that company's health plan is governed solely by federal law, including the Employee Retirement Income Security Act (ERISA), and does not

have to comply with state health benefit mandates. Companies that are able to self-insure (and therefore not subject to Connecticut's health insurance mandates) are typically larger companies that can afford taking on such risk. Smaller companies usually cannot and are forced to be fully insured and subject to state regulation.

So, Connecticut's health insurance mandates impact smaller employers in the state to a greater degree than larger employers. When the legislature either creates a new mandate or expands an existing mandate, it is making health insurance less affordable for those small companies that can least afford to shoulder these cost increases.

CBIA asks this committee to reject all new or expanded mandate proposals and to enact a moratorium on health insurance mandates. It is crucial that as the state moves forward toward major health care reform, that the General Assembly refrain from taking any actions that would increase the cost of already skyrocketing health insurance premiums.

Again, please reject **SB 205** and thank you for the opportunity to offer CBIA's comments on this legislation. I look forward to working with you on this and other issues related to the reforming Connecticut's health care system.



2/1

State of Connecticut  
Department of Developmental Services

DDS

Dannel P. Malloy  
Governor

Terrence W. Macy, Ph.D.  
Commissioner

Joseph W. Drexler, Esq.  
Deputy Commissioner

DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY  
BEFORE THE LEGISLATIVE INSURANCE AND REAL ESTATE COMMITTEE

**Raised Bill. No. 205, An Act Concerning Insurance Coverage for the Birth to Three Program.**

February 28, 2012

Senator Crisco, Representative Megna, and members of the Insurance and Real Estate Committee. I am Terrence W. Macy, Ph.D., Commissioner of the Department of Developmental Services (DDS), and I am here to testify in support of Raised Bill No. 205, An Act Concerning Insurance Coverage for the Birth to Three Program. With me today is Linda Goodman, Director of the Connecticut Birth to Three program.

Under the administration of DDS, the Connecticut Birth to Three System offers developmental evaluations and early intervention services to infants and toddlers under the age of three who have disabilities or developmental delays, including autism. The System is administered under the federal Individuals with Disabilities Education Act (IDEA) Part C and its regulations. Each year, the state receives approximately \$4 million in IDEA Part C funding to help support the administration of the Birth to Three Program and related service delivery. Approximately half of that amount is used for administration and half goes toward direct services. The state also appropriates nearly \$36 million to pay for direct services. The IDEA states that the federal funding is to supplement, not supplant state and local funding for early intervention. In order to receive this funding, the IDEA requires each state to annually assure that there is a "maintenance of effort" which is defined as the state spending as much or more from state and local funds for early intervention in one year as it did in the previous year. The definition of "state and local funds" has always excluded reimbursement from commercial health insurance plans. As the federal agency that administers the IDEA, the U.S. Department of Education has the authority to determine whether or not a state has met its obligation for maintenance of effort. If the U.S. Department of Education determines that a state has not met this obligation, it has the right to require the state to make up the difference by refunding the equivalent state money to the federal government.

In recent revisions to the IDEA Part C regulations that become effective on July 1, 2012, there is a new provision that says a state may establish a new baseline to include annual health insurance

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reimbursements and the state may then count future health insurance reimbursement toward "maintenance of effort" if the state has enacted statutory language regarding commercial health insurance coverage that (1) protects annual and lifetime caps; (2) ensures that billing for early intervention services alone will not cause a family to be denied health insurance coverage; and (3) ensures that the billing for early intervention services alone will not be the basis for increasing the family's health insurance premiums. If Connecticut enacts such language, it would be implemented when we receive our next IDEA Part C grant in July 2012.

State funding for Birth to Three was reduced in fiscal years 2012 and 2013, by \$1.6 million and \$3.2 million respectively in anticipation of the ability to collect greater amounts of insurance reimbursement due to changes made in the 2011 Legislative Session to CGS Section 38a-516a that went into effect on January 1, 2012. Insurance reimbursement for Birth to Three Services was almost \$4 million in FY11 and is expected to increase in fiscal years 2012 and 2013.

Currently, CGS Sections 38a-490a and 38a-516a already cover the first IDEA requirement which is to protect annual and lifetime caps. However, those statutes are silent on the other two required items related to billing for Birth to Three services, potentially causing a denial of coverage or premium increases. This proposed legislation would amend CGS Sections 38a-490a and 38a-516a to require that individual and group plans meet the last two IDEA insurance requirements, enabling the state to acknowledge the contributions of insurance companies in the funding of the Birth to Three System.

I'm attaching a letter from the Office of Special Education Programs (OSEP) dated May 4, 2011, to a state who inquired about the implications of the maintenance of effort requirement on funding. The letter provides informal guidance that a state who fails to maintain effort in a particular fiscal year would be subject to liability and could not take a pass on a portion of forthcoming Part C funds to remedy the situation. The passage of Senate Bill 205 would help Connecticut towards meeting maintenance of effort requirements going forward.

Thank you for raising Senate Bill 205. I urge your support of this bill and would be happy to answer any questions that you might have.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

The Honorable Robert Moser, MD, Secretary &  
Pat Kuester, MPA, Chief Fiscal Officer  
Kansas Department of Health and Environment  
1000 SW Jackson Street, Suite 570  
Topeka, Kansas 66612-1368

MAY 4 2011

Dear Secretary Moser and Ms. Kuester:

This is in response to the inquiry from your State to the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department) regarding the maintenance-of-effort (MOE) requirement under Part C of the Individuals with Disabilities Education Act (Part C or IDEA). Specifically, your State has asked the following:

- (1) What is the liability if a State fails to maintain effort?
- (2) If the State must pay back funds to the Department for its failure to maintain effort for a particular fiscal year, how is the amount computed?
- (3) If the State fails to maintain effort, can it pay the liability by not drawing down all of its Federal funds in an amount equal to the MOE shortfall?

IDEA section 637(b)(5)(B) requires that IDEA Part C funds "be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds." The Part C regulations in 34 CFR §303.124(b) provide that, "the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available." Allowances for the level of MOE required may be made under the following two circumstances: (1) Decreases in the number of children who are eligible to receive early intervention services; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

If the State fails to maintain effort in a particular fiscal year, the State would be subject to liability under the Single Audit Act. The remedy would be for the State to pay back the amount by which it failed to meet the MOE requirement in a particular fiscal year under 34 CFR §303.124(b). The actual amount that the State would need to pay back would be based on the State's shortfall in meeting the total amount of State and local public expenditures for the provision of early intervention services in that fiscal year, as supported by records of those expenditures.

You asked whether such payment could be made by liquidating less than the full allotment of your State's annual IDEA Part C allotment. A State could not decline to draw down all of its Federal IDEA Part C award funds to offset the amount by which the State failed to maintain effort because this would constitute repayment using Federal funds. The State's repayment must

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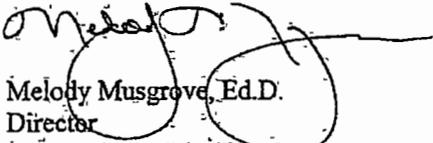
Page 2 – Honorable Robert Moser, MD & Ms. Pat Kuester

be made with non-Federal funds, or Federal funds for which accountability to the Federal government is not required. See 2 CFR Part 225, Appendix B, #16. As a result of the enactment of the American Recovery and Reinvestment Act of 2009 (ARRA), States received a large one-time increase in Federal Fiscal Year 2009 IDEA Part C funds. A State is prohibited from using Federal award funds, including ARRA IDEA Part C funds, to pay back the amount by which the State failed to maintain effort.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the Department of the IDEA in the context of the specific facts presented.

If you have further questions, please do not hesitate to contact Ruth Ryder at 202-245-7513 or by email at [ruth.ryder@ed.gov](mailto:ruth.ryder@ed.gov).

Sincerely,

  
Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs

Enclosure

cc: Part C Coordinator

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**INSURANCE AND  
REAL ESTATE  
PART 2  
360 – 637**

**2012**

**S - 638**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2012**

**VOL. 55  
PART 3  
617 - 941**

rgd/md/gbr  
SENATE

55  
April 11, 2012

Madam President, would move to refer this bill to the Commerce Committee.

THE CHAIR:

Seeing no objection, so ordered.

Mr. Clerk.

THE CLERK:

On page 12, Calendar 137, Substitute for Senate Bill Number 258, AN ACT CONCERNING AN INCREASE IN THE MAXIMUM ALLOWABLE UNEMPLOYMENT COMPENSATION TRUST FUND BALANCE, favorable report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Madam President.

Madam President, this item might be passed temporarily.

THE CHAIR:

Seeing no objection, sir, so ordered.

Mr. Clerk.

THE CLERK:

On page 13, Calendar 164, Substitute for Senate Bill Number 205, AN ACT CONCERNING INSURANCE COVERAGE FOR THE BIRTH TO THREE PROGRAM, favorable report of the Committee on Insurance.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President.

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Madam President, I move for acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

On acceptance and adoption -- on passage, rather, would you remark?

SENATOR CRISCO:

Thank you, Madam President.

I also request that the reading be waived and I be given permission to summarize.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR CRISCO:

Madam President, members of the circle, this is an outstanding example of excellent work by a state agency. The Department of Developmental Services has worked diligently to make sure that, not only are those who need assistance receive that need, but also provide that need with additional revenue to the State.

This bill adds provisions to insurance coverage for medically necessary early intervention services, the Birth to Three program. The additional insurance provisions in the bill brings the state Birth to Three insurance statutes into conformance with recently revised federal IDA regulations that become effective on July 1, 2012.

The feds have required that we maintain an effort, a maintenance of effort, which is defined as the State spending as much or more from state and local funds for early intervention in one year as it did in the previous year. And as I said earlier, Madam President, it is an extremely great example of an efficient state agency and leadership and staff work in this very needed program.

THE CHAIR:

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Thank you.

Will you remark? Will you remark?

Senator Fasano.

SENATOR FASANO:

Thank you, Madam President.

Madam President, through you to Senator Crisco.

THE CHAIR:

Please proceed, sir.

SENATOR FASANO:

Thank you, Madam President.

Senator Crisco, it's my understanding that one of the other purposes for making the changes in this bill is to comport with the federal laws that have changed. And if we don't make this change, we put some federal dollars at risk. Is that a correct understanding?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you to the distinguished Senator, yes.

THE CHAIR:

Senator Fasano.

SENATOR FASANO:

I thank you, Madam president. And I thank Senator Crisco.

THE CHAIR:

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Thank you.

Will you remark further? Will you remark further?

Senator Crisco.

SENATOR CRISCO:

If there's no objection, could we have it as a consent calendar?

THE CHAIR:

Seeing no objection, so ordered, sir.

Mr. Clerk.

THE CLERK:

On page 14, Calendar 181, Substitute for Senate Bill Number 88, AN ACT CONCERNING THE PUBLIC'S RIGHT TO KNOW OF A SEWAGE SPILL, favorable report of the Committee on Environment.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Good afternoon, Madam President.

THE CHAIR:

Good afternoon, sir.

SENATOR MEYER:

Nice to see you.

THE CHAIR:

Same here.

SENATOR MEYER:

I move acceptance of the committee's joint and favorable

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THE CLERK:

Page 1, Calendar 214, Senate Resolution Number 11; also page 1, Calendar 215, Senate Resolution Number 12; page 2, Calendar 216, Senate Joint Resolution Number 24; page 2, Calendar 217, Senate Joint Resolution Number 25.

Also on page 2, Calendar 244, House Joint Resolution Number 71; page 2, Calendar 245, House Joint Resolution Number 72; page 3, Calendar 246, House Joint Resolution Number 73; Calendar 247, House Joint Resolution 74; Calendar 248, House Joint Resolution Number 75; and Calendar 249, House Joint Resolution Number 76.

On page 4, House Joint Number -- Calendar 250, House Joint 77; Calendar 251, Senate Joint Resolution Number 26; also on page 4, Calendar 252, Senate Joint Resolution Number 27; on page 5, Senate Bill Number 53 -- I'm sorry, Calendar 53, Senate Bill Number 20; Calendar 56, Senate Bill 71; Calendar 57, Senate Bill 105.

On page 6, Calendar 75, Senate Bill 200; page 7, Calendar 80, Senate Bill Number 42; on page 9, Calendar 105, Senate Bill 252; on page 10, Calendar 111, Senate Bill 328; on 13, Calendar 164, Senate Bill Number 205; and on page 13, Calendar 168, Senate Bill 106.

On page 14, Calendar 181, Senate Bill 98; and Calendar 186, Senate Bill 191.

THE CHAIR:

Mr. Clerk, I think that's Senate Bill 88.

THE CLERK:

Senate Bill 88, stand corrected.

Also Calendar 186, Senate Bill 191; on page 15, Calendar 198, Senate Bill Number 28; on page 17, Calendar 212, Senate Bill 241; and Calendar 213, Senate Bill 139.

On page 18, Calendar 227, Senate Bill 99.

THE CHAIR:

At this time, please, the machine will be open and please

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call for a roll call vote.

THE CLERK:

Immediate roll call has been ordered in the Senate.  
Senators please return to the Chamber. Immediate roll  
call has been ordered in the Senate.

THE CHAIR:

Have all members voted? If all members have voted, the  
machine will be locked. And Mr. Clerk, will you call the  
tally?

THE CLERK:

Total Number voting	36	
Necessary for adoption	19	
Those voting Yea		36
Those voting Nay		0
Those absent and not voting	0	

THE CHAIR:

The consent calendar has been adopted.

Senator Gerratano -- Gerratana, sorry.

SENATOR GERRATANA:

Thank you, Madam President.

Just for a journal notation. I missed, not this vote, but  
the previous vote on the legislation. I was out of the  
Chamber on legislative business, but I would have voted  
affirmative.

THE CHAIR:

It will be noted.

SENATOR GERRATANA:

Thank you, madam.

THE CHAIR: