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Governor

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**State of Wisconsin**  
Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

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June 24, 1999

JUN 28 REC'D

The Honorable Fred Risser, President  
Wisconsin State Senate  
1 East Main, Suite 402  
Madison, WI 53702

The Honorable Scott Jensen, Speaker  
Wisconsin State Assembly  
1 East Main, Suite 402  
Madison, WI 53702

Re: Clearinghouse Rule 98-071

HFS 90, relating to early intervention services for children with developmental needs in the age group from birth up to 3.

Gentlemen:

In accordance with the provisions of s. 227.19(2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19(3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Donna Miller at 267-5150.

Sincerely,

  
Paul E. Menge

Administrative Rules Manager

cc Gary Poulson, Deputy Revisor of Statutes  
✓ Senator Judy Robson, JCRAR  
Representative Glenn Grothman, JCRAR  
Donna Miller, Division of Supportive Living  
Kevin Lewis, Secretary's Office

PROPOSED ADMINISTRATIVE RULES – HFS 90  
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES  
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

This order amends the Department's rules for operation of the Birth to 3 Program under s. 51.44, Stats., to establish a state-level mediation process for resolution of disputes between parents and county administrative agencies, to modify the current hearing process to provide for appointment of the impartial decisionmaker by the Department, to improve the required documentation by county administrative agencies that "natural environments" are being used to the maximum extent appropriate as the locations for provision of early intervention services, and to make several corrections, updating changes and experienced-based improvements in the rules.

Addition of the new state-level mediation process for resolution of disputes means that either a parent or the county administrative agency may at any time ask for mediation of a dispute between them. Mediation is voluntary and may result in a written agreement between the parties. The opportunity for mediation of a dispute is in addition to the current opportunity that parents have to request a hearing to challenge a county administrative agency's proposal or refusal to initiate or change the evaluation process or eligibility determination of the child or to provide appropriate early intervention services. The result of a hearing is the impartial hearing officer's decision on the case.

The rule changes relating to how disputes are resolved between parents and county administrative agencies and to documentation of the use of natural environments for provision of early intervention services are being made to incorporate changes made in Part C of the federal Individuals with Disabilities Education Act (IDEA), 20 USC 1400, by Public Law 105-17.

The other changes made in ch. HFS 90 by this rulemaking order are the following:

- Addition of references to federal Public Law 105-17 which recently amended the Individuals with Disabilities Education Act;
- Substitution of Part C for Part H as the federal grant program reference to the Birth to 3 Program in the Individuals with Disabilities Education Act, pursuant to a change made by PL 105-17;
- Deletion of the phrase, "and other early intervention services identified in a child's IFSP" from s. HFS 90.11 (2) (a) 2. That phrase was inadvertently not deleted when ch. HFS 90 was amended, effective May 1, 1997, to provide that fees be charged for non-core services, and therefore is not consistent with

the changes made at that time in ch. HFS 90;

- Under s. HFS 90.11 (4), Other Early Intervention Services, the identification of a specific new service under certain types of early intervention services. The new service is “provide consultation to and training of parents, other service providers and community agencies in regard to” the service type. This is added under audiology services, communication services, nursing services, occupational therapy services, physical therapy services, psychological services, social work services, special instruction services and vision services; and
- Insertion of “motor skills” in s. HFS 90.11 (4) (m) 2. to correct an obvious omission.

### Responses to Clearinghouse Recommendations

All comments of the Legislative Council’s Rules Clearinghouse were accepted, except the following:

5.b. Comment: In HFS 90.12 (5) (b) 2., should the notification to the Department of the party’s consent or refusal to participate in mediation be in writing? If so, insert the phrase “in writing” after “department” on line 1 and the note following subd. 3. should indicate that the party’s written notification under subd. 2. c. should be sent to the address indicated in the Note.

Response: No change. A verbal response or a written response by fax or mail would be acceptable. The timeline is quite short. The Department will contact the requesting party in writing.

5.c. Comment: In HFS 90.12 (5) (g), what specific information is the mediator required to report to the Department “for the purpose of administering the mediation program”?

Response: That information would likely include the persons present at the mediation, the dates, locations and lengths of mediation sessions, a summary of concerns that led to mediation and the outcome of mediation.

5.g. Comment: Perhaps add a note under HFS 90.12 (6) (d) 4. e. to tell the impartial administrator to whom and where the decision is to be sent.

Response: Unnecessary. The DOA hearing officers will know where to send the decision, and any other hearing officer will be in direct contact with the program.

## Public Review

The Department held two public hearings on the proposed amendments to ch. HFS 90. The hearings were in Madison and Stevens Point in July 1998. Eight persons attended. Five of them testified on the proposed rule changes while one other submitted written comments at a hearing. A list of persons who participated in the hearings and a summary of their comments and the Department's responses to those comments are found in an attachment to this document.

One modification was made in the proposed rules in response to public comments. In s. HFS 90.11(2)(b)1.e., the language in the requirement that a provider of early intervention services, when a member of an EI team, train other team members to implement aspects of his or her discipline was modified to replace the ambiguous phrase, "while retaining professional responsibility," with "according to standards of practice for his or her discipline."

Following public hearings, the Department made several other changes in the proposed rules at the direction of the U.S. Department of Education's Office of Special Education Programs. These changes were necessary for the rules to be in compliance with amendments to the federal regulations for the Early Intervention Program for Infants and Toddlers with Disabilities, 34 CFR Part 303, published in the Federal Register, March 12, 1999, pp. 12535-12537. These changes include the following: deleting the requirement for parent permission to conduct a screening; deleting the requirement for parent permission to make a referral to the program; shortening the timelines for the mediation process; clarifying that a surrogate parent may not be an employe of the Department or any other state agency or of any agency that provides services to the child or to a member of the child's family; and requiring rather than encouraging the convening of a conference for a child approaching the age of 3 who has been receiving Birth to 3 services but will not likely be eligible to move on to a preschool program under subch. V of ch. 115, Stats.

## Final Regulatory Flexibility Analysis

These rule changes will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They apply to the Department and to county agencies administering the Birth to 3 Program.

## SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT RESPONSES

### HFS 90 - EARLY INTERVENTION SERVICES FOR CHILDREN FROM BIRTH TO 3 WITH DEVELOPMENTAL NEEDS-- AMENDMENTS

Public hearings were held in Madison on July 6, 1998 and in Stevens Point on July 8, 1998.

Staff in attendance were Beryl Gribbon Fago, Hearing Officer, and Donna Miller, Resource Person.

The hearing record was left open until July 27, 1998 for receipt of written comments. Participation at the hearings is tabulated below. The persons who observed only did not indicate support or opposition to the proposed rule changes.

Registered	8
Testified	5
Observed, did not testify.	2
Written comments submitted by persons who attended the hearing but did not testify	1
Written comments submitted by persons who did not attend the hearings	0

The following is a list of the persons who testified at the hearings or submitted written comments. The number preceding a name serves in the attached summary of hearing comments to indicate the person who made the specific comment.

1. James R. Ryan  
Penfield Children's Center  
Milwaukee, WI
2. Nick Sgarlata  
St. Mary's Hospital--Ozaukee  
Mequon, WI
3. Cheryl Appel  
Madison, WI
4. Michele A. Bjella  
Stevens Point, WI
5. Sue Chapman  
Achievement Center EIP  
Stevens Point, WI
6. Ann M. Klesmith  
Stevens Point, WI

## **PUBLIC COMMENTS ON PROPOSED CHANGES TO HFS 90 AND DEPARTMENT RESPONSES**

***Comments on the rule change relating to assurance that early intervention services are provided, to the extent appropriate, in natural environments. [HFS 90.10(5)(d) 2. and 90.11(5)(a)]***

1. Comment: Supports the rule change. (2, 3, 4, 5, 6)

Response: Acknowledged.

2. Comment: Allow parent choice of locations for early intervention services and respect the expressed wishes of families. (1, 2, 5)

Response: Federal law requires that early intervention services be provided in natural environments unless the child's outcomes cannot be satisfactorily achieved in a natural environment. Family priorities, concerns and resources are central to the planning the IFSP and designing the early intervention services designed to meet the child's outcomes. Birth to 3 programs should arrange for options for settings, including in the home and community where typically developing peers participate. The IFSP teams, including the family, will discuss options that meet the requirement for services in natural environments.

3. Comment: Use broad guidelines and flexibility in interpreting the federal requirements to take into family circumstances. Allow for a combination of environments and variety of contexts. The natural environment may not be the best learning environment for a child since some homes, child care settings or community settings are not easily conducive to learning. Segregated services may best serve the child in some cases. (1, 2, 4, 5)

Response: The focus in determining the location of early intervention services should be on settings that are most likely to assist the child and family in meeting the child's developmental outcomes. A variety of settings may be appropriate. This determination should be based on the individual child and family needs and resources.

The focus of early intervention is working with families to enhance their child's development. This may require intensive services focused on parent-child interactions. In the rare cases when the IFSP team feels that outcomes cannot be met in the child's home or a community setting where typically developing peers participate, the team may determine that another setting is more appropriate. The IFSP team must provide written justification for that decision.

4. Comment: Providing highly intensive intervention in segregated settings provides a foundation of skills to allow the child to successfully interact in other environments with typically developing children. (1)

Response: Federal law requires that early intervention services be provided in natural environments unless the child's outcomes cannot be satisfactorily achieved in natural environments. The child should receive early intervention services in his or her natural environments--settings that are typical for children without disabilities--rather than in settings separate from their age peers. A child's ability to interact with other children is enhanced through secure and consistent relationships with caregivers and through participation with peers in developmentally appropriate settings.

5. Comment: Child care providers may not be willing to have therapy or other early intervention services in their centers. (1, 5)

Response: While not all child care providers are prepared or willing to have early intervention services provided in their centers, many welcome the support that early interventionists can provide. Early intervention can offer supports to the child care provider such as training or assistance in integrating activities into daily routines. If providing services in the child care center is not an option, the early intervention program may need to arrange for flexible scheduling to meet with the child and the family in the home.

6. Comment: The IFSP team needs to consider the stress on families when deciding the location of services. In addition, in some family situations, such as in controlling or abusive situations, the parent may want to leave the home or the provider may not be able to enter it. (3)

Response: The IFSP team should carefully and respectfully consider these and other factors that may affect decisions about the settings for early intervention. Natural environments include community settings where children without disabilities participate, not just the child's home.

7. Comment: Insurance may cover the cost of clinic visits for therapy services but will not cover the cost of the same service in the home or community settings. With the ability to pay system, parents may have more cost sharing when services are provided in a natural environment. Concerned that parents may choose not to receive the unreimbursed services. (3)

Response: The service coordinator and other early intervention providers should discuss with the family the value of each early intervention service. Under the ability to pay system, if the cost share has a significant effect on the provision of the service, the county may adjust the cost share for an individual family.

***Comments on the establishment of a system of mediation for resolution of disputes between parents and county administrative agencies. [HFS 90.12(5)]***

1. Comment: Indicated support for the rule change. (3)

Response: Acknowledged.

***Comments on emphasizing the role of consultation in providing early intervention services.  
[HFS 90.11(2)(b)1.e.]***

1. Comment: Indicated support for the rule change. (3, 4)

Response: Acknowledged

2. Comment: Concerned with legal ramifications of professional being held liable for mishandled care. Would the professional be able to choose whom to train and express level of comfort as trainer and receiver of information? Suggest replacing "professional accountability" with "standards of practice". (3)

Response: Agreed. The proposed rule has been changed. The professional is accountable for the standards of practice for his or her discipline in releasing responsibilities including evaluating the ability of the parent or other team member to implement the activity.

***Other Comments***

1. Comment: Increase outreach to families in all segments of society (6)

Response: Acknowledged. Local Birth to 3 programs are primarily responsible for child find and other outreach activities. The state Birth to 3 Program works with counties to expand outreach to families with cultural or linguistic diversity.



6-23-99

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
RENUMBERING, AMENDING, REPEALING AND RECREATING AND  
CREATING RULES

To repeal HFS 90.10 (5) (f) 4. Note #1; to renumber HFS 90.11 (2) (b) 1. e. and 90.13 (2) (b) to (h); to amend HFS 90.03 (28), 90.05 (4) (a), 90.07 (1), 90.08 (7) (k), 90.10 (5) (f) (intro.) and 4. (intro.) 90.11 (1) (c) 1. b., (2) (a) 1. and 2., (b) 1. d., (4) (b) 5. and 6., (c) 3. and 4., (g) 2. and 3., (i) 2. and 3., (j) 2. and 3., (k) 1. and 2., (L) 4. and 5., (m) 2., 6. and 7. and (o) 2. and 3. and (5) (a), 90.12 (1) (a) 5. and 90.13 (2) (c), as renumbered; to repeal and recreate HFS 90.07 (3), 90.10 (5) (d) 2. and 90.12 (5); and to create HFS 90.10 (5) (f) 5., 90.11 (2) (b) 1. e., (4) (b) 7., (c) 5., (g) 4., (i) 4., (j) 4., (k) 3., (L) 6., (m) 8. and (o) 4., 90.12 (6) and 90.13 (2) (b), relating to early intervention services for children with developmental needs in the age group from birth up to 3.

Analysis Prepared by the Department of Health and Family Services

This order amends the Department's rules for operation of the Birth to 3 Program under s. 51.44, Stats., to establish a state-level mediation process for resolution of disputes between parents and county administrative agencies, to modify the current hearing process to provide for appointment of the impartial decisionmaker by the Department, to improve the required documentation by county administrative agencies that "natural environments" are being used to the maximum extent appropriate as the locations for provision of early intervention services, and to make several corrections, updating changes and experienced-based improvements in the rules.

Addition of the new state-level mediation process for resolution of disputes means that either a parent or the county administrative agency may at any time ask for mediation of a dispute between them. Mediation is voluntary and may result in a written agreement between the parties. The opportunity for mediation of a dispute is in addition to the current opportunity that parents have to request a hearing to challenge a county administrative agency's proposal or refusal to initiate or change the evaluation process or eligibility determination of the child or to provide appropriate early intervention services. The result of a hearing is the impartial hearing officer's decision on the case.

The rule changes relating to how disputes are resolved between parents and county administrative agencies and to documentation of the use of natural environments for provision of early intervention services are being made to incorporate changes made in Part C of the federal Individuals with Disabilities Education Act (IDEA), 20 USC 1400, by Public Law 105-17.

The other changes made in ch. HFS 90 by this rulemaking order are the following:

- Addition of references to federal Public Law 105-17 which recently amended the Individuals with Disabilities Education Act;
- Substitution of Part C for Part H as the federal grant program reference to the Birth to 3 Program in the Individuals with Disabilities Education Act, pursuant to a change made by PL 105-17;
- Deletion of the phrase, “and other early intervention services identified in a child’s IFSP” from s. HFS 90.11 (2) (a) 2. That phrase was inadvertently not deleted when ch. HFS 90 was amended, effective May 1, 1997, to provide that fees be charged for non-core services, and therefore is not consistent with the changes made at that time in ch. HFS 90;
- Under s. HFS 90.11 (4), Other Early Intervention Services, the identification of a specific new service under certain types of early intervention services. The new service is “provide consultation to and training of parents, other service providers and community agencies in regard to” the service type. This is added under audiology services, communication services, nursing services, occupational therapy services, physical therapy services, psychological services, social work services, special instruction services and vision services; and
- Insertion of “motor skills” in s. HFS 90.11 (4) (m) 2. to correct an obvious omission.

The Department’s authority to repeal, amend, repeal and recreate and create these rules is found in s. 51.44 (5) (a), Stats. The rules interpret s. 51.44, Stats.

SECTION 1. HFS 90.03 (28) is amended to read:

HFS 90.03 (28) “Part ~~H~~ C” means the federal grant program to help states establish statewide comprehensive systems of early intervention services for children in the age group birth to 3 and their families, which was added to the Individuals with Disabilities Education Act, 20 USC ch. 33, by PL 99-457 and amended by PL 102-119 and PL 105-17.

SECTION 2. HFS 90.05 (4) (a) is amended to read:

HFS 90.05 (4) (a) Any individual or organization having reason to believe that one or more requirements of this chapter or Part ~~H~~ C and its implementing regulations, 34 CFR Pt. 303, are not being met by the department or a county administrative agency or by any other public agency or private provider involved in the early intervention system under agreement with the county administrative agency may complain to the department. The complaint shall be in writing and be signed and shall consist of a statement setting forth the complaint and the facts upon which the complaint is based. The department shall develop procedures to inform parents and other interested individuals and organizations about their right to file a complaint and how to file a complaint.

Note: A complaint under this subsection should be sent to the Birth to 3 Program, Division of Supportive Living, P.O. Box 7851, Madison WI 53707.

Note: The process for resolution of disputes between parents and county administrative agencies is described in s. HFS 90.12 (5).

SECTION 3. HFS 90.07 (1) is amended to read:

HFS 90.07 (1) ESTABLISHMENT OF CHILD FIND SYSTEM. Each county administrative agency shall establish a comprehensive child find system to ensure that all children who may be eligible for the birth to 3 program are identified and, ~~with the parent's permission,~~ referred for screening or for evaluation to determine eligibility for the birth to 3 program. The system shall include public awareness activities and an informed referral network.

SECTION 4. HFS 90.07 (3) is repealed and recreated to read

HFS 90.07 (3) SCREENING AND REFERRAL FOR EVALUATION. (a) If the primary referral source suspects that an infant or toddler has a developmental delay, the primary referral source shall conduct or request a formal screening to determine if there is reason to refer the child for an evaluation.

(b) If the primary referral source has reasonable cause to believe that a child has a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay or has a developmental delay, the primary referral source shall refer the child for an evaluation. The primary referral source shall ensure that referral for evaluation is made no more than 2 working days after a child has been identified.

Note: Referral sources should differentiate between a request or need for a formal screening and referral for an evaluation. For example, a child diagnosed as having Down syndrome, which has a high probability of resulting in a developmental delay, should be referred for an evaluation rather than a formal screening, whereas a child who seems slow in speech or motor development may first be formally screened to determine if there is need for an evaluation.

(c) 1. A service provider may do informal or formal screening of a child as part of the service provider's routine observations or intake procedures.

2. Following either a formal or informal screening, the primary referral source or the service provider shall inform the parent of the reason, procedures and results of the screening.

Note: While parental consent is not required to screen a child, the service provider is encouraged to give the parent information about the screening process before conducting the screening.

SECTION 5. HFS 90.08 (7) (k) is amended to read:

HFS 90.08 (7) (k) If the parent chooses not to take part in the evaluation process or development of the report, the service coordinator shall meet with the parent upon completion of the evaluation to discuss the findings and conclusions of the EI team. The service coordinator shall document in the child's early intervention record why the parent was not involved and the steps taken to share the findings and conclusions of the EI team with the parent.

SECTION 6. HFS 90.10 (5) (d) 2. is repealed and recreated to read:

HFS 90.10 (5) (d) 2. The locations where early intervention services will be provided. This list shall be accompanied by a statement that describes the environments in which early intervention services are provided, with justification if a specific early intervention service will not be provided in a natural environment.

SECTION 7. HFS 90.10 (5) (f) (intro.) and 4. (intro.) are amended to read:

HFS 90.10 (5) (f) (intro.) A written plan for the steps to be taken to support the child and family through transitions, including the transition upon reaching the age

of 3 to ~~early childhood special education programs, and other services that may be available~~ a preschool program under subch. V of ch. 115, Stats., or to other appropriate services for children who may not be eligible for a preschool program under subch. V of ch. 115, Stats. These steps shall include:

4. (intro.) ~~Convening~~ In the case of a child who may be eligible for a preschool program under subch. V of ch. 115, Stats., convening, with the approval of the family, a conference involving the family, the county administrative agency and the local educational agency responsible for ~~early childhood special education programs~~ preschool programs under subch. V of ch. 115, Stats., at least 90 days before the child reaches the age of 3, in order to:

SECTION 8. HFS 90.10 (5) (f) 4. Note #1 is repealed.

SECTION 9. HFS 90.10 (5) (f) 5. and Note are created to read:

HFS 90.10 (5) (f) 5. In the case of a child who may not be eligible for preschool programs under subch. V of ch. 115, Stats., making reasonable efforts to convene, with the approval of the family, a conference involving the family, the county administrative agency and other agencies providing services for children not eligible for preschool programs assisted under subch. V of ch. 115, Stats., in order to:

- a. Discuss the appropriate services the child may receive; and
- b. Prepare a written transition plan to reflect decisions made at the conference and the role of sending and receiving agencies.

Note: While subds. 4. and 5. require a conference for a child's transition at age 3 from the Birth to 3 program to a preschool program under subch. V of ch. 115, Stats., or to other appropriate services, the county administrative agency is encouraged, whenever there is a change in an agency providing services to the child and the child's family, to convene a conference with the family and the sending and receiving agencies to develop a plan to support the child and family and define the role of the agencies.

SECTION 10. HFS 90.11 (1) (c) 1. b. and (2) (a) 1. and 2. and (b) 1. d. are amended to read:

HFS 90.11 (1) (c) 1. b. Part ~~H~~ C and the federal implementing regulations, 34 CFR Pt. 303, and this chapter; and

(2) (a) General conditions for early intervention services. 1. Appropriate early intervention services for an eligible child and the child's family, provided to the maximum extent appropriate to the needs of the child in natural environments, including the home and community settings in which children without disabilities participate, shall be based on the developmental needs of the child and shall be

provided with the written consent of the parent. Services shall be provided in collaboration with the parent, by qualified personnel, and in compliance with this chapter and Part ~~H~~ C requirements.

2. The county administrative agency shall provide or arrange for the provision of early intervention core services ~~and other early intervention services identified in a child's IFSP~~ at no cost to the child's family and shall provide or arrange for the provision of other early intervention services identified in the child's IFSP. The county administrative agency shall determine parental liability for the cost of the other early intervention services in accordance with ch. HFS 1. Parents may satisfy any liability not met by third party payers if the parents pay the amount determined in accordance with the family support payment formula in s. HSS 65.05 (7).

(b) General role of early intervention service providers. 1. d. When a member of the team, participate in the EI team's assessment of a child, any family-directed assessment of the family and development of integrated goals and outcomes for the IFSP; ~~and~~

SECTION 11. HFS 90.11 (2) (b) 1. e. is renumbered 90.11 (2) (b) 1. f.

SECTION 12. HFS 90.11 (2) (b) 1. e. is created to read:

HFS 90.11 (2) (b) 1. e. When a member of the team, train other team members to implement aspects of his or her discipline according to standards of practice of the discipline; and

SECTION 13. HFS 90.11 (4) (b) 5. and 6. are amended to read:

HFS 90.11 (4) (b) 5. Provision of services for prevention of hearing loss; ~~and~~

6. Determination of the child's need for individual amplification, including selecting, fitting and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices; and

SECTION 14. HFS 90.11 (4) (b) 7. is created to read:

HFS 90.11 (4) (b) 7. Provision of consultation to and training of parents, other service providers and community agencies in regard to audiology services.

SECTION 15. HFS 90.11 (4) (c) 3. and 4. are amended to read:

HFS 90.11 (4) (c) 3. Services for the habilitation, rehabilitation or prevention of communicative or oropharyngeal disorders and delays in development of communication skills, including services directed at the acquisition of sign language,

the development of auditory awareness skills and speech production and the use of augmentative communication devices; ~~and~~

4. Development of augmentation devices or systems, including communication boards and sign language-; and

SECTION 16. HFS 90.11 (4) (c) 5. is created to read:

HFS 90.11 (4) (c) 5. Provision of consultation to and training of parents, other service providers and community agencies in regard to communication services.

SECTION 17. HFS 90.11 (4) (g) 2. and 3. are amended to read:

HFS 90.11 (4) (g) 2. Provision of nursing care to prevent health problems, restore or improve functioning and promote optimal health and development. This includes identification of family concerns and coordination of available resources to meet those concerns; ~~and~~

3. Administration of medications, treatments and regimens prescribed by a physician licensed under ch. 448, Stats.; and

SECTION 18. HFS 90.11 (4) (g) 4. is created to read:

HFS 90.11 (4) (g) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to nursing services.

SECTION 19. HFS 90.11 (4) (i) 2. and 3. are amended to read:

HFS 90.11 (4) (i) 2. Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; ~~and~~

3. Prevention or minimization of the impact of initial or future impairment, delay in development or loss of functional ability-; and

SECTION 20. HFS 90.11 (4) (i) 4. is created to read:

HFS 90.11 (4) (i) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to occupational therapy services.

SECTION 21. HFS 90.11 (4) (j) 2. and 3. are amended to read:

HFS 90.11 (4) (j) 2. Obtaining, interpreting and integrating information appropriate to program planning, to prevent, alleviate or compensate for movement dysfunctions and related functional problems; ~~and~~

3. Providing individual and group services and treatment to prevent, alleviate or compensate for movement dysfunction and related functional problems; and

SECTION 22. HFS 90.11 (4) (j) 4. is created to read:

HFS 90.11 (4) (j) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to physical therapy services.

SECTION 23. HFS 90.11 (4) (k) 1. and 2. are amended to read:

HFS 90.11 (4) (k) 1. Administering psychological and developmental tests and other assessment procedures, interpreting results, and obtaining, integrating and interpreting information about child behavior and child and family conditions related to learning, mental health and development; ~~and~~

2. Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, and parent education; and

SECTION 24. HFS 90.11 (4) (k) 3. is created to read:

HFS 90.11 (4) (k) 3. Provision of consultation to and training of parents, other service providers and community agencies in regard to psychological services.

SECTION 25. HFS 90.11 (4) (L) 4. and 5. are amended to read:

HFS 90.11 (4) (L) 4. Working with problems in a child's and family's living situation, at home, in the community and at any center where early intervention services are provided, that affect the child's maximum utilization of early intervention services; ~~and~~

5. Identifying, mobilizing and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; and

SECTION 26. HFS 90.11 (4) (L) 6. is created to read:

HFS 90.11 (4) (L) 6. Provision of consultation to and training of parents, other service providers and community agencies in regard to social work services.

SECTION 27. HFS 90.11 (4) (m) 2., 6. and 7. are amended to read:



HFS 90.11 (4) (m) 2. Designing learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas including cognitive processes, communication, motor skills and social interaction;

6. Working with other providers to develop an understanding of the child's disability and the impact of that disability on the child's development; ~~and~~

7. Providing support and consultation to child care providers and others in integrated child care settings; and

SECTION 28. HFS 90.11 (4) (m) 8. is created to read:

HFS 90.11 (4) (m) 8. Provision of consultation to and training of parents, other service providers and community agencies in regard to special instruction services.

SECTION 29. HFS 90.11 (4) (o) 2. and 3. are amended to read:

HFS 90.11 (4) (o) 2. Referral for medical and other professional services necessary for habilitation or rehabilitation of visual functioning disorders, or both; ~~and~~

3. Communication skills training for all environments, visual training, independent living skills training and additional training to activate visual motor abilities; and

SECTION 30. HFS 90.11 (4) (o) 4. is created to read:

HFS 90.11 (4) (o) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to vision services.

SECTION 31. HFS 90.11 (5) (a) is amended to read:

HFS 90.11 (5) (a) Location of services. To the maximum extent appropriate to the needs of the child, early intervention services shall be provided in the child's natural environments, including home and community settings where children without disabilities participate. A setting other than a natural environment may be used only when early intervention outcomes cannot be satisfactorily achieved for the child in a natural environment. If reasons exist for providing services in settings other than the child's natural environments, those reasons shall be documented in the child's IFSP.

SECTION 32. HFS 90.12 (1) (b) 5. is amended to read:

HFS 90.12 (1) (b) 5. All procedural safeguards the parent has under this chapter, including the right to file a complaint under s. HFS 90.05 (4), the right to participate in mediation and the right to request a hearing regarding the proposed or refused action.

SECTION 33. HFS 90.12 (5) is repealed and recreated to read:

HFS 90.12 (5) PROCEDURES FOR RESOLUTION OF DISPUTES - MEDIATION. (a) Definitions. In this subsection:

1. "Dispute" means any disagreement between parties concerning a county administrative agency's proposal or refusal to initiate or change the evaluation process or eligibility determination of the child or to provide appropriate early intervention services for the child and the child's family. "Dispute" includes a disagreement in which any other process, including a hearing under sub. (6) or litigation, has been requested or commenced.

2. "Mediation" means a dispute resolution process in which a neutral third person, who has no power to impose a decision if the parties do not agree to settle the case, helps the parties reach an agreement by focusing on the key issues in the dispute, exchanging information between the parties and exploring options for settlement.

3. "Party" means the parent of a child who is the subject of a dispute or the county administrative agency that is responsible for providing early intervention services to the child.

(b) Request for mediation. 1. A party may request the department to arrange for mediation of a dispute at any time. The request shall be in writing, shall briefly describe the dispute and shall identify the parties. Both parties may jointly request mediation.

2. If only one of the parties requests mediation, no later than the next day after receiving the request the department shall notify the other party in writing of the request for mediation. The notice shall include all of the following:

a. An explanation of the mediation process and its advantages;

b. A statement that participation in mediation is voluntary and that agreement or refusal to participate will not affect the resolution of the dispute in any pending or potential adjudicative process, or the timing of that process, unless the parties agree otherwise; and

c. A request that the party notify the department within 3 business days after receiving the notice regarding the party's consent or refusal to participate in mediation.

3. If the department does not receive a timely response to the notice under subd. 2. or if the other party notifies the department of its refusal to participate in mediation, the department shall notify in writing the party that requested mediation that the other party has not responded or refuses to participate.

Note: Send a request for mediation to Birth to 3 Program, Division of Supportive Living, P.O. Box 7851, Madison, WI 53707.

(c) Appointment of mediator. 1. a. A party that requests mediation may nominate a mediator from the roster under par. (d). If a party nominates a mediator, the department shall include in the notice under par. (b)1. the name of the nominated mediator.

b. If both parties nominate the same person as mediator, the department shall appoint that person as mediator if he or she is on the roster under par. (d) and available to mediate.

c. If both parties request mediation but neither party nominates a mediator, the department shall propose a mediator from the roster under par. (d).

d. If both parties consent to mediation but the party that requests mediation does not nominate a mediator, the nominated mediator is not available or the other party does not consent to the appointment of the nominated mediator, the department shall propose a mediator from the roster under par. (d).

2. Whenever the department proposes a mediator under subd. 1.c. or d., the department shall send information about the mediator's training and experience to both parties. Within 2 business days after receiving the information, either party may request the department to propose a different mediator from the roster under par. (d).

3. Both parties may agree to use a mediator not listed on the roster in par. (d). If the parties choose a non-roster mediator, the parties shall agree to pay the compensation of that mediator as provided in par. (g) 3.

(d) Roster of mediators. In collaboration with the department of public instruction, the department shall maintain a roster of mediators qualified to resolve disputes. The department may include a person on the roster if all of the following apply:

1. The department determines that the person has the appropriate skills and knowledge to act as a mediator under this section;

2. The person participates in a training program of at least 5 days' duration that has been approved by the department;

3. The person consents to be observed by a department representative at any mediation session; and

4. The person participates in at least one day of additional training approved by the department each year.

(e) Mediation. 1. Unless both parties agree otherwise, mediation shall commence within 14 days after the mediator is appointed and shall not delay hearings or civil action related to the dispute.

2. The parents of the child and 2 representatives of the county administrative agency may participate in mediation. With the consent of both parties, other persons may participate in mediation. With the consent of both parties, a department representative may observe the mediation sessions.

3. At the commencement of mediation, the mediator shall inform the parties of the information that is required to be reported to the department for the purpose of administering the mediation program. The department may not require a mediator to disclose the substance of any matter discussed or communication made during mediation.

4. Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator. The mediator may recess a mediation session to consult privately with a party. If the mediator does so, he or she shall disclose the general purpose of the consultation but may not reveal other information about the consultation without the consent of the party consulted.

5. Unless both parties and the mediator agree otherwise, no person may record a mediation session.

6. The mediator and either party may withdraw from mediation at any time.

7. No adverse inference may be drawn by any hearing officer or adjudicative body from the fact that a party did not consent to mediation, that a mediator or party withdrew from mediation or that mediation did not result in settlement of the dispute.

(f) Resolution or agreement. If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing, that it is signed by the parties and that a copy is given to each party. The resolution or agreement is legally binding upon the parties.

(g) Mediator compensation. 1. Except as provided in subds. 2. and 3., the department is responsible for the costs of mediation services. The department shall establish a schedule for the compensation of mediators and the reimbursement of their expenses. The department shall pay mediators from the appropriation under s. 20.435 (6) (m), Stats.

2. If the parties agree that the amount of compensation paid to a mediator should be greater than the schedule under subd. 1 allows, the additional compensation is the responsibility of the parties.

3. If the parties have agreed to mediation by a mediator who is not on the roster under par. (d), the mediator's compensation is the responsibility of the parties.

(h) Program evaluation. The department may require that mediators, and may request that parties, participate in the evaluation of the mediation program. The department shall ensure that mediators and parties may participate in evaluating the program without being required to identify themselves or mediation participants.

(i) Contract for services. The department may contract with a private, nonprofit agency to administer the mediation program under this section or for mediator training or other services, including outreach and promotion, related to administration of the program.

SECTION 34. HFS 90.12 (6) is created to read:

HFS 90.12 (6) PROCEDURES FOR RESOLUTION OF DISPUTES - HEARING. (a) Definitions. In this subsection:

1. "Dispute" means any disagreement between parties concerning a county administrative agency's proposal or refusal to initiate or change the evaluation process or eligibility determination of the child or to provide appropriate early intervention services for the child and the child's family. "Dispute" includes a disagreement in which any other process, including mediation under sub. (5) or litigation, has been requested or commenced.

2. "Impartial decision-maker" means a person appointed by the department to implement the dispute resolution process who meets all of the following qualifications:

a. Is knowledgeable about the requirements of this chapter, including dispute process management requirements, and the needs of and services available for eligible children and their families;

b. Is not an employe of the county administrative agency or of any other agency or program involved in the provision of early intervention services or care for

the child, although he or she may be paid by an involved agency or program to provide impartial decision-maker services; and

c. Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

Note: The Department maintains a list of persons who serve as impartial decision-makers. The list includes the qualifications of each person. For a copy of the list, phone 608-266-8276.

3. "Party" means the parent of a child who is the subject of a dispute or the county administrative agency that is responsible for providing early intervention services to the child.

(b) Filing of request for hearing. A parent may request a hearing to challenge a county administrative agency's proposal or refusal to initiate or change the evaluation process or eligibility determination of the child or to provide appropriate early intervention services for the child and the child's family. The request shall be in writing and filed with the department within one year after the date of the agency's proposal or refusal. The written request shall include the name and address of the child, the county responsible for providing early intervention services to the child, a description of the nature of the problem relating to the action or inaction which is the subject of the complaint, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parent at the time.

Note: The Department has developed a form to assist parents in requesting a hearing. For a copy of the form, phone 608-266-8276. A request for a hearing should be sent to the Birth to 3 Program, Division of Supportive Living, P.O. Box 7851, Madison, WI 53707.

(c) Referral of dispute to impartial decision-maker. 1. Upon receipt of a written request from a parent under subd. 2., the department shall promptly appoint an impartial decision-maker.

2. After it appoints an impartial decision-maker, the department shall send to the county administrative agency and the parent a copy of the parent's written request with the name and address of the impartial decision-maker.

3. Upon receipt of a parent's request for a hearing, the department shall inform the parent about the availability of mediation under sub. (5) and about any free or low-cost legal services that might be available to the parent.

4. The county administrative agency is responsible for the costs of a hearing, including the salaries of the impartial decision-maker and stenographer.

(d) Conduct of hearing. 1. Both parties at a hearing may be accompanied by counsel and advised by counsel and by individuals with special knowledge of or training in early intervention services for eligible children.

2. Both parties at a hearing may present evidence, compel the attendance of witnesses and the production of relevant documents and confront and cross-examine witnesses.

3. At least 5 business days prior to a hearing, a party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing. An impartial decision-maker may bar any party that fails to comply with this requirement from introducing a relevant evaluation or recommendation without the consent of the other party.

4. The impartial decision-maker shall do all of the following:

a. Schedule each hearing at a time and place that is reasonably convenient for the parent and notify the parties accordingly;

b. Serve as hearing officer;

c. Review the record and make a decision about the dispute;

e. Issue a written decision, and mail it to both parties and to the state birth to 3 program coordinator not later than 45 days after receipt of the request for hearing under par. (b), unless granting an extension of the time period limit at the request of either party. If an extension is granted, the impartial decision-maker shall include that extension and the reason for it in the hearing record; and

f. When requested by either party or by the department, produce an official record of the hearing no later than 30 days from the date of the decision under this subd. 4.e.

(e) Civil action. Either party aggrieved by the decision under par. (d) 4. e. may bring a civil action in state or federal court. An action filed in circuit court shall be commenced within 30 days after the date of the written decision. Pursuant to 20 USC 1439 (a) (1) and s. 51.44 (1m) and (5) (a) 4., Stats., the court shall receive the record of the administrative hearing, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of evidence, shall grant whatever relief the court determines is appropriate. Sections 227.52 to 227.58, Stats., do not apply to actions under this paragraph.

(f) Services pending decision on a dispute. Pending the decision on a dispute, unless the county administrative agency and parent agree otherwise, a child shall continue to receive the early intervention services that were provided before the dispute

was filed. If the dispute involves an application for initial services, the child shall receive any services that are not in dispute.

SECTION 35. HFS 90.13 (2) (b) to (h) are renumbered 90.13 (2) (c) to (i).

SECTION 36. HFS 90.13 (2) (b) is created to read:

HFS 90.13 (2) (b) Not be a person providing early intervention services to the child or the child's family;

SECTION 37. HFS 90.13 (2) (c), as renumbered, is amended to read:

HFS 90.13 (2) (c) Not be an employe of any state agency or an agency providing services to the child or to any family member of the child, although he or she may be paid by that agency to provide surrogate parent services;

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and  
Family Services

Dated:

By: \_\_\_\_\_  
Joseph Leean  
Secretary

SEAL: