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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2001-02

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Children and Families (AC-CF)

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

DATE: December 7, 2001

TO: Dave Matzen

Committee on Children and Families

FROM: John Scocos, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

### **CLEARINGHOUSE RULE 01-106**

AN ORDER to renumber HFS 90.06 (1) and (2) (i) to (p); to amend HFS 90.06 (2) (h), 90.11 (2) (a) 2. and (4) (intro.) and 90.12 (2) (c); and to create HFS 90.06 (1) and (2) (i), relating to early intervention services for children with developmental needs in the age group from birth to 3.

Submitted by **Department of Health and Family Services.**

Report received from Agency on **December 6, 2001.**

To committee on **Children and Families.**

Referred on **Friday, December 7, 2001.**

Last day for action - **Monday, January 7, 2002.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Clearinghouse Rules beginning with the prefix "01" is now available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 01-106

AN ORDER to renumber HFS 90.06 (1) and (2) (i) to (p); to amend HFS 90.06 (2) (h), 90.11 (2) (a) 2. and (4) (intro.) and 90.12 (2) (c); and to create HFS 90.06 (1) and (2) (i), relating to early intervention services for children with developmental needs in the age group from birth to 3.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

09-11-01 RECEIVED BY LEGISLATIVE COUNCIL.

10-09-01 REPORT SENT TO AGENCY.

RNS:LR;jal;wu

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 01-106

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. In s. HFS 90.06 (1) (b), the parenthetical term should be deleted. A note could explain that maintenance is the same as alimony.

b. In s. HFS 90.06 (2) (i), the first three subdivisions could be consolidated to one introductory paragraph. The subdivision paragraphs could then be renumbered as subdivisions.

c. In s. HFS 90.06 (2) (i) 3. b., all the material after "adjusted annual income" should be deleted. Because "adjusted annual income" is defined in the definitions section of the rule, it is not necessary to include the additional material.

d. Section HFS 90.06 (2) (i) 3. (intro.) should be rewritten in the active voice. It could begin with: "A county administrative agency shall make . . . ."

e. In s. HFS 90.06 (2) (i) 3. c., the word "federal poverty threshold" is initially used. It may be useful to define this term since it, as well as its acronym, "FPT," is used several times throughout this provision of the rule.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

The analysis to the rule states that federal policies governing "Birth to 3" programs require participating states to administer a statewide early intervention system and do not allow a

county to bill a family's insurance without the family's consent. It might be useful to provide a citation to the policy that prohibits counties from billing a family's insurance without the family's consent. In addition, it may also be useful to provide citations to the relevant provisions in the Code of Federal Regulations governing policies related to payment for services, especially 34 C.F.R. ss. 303.520, 303.521 and 303.527.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

There are gaps between the adjusted income levels shown in Table HFS 90.06. For example, adjusted income of 200.5% of the federal poverty threshold (FPT) is not covered, nor is 300%. It is suggested that the second listing be "over 200% of the FPT and at or below 300% of the FPT. Other listings should be redrafted in a similar manner, so that there are no gaps.

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

**Need for Proposed Rules**

Counties must, under s. 51.44 (3) and (4), Stats., and s. HFS 90.06 (2), provide or contract for the provision of early intervention services for children with developmental needs in the age group from birth to 3. Section HFS 90.06 (2) (h) specifies that county administrative agencies must determine the amount of parental liability for the costs of the early intervention services in accordance with ch. HFS 1. Chapter HFS 1 contains the Department's cost liability determination and ability to pay standards and guidelines for services purchased or provided by the Department and counties. Section HFS 90.06 (2) (h) also states that parents may satisfy any liability not met by third party payers if parents pay the amount determined in accordance with the family support payment formula in s. HFS 65.05 (7). The Department's authority to use a system of payments in the "Birth to 3 Program" is found in 34 CFR 303.520 and 303.521, (1999).

The Department's ability to pay system currently ties the Birth to 3 Program to s. HFS 65.05 (7) and ch. HFS 1. Chapter HFS 90's use of these other Department administrative rules has had several undesirable consequences. First, the methodology in s. HFS 65.05 (7), while appropriate for families with children having severe disabilities, is inappropriate for the Birth to 3 Program because of the variability in applying the methodology and the significantly greater turnover of families in the Birth to 3 Program. This turnover of families makes the chapter's complex calculations relatively onerous on counties to administer.

Sections HFS 90.06 (2) (h) and 90.11 (2) (a) 2. and 4. cross reference and incorporate ch. HFS 1. Section HFS 1.01 (4) (d) allows counties to request an exemption from applying the ability to pay system because the county can document that the imposition of a ch. HFS 1 family cost sharing charge is administratively unfeasible. Twenty-four counties have demonstrated to the Department that their cost of administering the ability to pay system amounts to more than the revenues the counties collect. The relatively high cost of administering the program under the current provisions of ch. HFS 90 combined with relatively low rates of cost-sharing by families permitted by counties' application of s. HFS 65.05 (7), has made the program burdensome on some counties.

Second, federal regulations and policies, notably 34 CFR 303.1, 303.520 and 303.521 (1999) and U.S. Department of Education, Office of Special Education Programs' (OSEP) letters governing birth to 3 programs, and, specifically, an OSEP letter to Lucas in Alabama dated July 22, 1996, require participating states to administer a statewide early intervention system and do not permit billing a family's insurance without the family's consent. Chapter HFS 1, however, requires that a family's insurance benefits be billed; this conflicts with federal law. Third, the current ability of counties to request and obtain exemption from participating in the ability to pay system also is contrary to federal policies requiring states to operate a uniform statewide early intervention system. While federal regulations are currently being revised, none of the regulations circulated by the U.S. Department of Education would have any bearing on the Department of Health and Family Service's promulgation of these administrative rules.

The Department proposes to modify ch. HFS 90, the rules governing early intervention services for children with developmental needs up to age 3. The rule modifications would have two results. First, since ch. HFS 90 would no longer cross-reference ch. HFS 1, counties could no longer request exemption from participating in Wisconsin's Birth to 3 Program cost share. County participation in administering the Birth to 3 Program cost share would become mandatory. Second, the method of determining parents' share of the costs of needed services would be simplified and

standardized statewide and would be based on the relationship of families' incomes to the federal poverty guidelines.

The proposed rules would simplify the determination of parental cost share, thereby eliminating the current ability to pay system's inequities for families statewide and reducing counties' administrative costs associated with the program. The Department proposes using the federal poverty guidelines, as revised annually, as a benchmark against which families' adjusted incomes would be compared to determine the parental cost share liabilities. Under such a system, the Department projects that the number of families required to share in the early intervention service costs would roughly double. Since each family's cost share will be based on approximately 1% of their income (as adjusted by a standard deduction for each child with a disability in the family) rather than the existing basis of 3% of income minus a standard deduction and disability-related expenses, the cost share of some families may increase. Families with incomes above 250% of the federal poverty guidelines will be billed for part of the early intervention services their children receive. Families with adjusted incomes below 250% of the federal poverty guidelines will be exempt from cost sharing. The Department projects that about 2,000 families would be exempt from cost sharing under the proposed formula and about 3,100 families are projected to have a liability for a cost share.

Under the simplified payment system the Department is proposing, the Department expects counties' costs to administer the payment system to decline as the number of forms and required calculations would be significantly reduced. The Department projects that the proposed rule changes would increase the revenues generated by counties, in total, due to the fact that more families would have a parental cost share and more counties will be participating in the parental cost share system. However, individual counties having relatively lower per capita incomes may not experience significant revenue increases.

### **Response to Clearinghouse Comments**

The Department accepted all comments made by the Legislative Council's Rules Clearinghouse. With respect to one of the Clearinghouse's comments, the Department offers the following response:

4. Comment: The analysis to the rule states that federal policies governing "Birth to 3" programs require participating states to administer a statewide early intervention system and do not allow a county to bill a family's insurance without the family's consent. It might be useful to provide a citation to the policy that prohibits counties from billing a family's insurance without the family's consent. In addition, it may also be useful to provide citations to the relevant provisions in the Code of Federal Regulations governing policies related to payment for services, especially 34 C.F.R. 303.520, 303.521 and 303.527.

Response: The pertinent authority that does not allow a county to bill a family's insurance without the family's consent is in a federal Office of Special Education control letter to Lamona Lucas in Alabama dated July 22, 1996. The Department has included reference to that letter in the analysis to the rule.

### **Public Review**

The Department held two public hearings on the proposed rules. The hearings were held in Madison (October 16, 2001) and Eau Claire (October 17, 2001). A combined total of eleven people registered at the hearings. Fourteen other persons submitted written comments on ch. HFS 90 during the public comment period ending November 15, 2001. A list of persons who attended a



hearing or submitted comments in writing after the hearings and the Department's responses to the comments follow this document.

The Department made a number of modifications in the rules in response to public comments. These changes pertained to:

- clarifying the definition of the term "family;"
- clarifying the definition of "parental annual income;"
- clarifying how to determine a parental cost share for households with unmarried, separated or divorced parents;
- raising the level at which a parental cost share is first imposed;
- revising Table HFS 90.06 to add an annual income category;
- clarifying that counties are not required to pursue collection from parents;
- clarifying that revenues from the parental cost share be used for Birth to 3 program services; and
- clarifying that a parental cost share is an annual amount that may be paid monthly.

### **Final Regulatory Flexibility Analysis**

The revision of ch. HFS 90 will decrease the number of forms county administrative agencies are required to complete and the number of calculations agencies are required to perform as part of their billing and collection responsibilities under the Birth to 3 Program. Counties may delegate their billing and collection responsibilities to a service provider by written agreement. Occasionally, service providers are small businesses as defined under s. 227.114 (1) (a), Stats. Since county administrative agencies have ultimate responsibility for the paperwork associated with determining parental cost share and, through these proposed rules, the Department is proposing ease the administrative burden of the program, the Department has not proposed specific exemptions from these requirements for small businesses.

**Department of Health and Family Services  
Bureau of Developmental Disabilities  
Public Hearing and Written Comment Summary  
Chapter HFS 90**

Two public hearings on the emergency rules and proposed permanent rules were held as follows:

Madison, WI on October 16, 2001  
Eau Claire, WI on October 17, 2001

Staff in attendance:

Donna Miller, Birth to 3 Program, DHFS--Hearing Moderator (October 16 & 17, 2001)  
David Sorenson, Birth to 3 Program, DHFS--Resource Person (October 16 & 17, 2001)  
Beth Wroblewski, BDDS, DHFS--Resource Person (October 17, 2001)  
Kristina Stuart, Birth to 3 Program, DHFS (October 17, 2001)  
Audrey Roeker, WRO/DHFS/OSF/AA (October 17, 2001)  
Vince Maro, WRO/DHFS/OSF/AAA (October 17, 2001)  
Harry Hobbs, WRO/DHFS/OSF/AAA (October 17, 2001)  
Lynn Ansfield, Representative John Lehman's office

The department kept the hearing record open for written comments until November 15, 2001.

Participation in the hearings is tabulated below. The indication of support and opposition reflects the positions indicated on the registrations or written statements filed by the hearing participants and in written comments submitted to the Department.

Registered: 11

Oral testimony: 6

Written comments from people who attended, but did not testify: 5

Written comments from people who did not attend a hearing: 14

Support the rules: 1

Support the rules with changes: 5

Oppose the rules: 21

Undecided: 0

**Proposed HFS 90 Revision  
Hearing Attendees or Commenters**

The following is a complete list of the people who attended a public hearing or submitted written comments on the proposed ch. HFS 90 permanent rules. Each person's name and affiliation is accompanied by an indication of the person's position on the proposed rules and whether or not the person testified or provided written comments. The number preceding a name indicates who made the specific comment in the attached summary of hearing comments

<b>Name and Address</b>	<b>Position</b>	<b>Action</b>
1. Betty Easley Curative Care Network 1000 N 92 <sup>nd</sup> St Milwaukee, WI 53226	Support	Written comments
2. Nancy Meyer 467 116 <sup>th</sup> Street Roberts, WI 54023	Opposed	Oral comments
3. Douglas & Laurel Lantis N2180 611 <sup>th</sup> Street Bay City, WI 54723	Opposed	Oral comments
4. Mary Magnuson 1409 Hammond Avenue Superior, WI 54880	Opposed	Oral Comments
5. Janet Cleary 412 W Kinne, PO Box 238 Ellsworth, WI 54011	Opposed	Oral Comments
6. Sara Brunner W1670 State Road 29, Apt C Spring Valley, WI 54767	Opposed	Oral Comments
7. Cindy Schlosser 120 S Michigan Street Eau Claire, WI 54703	Opposed	Oral & written Comments
8. Natalie Hazen 2618 Yorktown Ct. Eau Claire, WI 54703	Opposed	Written comments
9. Vicky Ebensperger 808 Main St Menomonie, WI 54751	Opposed	Written comments
10. Marie Swartz 207 Main St Colfax, WI 54730	Opposed	Written comments
11. Robin Weishoff 312 S. 130 <sup>th</sup> Ave Fall Creek, WI	Opposed	Written comments
12. Douglas County Birth to 3 Program Douglas County Health Department 1409 Hammond Ave Superior WI 548880	Opposed	Written comments
13. Dawn Giraldo 1225 College Ave. Howards Grove, WI 53083	Opposed	Written comments

Name and Address	Position	Action
14. Dunn County Maternal and Child Health Coalition Dunn County Health Department 800 Wilson Avenue Menomonie, WI 54751	Opposed	Written comments
15. Laurie Schierl 3600 N. Rankin St Appleton, WI 54911	Opposed	Written comments
16. Catherine Krieps 1042 S. 7 <sup>th</sup> Ave. West Bend, WI 53095	Opposed	Written comments
17. Dawn Wangard W160 N10748 Hidden Glen Lane Germantown, WI 53022	Opposed	Written comments
18. Ken Koss Chippewa County DHS 711 N. Bridge St. Rm. 306 Chippewa Falls, WI 54729-1877	Opposed	Written comments
19. Anne and Eric Eggenberg 2512 South 76 <sup>th</sup> St. West Allis, WI 53219	Opposed	Written comments
20. Michael & Leila R. Keim 1360 Walnut Street Prescott, WI 54021	Opposed	Written comments
21. Sue Olson 510 S. Fourth St. Delavan, WI 53115	Opposed	Written comments
22. Julayne & Nathaniel Stadler N10520 Cherry Rd Birnamwood WI 54414	Opposed	Written comments
23. Chris Hribal Kenosha County DHS Chris Weyker KAC Early Intervention Services 3508 Washington Road Kenosha, WI 53144	Opposed	Written comments
24. Anonymous Parent, Kenosha County	Opposed	Written comments
25. Tim H. Steller Chief Executive Officer North Central Health Care 1100 Lake View Drive Wausau WI 54403	Support with changes	Written comments
25. Barbara Staehler Shawano Co. DCP 504 Lakeland Rd Shawano WI 54166	Support with changes	Written comments

Name and Address	Position	Action
26. Lynn Breedlove Wisconsin Coalition for Advocacy along with Catharine Kriebs and Theresa Danner	Support with changes	Oral and written comments
27. County and provider comments from series of five regional meetings during the public comment period.	Request for clarification. See related document.	Oral comments

**Summary of HFS 90 Public Hearing Oral and Written Testimony and  
Written Comments with Departmental Responses**

<b>Rule Reference</b>	<b>Comment</b>	<b>Department Response</b>
General	Proposed parental cost share is harmful, punitive to families. Will be ultimately detrimental to Birth to 3 Program. <b>13, 16, 17</b>	No change. The Department's intent was to make the Parental Cost Share System fairer to all families.
General	May injure the close relationship between family and Birth to 3 Programs. May hinder the spirit of the Program. Providers uncomfortable talking about money with families <b>5, 6, 7, 10, 13, 16, 17</b>	No change. The Ability to Pay System has been in place since May 1997. Families have been required to disclose their income to have their cost share determined. Counties implementing the Ability to Pay System have not reported significant difficulties talking with families about the system, collecting financial information or in maintaining their relationships with families.
General	Cost share will be deterrent to referrals. <b>14, 21</b>	No change. Since the Ability to Pay System was implemented in 1997, there has been no decline in the enrollment in the Birth to 3 Program.
General	Parents don't know how helpful Program can be on intake. May decide not to participate because of cost share. Families may delay coming into services. Valuable time lost. Importance of early intervention. Don't want parents to decline service because of cost share. Anything that may be a barrier to child receiving services should not be implemented. <b>2, 3, 4, 5, 6, 7, 8, 10, 14, 21, 26</b>	No change. Counties implementing the Ability to Pay System have reported that few families decline to enter the Birth to 3 Program or decide to withdraw from the Program because of the parental costs.
General	Families will discontinue early intervention services and seek private services. <b>13, 15, 16, 17</b>	No change. The Birth to 3 Program is a voluntary program. Some families may choose to receive services outside the Birth to 3 system.
General	If parents decline services, there will burden on the schools with increased costs. <b>2, 5, 10, 23</b>	No change. Research shows that early intervention can reduce future costs. While there may be some families who decline services, most families will choose to participate.

Rule Reference	Comment	Department Response
<p>General; HFS 90.06 (2) (i) 4.</p>	<p>Parents will have to make a decision of whether or not they can afford to continue the services the child needs and might cancel their participation in Birth to 3 Program. Families have no extra money for services. Too costly to families to have cost share on top of insurance payments plus other medical expenses. <b>2, 3, 7, 10, 13, 16, 17, 19, 20, 21, 23, 24, 26</b></p> <p>Cost sharing formula does not take into considerations actual expenses. The formula should be gross income minus medical and medication expenses. <b>2, 3, 13, 16, 17, 24, 26</b></p>	<p>Rule Changed. Section HFS 90.06 (2) (i) 4. directs county administrative agencies to inform parents of their right to request a waiver of the parental cost share in whole or in part based upon the unique circumstances of the child or family. Cost shares are reasonable for income and family size.</p> <p>No change. The parental cost share already acknowledges extra costs that some families with children with disabilities may have by providing a \$3,300 deduction from the parental income for each child in the Birth to 3 Program and each child with a disability in the family. The deduction is based on the Family Support Program's allowance for a child with a disability. Experience with the current system has shown that parents value the program and that it is a good investment.</p>
<p>General</p>	<p>Families already pay insurance costs; this penalizes families who pay insurance and other deductibles for health insurance that helps fund Birth to 3 services. Formula does not take into consideration payments by insurance. Possible for county to be paid twice for services. <b>13, 16, 17, 26</b></p>	<p>No change. Deductibles and co-pays for early intervention services are covered by the Birth to 3 Program. A Birth to 3 Program will not collect more from a family than the cost to provide early intervention services. If a county incorrectly collects more than the cost to provide services to an individual child, they must return the difference to the family. Insurance payments may also reduce a family's cost share.</p>
<p>General</p>	<p>Tax dollars are already supporting the program so working families who pay taxes are paying twice. Uncomfortable asking parents to share in a cost of Program that has sufficient funds. <b>12 13, 15, 16, 17, 20</b></p>	<p>No change. The parental cost share is patterned after the Uniform Fee System that is used for all county and state Human Service Programs and is consistent with cost shares for human services within the state. Public funds are limited, and families who have the ability to share in the cost of services are expected to contribute a fair share for the services their children receive.</p>
<p>General</p>	<p>No direct correlation to actual costs of therapies; same cost share for more services. Cost share should be relative to services provided, not a flat fee. Base the cost share on services rather than income. Expenses for families are the same. <b>3, 13, 16, 17</b></p>	<p>No change. The services provided by the Birth to 3 Program are based upon individual child and family outcomes with the intent to meet the child's developmental needs. This should not be influenced by family income nor should it be influenced by the family's parental cost share. A family will not pay more in their parental cost share than the costs of their individual services.</p>

Rule Reference	Comment	Department Response
General	Program should be free to families as are schools. Neighboring states don't have cost share. Families may move to get service. <b>2, 3, 4, 5, 7, 8, 9</b>	No change. The Individuals with Disabilities Education Act (IDEA), Part C, the federal law that governs the Birth to 3 Program, permits states to have a system of fees for their early intervention program and, to be consistent with other programs administered by the Department, the Department has elected to implement a system of fees. Part B of IDEA does not permit fees because older children are entitled to a free and appropriate public education.
HFS 90.06 (2) (i) 1.	Collection proceedings can be implemented if families do not pay. County may refer to collections, which will create additional expense. <b>13, 16, 17, 23</b>	Rule Changed. The Department modified s. HFS 90.06 (2) (i) 1. to delete the requirement that a county is only responsible for collecting revenues from this system, not for implementing collection proceedings. The Department also modified s. HFS 90.06 (2) (i) 4. to permit counties to waive the parental cost share based upon unique family circumstances. They may also extend the payment period or reduce the amount due.
General	County agencies must follow up on suspected misinformation about families' financial status. <b>13, 16, 17</b>	No change. This requirement is not in the rule. The Department has developed a simple one-page parental statement of income for verifying parental income. The parental signature on this form indicates that the information on it is accurate. This is the only fiscal information a family will need to disclose.
HFS 90.06 (2) (i) 1.	The Parental Cost Share system fails to account for annual variations in family income. Families will have to petition the county every time their financial picture changes. Concerned about how financial situations will be reevaluated. County must make individual determinations of exemption. <b>13, 10, 16, 17, 23</b>	No change. Cost Share system determines an annual amount assessed to the family based on family size and annual income. However, the rule recognizes the diversity of individual families by permitting exemptions or reductions on an individual basis as noted previously. Counties have the ability to take into account seasonal or annual variations of income, without the need for a re-determination of the Parental Cost Share. A county also has the discretion to extend or skip payments for a family in times of temporary financial hardships. Families have the right to complete a revised statement of income form anytime there is a change in family size or a long-term change in family income and their cost share would be revised.
General	IDEA allows local choice about implementing. Counties should have the option not to enforce parental cost share if extra funding is not needed. <b>12</b>	No change. The Individuals with Disabilities Education Act (IDEA), Part C, the federal law that governs the Birth to 3 Program, permits state discretion in implementing a system of fees. However, if a state exercises this option - it must be a statewide system. Therefore, the Department cannot permit individual county exceptions.



Rule Reference	Comment	Department Response
General	Question the need for a parental cost share in same year as budget increase. Belief that this new system will not generate money. <b>5, 6, 8, 13, 16, 17</b>	No change. The additional \$5.3 million in state funding will have a significant and beneficial impact on funding for the Birth to 3 Program. However, the Birth to 3 Program funding already included an ability to pay system as a part of the full fiscal picture of the program. Even with increased funding, the Birth to 3 Program is not adequately funded in Wisconsin due an increased number of children, reduced private insurance coverage and increased service costs. The new, streamlined Parental Cost Share System will increase county revenues by an estimated doubling of revenue.
General	Families will deny access to insurance. Will reduce revenue, not raise it, as provider relies on third party revenue. <b>23</b>	No change. Families will be encouraged to allow access to private insurance, as part of the total funding for the Birth to 3 Program. Experience with the Ability to Pay System demonstrated that parents do not deny access to private insurance due to the cost share. The parental cost share may be reduced by insurance payments.
General; HFS 90.06 (1)	Unlikely to be uniform, language is ambiguous and allows for variations. Question uniformity in implementing and collecting. Definitions of family and income will be confusing to implement. <b>4, 10, 12, 18, 27</b>	Rule changed. The Department modified the definitions of "family" and "income" in s. HFS 90.06 (1) to make them clearer to implement. In addition, the Department clarified s. HFS 90.06 (2) (i) 1. a. by giving more guidance on what to do when a child's parents are divorced or separated. When a child lives in two households, the maximum cost share will still be \$1,800. Based on questions and comments from programs at the Birth to 3 regional meetings, the Department is revising the guidance and forms originally distributed to counties to assure clarity.
General	Difficult and costly to administer for counties. <b>13, 16, 17, 18, 19, 23</b>	No change. The previous Ability to Pay System required that a county and a family go through lengthy financial calculations, including itemized deductions to arrive at a family's cost share. This new system is easier to implement and fairer to families.
General	Counties can no longer get an exemption if it costs the county more to administer than what they receive. <b>23</b>	No change. The new rule requires all counties to administer the Birth to 3 Program Cost Share System. The ability of 24 counties to opt out of the system created inequities for families living in different counties. The system created in these proposed rules will be less costly to implement and will increase county revenues.

Rule Reference	Comment	Department Response
HFS 90.06 (2) (i) 2.	Concern that if parents refuse to give financial information they will be charged the maximum parental cost share. 13, 16, 17	No change. This requirement is not a new feature of ch. HFS 90. The current language in the Uniform Fee System states: "A responsible party who is informed of his or her rights and knowingly refuses to provide full financial information and authorizations for billing all applicable insurance shall not be eligible under s. HFS 1.02 (6) to discharge liability other than by means of full payment." The new language is less stringent for families: "A parent who is informed of his or her rights and who knowingly refuses to provide full financial information shall be liable for the maximum parental cost share." This language limits a parent's liability to \$150 per month, rather than the full cost of services for a child. Full costs of services are typically \$8,000 per year.
General	There should be a minimum amount below which billing is not done, e.g., \$10. 1	No change. There is not a Parental Cost Share System payment of less than \$25 per month.
Table HFS 90.06	Burden on middle class. Concern that there is a significant difference in the impact of income between 200% and 400% of the federal poverty guidelines. Also concern that the amount doubles between these lower ranges. 3, 4, 24, 26	Adjustment of the table. The Department modified Table HFS 90.06 to start the percentages at 250% of the federal poverty guidelines. The Department also added an additional level by creating a 300 -350% and 350 - 400% category with a \$35/month cost share. Under the previous Ability to Pay System, some families with higher incomes had a lower cost share than middle and lower income families because they claimed many more expenses as deductions. Middle income families, with little extra income, had disproportionately high cost shares. The new system makes payment more proportional to income.
General	Exempt children with Medical Assistance through the Katie Beckett Program. 25, 26	No change. The Katie Beckett Program includes families of middle and upper income levels, so the family may have a Parental Cost Share in the Birth to 3 Program.
General	All families, without regard to income, should have the same cost share. 3	No change. The Individuals with Disabilities Education Act (IDEA), Part C, the federal law that governs the Birth to 3 Program, requires that a state implementing a system of fees have a sliding fee scale that takes into account a family's income. Therefore, the Department cannot apply a single fee to all families without respect to income and family size.
General	Parents will refuse specific services, e.g., education, if this creates costs requiring that they pay their Parental Cost Share. 5, 6	No change. Under 34 CFR 303.405, parents have the right to accept some services and refuse others. They retain this right and could make this choice under this Parental Cost Share system.

Rule Reference	Comment	Department Response
Table HFS 90.06	Question why parents pay same each month, particularly when they might have missed services in a month. Confusing whether parental cost share is annual or monthly. <b>7, 18</b>	Changed table for clarity. The Department has modified the Table to clarify that the amount is an annual parental cost share. The Department added a monthly payment column since most families will choose to pay on a monthly basis.
HFS 90.06 (2) (i)	Proposed parental cost share is confusing, has many loopholes, is cumbersome. <b>18</b>	No change. The process has been significantly simplified.
HFS 90.11 (2) (a) 2.; 90.11 (4)	Use the Uniform Fee system rather than Birth to 3 Program parental cost share. <b>18, 25</b>	No change. The Uniform Fee System (UFS) is not appropriate for the Birth to 3 Program because it allows counties to request an exemption from applying the system when the county documents that the imposition of the cost sharing charge is administratively unfeasible. This is contrary to federal policies requiring states to operate a uniform statewide early intervention system. The UFS requires that a family's insurance benefits be billed. This is a contradiction of federal law, as federal policies do not allow a county to bill a family's insurance without the family's consent.
General	Early intervention services must be provided even if families don't pay. <b>23</b>	No change. Federal rules allow that a state could stop services based on non-payment. The State of Wisconsin strongly believes in the positive effects early intervention services have for children and families, and has chosen not to discontinue services if a family does not meet their financial liability.
HFS 90.06 (2) (i)	Money collected should go back into the Birth to 3 Program. <b>7, 12, 13, 16, 17, 19, 26, 27</b>	Added language to rule. The Department intends that funds received under the Parental Cost Share System will be available to the local Birth to 3 Program, as has been expected with the current Ability to Pay System. Therefore, the Department has added s. HFS 90.06 (2) (i) 6. to require that monies be designated for the Birth to 3 Program.
Table HFS 90.06	Maximum cost share should be higher. <b>25</b>	No change. The maximum of \$150 would ensure that higher income families continue to participate in the Birth to 3 Program.