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Chapter HFS 90

EARLY INTERVENTION SERVICES FOR CHILDREN FROM BIRTH TO AGE 3 WITH DEVELOPMENTAL NEEDS

HFS 90.01 Authority and purpose.
HFS 90.02 Applicability.
HFS 90.03 Definitions.
HFS 90.04 Eligibility.
HFS 90.05 Department responsibilities.
HFS 90.06 County administrative agency designation and responsibilities.
HFS 90.07 Identification and referral.
HFS 90.08 Evaluation.
HFS 90.09 Assessment.
HFS 90.10 Development of service plan.
HFS 90.11 Service provision.
HFS 90.12 Procedural safeguards for parents.
HFS 90.13 Surrogate parent.

Note: Chapter HSS 90 was created as an emergency rule effective October 1, 1991. Chapter HSS 90 was renumbered Chapter HFS 90 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, April, 1997, No. 496.

HFS 90.01 Authority and purpose. This chapter is promulgated under the authority of s. 51.44 (5) (a), Stats., to implement a statewide program of services for children in the age group birth to 3 who are significantly delayed developmentally insofar as their cognitive development, physical development, including vision and hearing, communication development, social and emotional development or development of adaptive behavior and self−help skills is concerned, or are diagnosed as having a physical or mental condition which is likely to result in significantly delayed development.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92.

HFS 90.02 Applicability. This chapter applies to the department, to county agencies administering the early intervention services program, to other county agencies providing services under that program, and to all providers of early intervention services who are under contract to or have entered into agreement with county agencies to provide those services.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92.

HFS 90.03 Definitions. In this chapter:

(1) "Assessment" means the initial and ongoing procedures used by qualified personnel and family members, following determination of eligibility, to determine an eligible child's unique strengths and needs and the nature and extent of early intervention services required by the child and the child's family to meet those needs.

(2) "Assistive technology device" means an item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve the functional capability of an eligible child.

(2m) "Assistive technology service" means a service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device.

(3) "Atypical development" means development that is unusual in its pattern, is not within normal developmental milestones, and adversely affects the child's overall development.

(4) "Birth to 3" means from birth up to but not including age 3.

(5) "Birth to 3 program" means the effort in Wisconsin under s. 51.44, Stats., and this chapter that is directed at meeting the developmental needs of eligible children and meeting the needs of their families as these needs relate to the child's individual development.

(6) "Child" means a person in the age group birth to 3 with a developmental delay or disability as determined in accordance with criteria under s. HFS 90.08 (5) or (6).

(7) "Child find" means identifying, locating and evaluating children who may be eligible for the birth to 3 program.

(8) "Consent" means, in reference to a parent, that the parent:

(a) Has been fully informed of all information relevant to an activity for which consent is sought, in the parent's language or other mode of communication;

(b) Understands that information;

(c) Agrees in writing to the activity for which consent is sought and the written consent describes that activity and lists the records, if any, that will be released in this connection, and to whom the records will be released; and

(d) Understands that the granting of consent is voluntary and may be revoked at any time.

(9) "Core services" means the interdisciplinary evaluation of a child to determine eligibility, the identification of a service coordinator, provision of service coordination, development of an individualized family service plan, and the protection of rights under procedural safeguards.

(10) "County administrative agency" means the s. 46.21, 46.22, 46.23, 51.42 or 51.437, Stats., department, the local public health agency or any other public agency either designated by a county board of supervisors or acting under contract or agreement with the county board of supervisors to operate the birth to 3 program in the county and provide or contract for early intervention services for eligible children in that county.

(11) "Department" means the Wisconsin department of health and family services.

(12) "Developmental delay" means development that lags behind established developmental milestones as determined in accordance with the criteria under s. HFS 90.08 (5).

(13) "Developmental status" means the current functioning of a child in the areas of cognition, communication, vision and hearing, social interaction, emotional response, adaptive behavior and self−help skills, and the current physical condition and health of the child.

(14) "Diagnosed condition" means a physical or mental condition for which the probability is high, based on a physician's diagnosis and documenting report, that the condition will result in a developmental delay.

(15) "Early intervention record" means information recorded in any way by the county administrative agency or service provider regarding a child's screening, evaluation, assessment or eligibility determination, development and implementation of the IFSP, individual complaints dealing with the child or family and any other matter related to early intervention services provided to the child and the child's family.

(16) "Early intervention services" means services provided under public supervision that are designed to meet the special developmental needs of an eligible child and the needs of the child's family related to the child's development and selected in collaboration with the parent.

(17) "EI team" or "early intervention team" means the interdisciplinary team consisting of the parent, service coordinator and

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appropriate qualified personnel that conducts the evaluation or assessment of a child.

(18) "Eligible child" means a child eligible for the birth to 3 program.

(19) "Evaluation" means the process used by qualified professionals to determine a child's initial and continuing eligibility for early intervention services under s. 51.44, Stats., and this chapter.

(20) "Family−directed assessment" means the ongoing process by which the parent and service providers work together in partnership to identify and understand the family's strengths, resources, concerns and priorities including relevant cultural factors, beliefs and values, in order to provide support and services to increase the family's capacity to meet the developmental needs of the child.

(21) "IFSP" or "individualized family service plan" means a written plan for providing early intervention services to an eligible child and the child's family.

(22) "IFSP planning process" means the process to develop the IFSP which begins with the family's first contacts with the birth to 3 program, includes the evaluation of the child's abilities to determine eligibility; identification and assessment of the eligible child's unique needs; at a family's option, family−directed assessment of the family's strengths, resources, concerns and priorities; development of the written IFSP; implementation of the plan; planning for transition to other programs or services; and ongoing review and revision of the written plan.

(23) "IFSP team" means the team that develops and implements the IFSP consisting of the parent, service coordinator, service providers, at least one professional who served on the EI team and any other person identified by the parent.

(24) "Interdisciplinary" means drawing from different disciplines, specialties and perspectives, including perspectives of parents, and using formal channels of communication that encourage members or contributors to share information and discuss results.

(24m) "Native language" means the language or other mode of communication normally used by the parent.

(25) "Natural environment" means settings that are natural or normal for the child's age peers who have no disability.

(26) "Parent" means the biological parents with parental rights or, if there is only one, the biological parent with parental rights; the parents by adoption or, if there is only one, the parent by adoption; a person acting as a parent such as a grandparent or stepparent with whom the child lives; a guardian; or a surrogate parent.

Note: The term "parent" is being used in the singular throughout this chapter for reasons of convenience of expression.

(27) "Parent facilitator" means the parent of a child with a disability, who is hired by the county administrative agency or a service provider on the basis of demonstrated skills in planning and communicating and in providing support to other parents.

(28) "Part 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, 20 USC 1471−1485, 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.

(28m) "Personally identifiable information" means the name of the child or the child's parent or other family member, the address of the child or the child's parent or other family member, any personal identifier such as the child's or parent's social security number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(29) "Procedural safeguards" means the requirements under ss. HFS 90.12 and 90.13 designed to protect the rights of children and families receiving services through the birth to 3 program.

(30) "Public health agency" means a health department, board or officer under ch. 251, Stats.

(31) "Qualified personnel" means persons who have met Wisconsin approved or recognized certification, licensing, registration or other comparable requirements set out in s. HFS 90.11 (6) for providing an early intervention service.

(32) "Screening" means the process for identifying children who need further evaluation because they may have a developmental delay or a diagnosed condition.

(33) "Service coordinator" means the person designated by a county administrative agency and responsible to that agency for coordinating the evaluation of a child, the assessment of the child and family and the development of an individualized family service plan, and for assisting and enabling the eligible child and the child's family to receive early intervention and other services and procedural safeguards under this chapter. A "service coordinator" is called a "case manager" for purposes of reimbursement for services under chs. HFS 101 to 108.

(34) "Service provider" means a public or private agency which by contract or agreement with a county administrative agency provides early intervention services under s. 51.44, Stats., and this chapter.

(35) "Surrogate parent" means a person who has been appointed in accordance with s. HFS 90.13 to act as a child's parent in all matters relating to s. 51.44, Stats., and this chapter.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. am. (1), (2), (6), (10), (16), (19), (28) and (33), cr. (2g), (8) (b), (24g) and (28g), renum. (8) (b) to (d) to be (8) (c) to (e), r. and recr. (25), eff. 1−1−93; am. (1), (2), (6), (10), (16), (19), (28) and (33), cr. (2m), (24m) and (28m), renum. (8) (c) and (d) to be (8) (d) and (c) and am., r. and recr. (25), Register, June, 1993, No. 450, eff. 7−1−93; am. (15), Register, April, 1997, No. 496, eff. 5−1−97; **am. (28), Register, September, 1999, No. 525, eff. 10−1−99.**

HFS 90.04 Eligibility. A child shall be eligible for early intervention services under this chapter if the child is either:

(1) Determined by the EI team under s. HFS 90.08 to be developmentally delayed; or

(2) Determined by the EI team under s. HFS 90.08 to have a physician−diagnosed and documented physical or mental condition which has a high probability of resulting in a developmental delay.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92.

HFS 90.05 Department responsibilities. (1) GENERAL. The department is responsible for developing and supporting a statewide comprehensive system of services for children with disabilities in the age group birth to 3 and their families, and for supervising and monitoring local birth to 3 programs to ensure that they comply with 20 USC 1471−1485, 34 CFR Pt. 303, s. 51.44, Stats., and this chapter.

(2) DEVELOPMENT AND SUPPORT. In developing and supporting the statewide system, the department shall:

(a) Provide technical assistance to county administrative agencies on operation of a local birth to 3 program;

(b) Enter into an interagency agreement with the Wisconsin department of public instruction related to operation of the birth to 3 program, including operation of child find and facilitating the transition at age 3 of a child with a disability from the birth to 3 program to the program for children with exceptional educational needs under ch. 115, Stats., and ch. PI 11, and such other state−level interagency and intra−agency agreements as are necessary to facilitate and coordinate the operation of birth to 3 programs. The interagency and intra−agency agreements shall cover assignment of financial responsibility and the resolution of disputes;

(c) Undertake public awareness and other child find activities that focus on identification, location or evaluation of children who are eligible to receive early intervention services. The department shall endeavor to make the public aware of the rationale for early intervention services, the availability of those services, how to make referrals and how a family might obtain the services,

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through various means such as public service announcements and the distribution of brochures and other printed materials. Before undertaking any statewide child find activity that focuses on the identification, location or evaluation of children, the department shall ensure that adequate notice is published in newspapers or other media with circulation adequate to notify parents throughout the state of the activity;

(d) Operate or arrange for operation of a central directory of services to provide information on request by mail or telephone about public and private early intervention resources, research and demonstration projects in the state and various professional and other groups providing assistance to children in the birth to 3 age group and their families; and

(e) Develop a comprehensive system of personnel development, including a plan for the provision of both preservice and inservice training, conducted as appropriate on an interdisciplinary basis, for the many different kinds of personnel needed to provide early intervention services, including personnel from public and private providers, primary referral sources, paraprofessionals and service coordinators. The training shall be directed specifically at:

1. Understanding the basic components of early intervention services available in the state;

2. Meeting the interrelated social, emotional, health, developmental and educational needs of eligible children; and

3. Assisting parents of eligible children in furthering the development of their children and in participating fully in the development and implementation of the IFSP.

(3) SUPERVISION AND MONITORING. In supervising and monitoring local birth to 3 programs, the department shall:

(a) Collect from county administrative agencies information on use of funds, system development, number of children needing and receiving early intervention services, types of services needed, types of services provided and such other information the department requires to describe and assess the operation of local programs;

(b) Have ready access to county administrative agency files and staff, and the files and staff of service providers under contract or agreement with the county administrative agency;

(c) Make an independent on−site investigation if the department determines it is necessary;

(d) Ensure that deficiencies identified through monitoring are corrected by means that may include technical assistance, negotiations, corrective action plans and the threat or imposition of sanctions as allowed by law to achieve compliance including withholding of funds under s. 46.031 (2r), Stats.; and

(e) Resolve disputes between local agencies that cannot be resolved locally. One or both parties may ask the department, in writing, to resolve a dispute or, if the department determines that a dispute between local agencies adversely affects or threatens to adversely affect the delivery of services to families, the department may, on its own initiative, act to resolve the dispute.

(4) PROCEDURES FOR RECEIVING AND RESOLVING COMPLAINTS ABOUT OPERATION OF THE PROGRAM. (a) Any individual or organization having reason to believe that one or more requirements of this chapter or Part 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: Processes for resolution of disputes between parents and county administrative agencies are described in s. HFS 90.12 (5) and (6).

(b) The department in response to a complaint filed under par. (a) shall appoint a complaint investigator who shall do the following:

1. Find out the facts related to the complaint;

2. Interview the complainant or the complainant's representative as part of fact−finding if that seems useful;

3. Conduct an independent on−site investigation at the county administrative agency or of a service provider if the department considers that necessary;

4. Consider the merits of the complaint; and

5. Recommend resolution of the complaint.

(c) 1. Except as provided under subd. 2., within 60 days after receiving a complaint under this subsection the department shall prepare a written decision stating the reasons for the decision, provide notice that the complainant or agency may request review of that decision by the secretary of the U.S. department of education, and forward the decision to the affected agency or agencies with a copy to the complainant.

2. The department may extend the time limit for resolving a complaint by an additional 60 days if it determines that exceptional circumstances exist with respect to a particular complaint.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. am. (2) (c) and (4) (a), renum. (2) (e) 1. and 2. and (3) (c) to be (2) (e) 2. and 3. and (3) (d) and am. (3) (d), cr. (2) (e) 1. and (3) (c), eff. 1−1−93; am. (2) (c), (3) (b) and (4) (a), renum. (2) (e) 1. and 2. and (3) (c) to be (2) (e) 2. and 3. and (3) (d) and am. (3) (d), cr. (2) (e) 1., (3) (c) and (e), Register, June, 1993, No. 450, eff. 7−1−93; am. (4) (a), Register, April, 1997, No. 496, eff. 5−1−97; **am. (4) (a), Register, September, 1999, No. 525, eff. 10−1−99.**

HFS 90.06 County administrative agency designation and responsibilities. (1) DESIGNATION BY COUNTY BOARD. The county board of each county shall designate a county department under s. 46.21, 46.22, 46.23, 51.42 or 51.437, Stats., a local public health agency or any other county agency or enter into a contract or agreement with any other public agency to be the administrative agency in the county for the birth to 3 program. That designation or notice of other arrangement shall be made by letter to the department.

Note: The letter identifying the county administrative agency should be sent to Birth to 3 Program Coordinator, Division of Supportive Living, P.O. Box 7851, Madison, WI 53707.

(2) RESPONSIBILITIES. A county administrative agency shall ensure that all of the following are done:

(a) Parents, representatives of agencies that refer, evaluate or provide services to young children and their families in the community and other interested persons are involved in planning, development and operation of the early intervention service system;

(b) A comprehensive child find system is established in accordance with s. HFS 90.07, including activities to make the public aware of the local birth to 3 program and development of a formal system of communication and coordination among pertinent agencies operating in the county that may have contact with eligible children and their families;

(c) A service coordinator is designated for every child referred for evaluation. The service coordinator need not be an employe of the county administrative agency but shall be accountable to the county administrative agency;

(d) The parents are informed orally and in writing about the purposes of the birth to 3 program, the process and the procedural safeguards;

(e) The parents are collaborators in the IFSP planning process;

(f) Written consent of the child's parents is obtained, in accordance with s. HFS 90.12 (2) (a), before the initial evaluation and assessment are conducted;

(g) Core services are provided at no cost to the parent;

(h) Other early intervention services as identified in s. HFS 90.11 (4) are provided in accordance with the IFSP. County

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administrative agencies shall determine parental liability for the costs of these early intervention services in accordance with ch. HFS 1. 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). Parental liability for the costs of these services shall begin with services designated in IFSPs developed or reviewed on or after May 1, 1997.

(i) Written consent of the child's parent is obtained, in accordance with s. HFS 90.12 (2) (b), for provision of early intervention services for the child and family to implement the IFSP;

(j) Interagency agreements are entered into with other local agencies to identify respective roles and responsibilities in the delivery of early intervention services, coordinate service delivery, ensure the timely delivery of services and identify how disputes will be resolved when there is disagreement about the agency responsible for provision of a particular service;

(k) The confidentiality of personally identifiable information about a child, a parent of the child or other member of the child's family, in accordance with s. HFS 90.12 (3), is maintained;

(L) An impartial decisionmaker is appointed to resolve complaints of parents under s. HFS 90.12 (5);

(m) The need of a child for a surrogate parent is determined, and a surrogate parent is appointed in accordance with s. HFS 90.13 if the child needs one;

(n) 1. An early intervention record is maintained for each child which includes the individualized family service plan for the child, all records of core services and other early intervention services received by the child, parental consent documents and other records pertaining to the child or the child's family required by this chapter, and these are made available for inspection by the child's parents and representatives of the department;

2. The early intervention record is kept separate from other records on the child maintained by the agency unless the parent specifically agrees in writing that another record and the early intervention record be kept together. Other records that might be kept with the early intervention record are the family support assessment and plan under s. 46.985, Stats., and ch. HFS 65, and the community options program assessment under s. 46.27 (6), Stats.

(o) Local birth to 3 program records are maintained, including interagency agreements, records of how funds were budgeted and expended, records of personnel qualifications, records related to state training plan implementation and copies of contracts and agreements with service providers, and these are made available for inspection by representatives of the department; and

(p) The department is provided, on request, with information on use of funds, system development, number of children needing and receiving early intervention services, types of services needed, types of services provided and such other information the department requires to describe and assess the operation of the local program.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. am. (1), (2) (c), (g) and (n), renum. (2) (m) to be (2) (m) 1., cr. (2) (m) 2., eff. 1−1−93; am. (1), (2) (c), (g) and (n), renum. (2) (m) to be (2) (m) 1., cr. (2) (m) 2., Register, June, 1993, No. 450, eff. 7−1−93; am. (2) (g), renum. (2) (h) to (o) to be (2) (i) to (p), cr. (2) (h), Register, April, 1997, No. 496, eff. 5−1−97; **corrections in (2) (h) and (n) made under s. 13.93 (2m) (b) 7., Register, September, 1999, No. 525.**

HFS 90.07 Identification and referral. (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 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.

(2) INFORMED REFERRAL NETWORK. (a) A county administrative agency shall establish a formal system of communication and coordination among agencies and others within the community serving young children. This referral network shall identify and include local providers of services related to early intervention, enhance each provider's knowledge of eligibility criteria under this chapter and coordinate referrals to the local birth to 3 program.

(b) The informed referral network shall be made up of all primary referral sources. Primary referral sources include but are not limited to:

1. Parents;

2. All agencies which receive funds directly or through a subcontract under relevant federal programs;

3. Health care providers such as neonatal intensive care units, perinatal follow−through clinics, hospitals, physicians, public health agencies and facilities, and rehabilitation agencies and facilities;

4. Day care providers;

5. Schools; and

6. Other qualified personnel and local providers of services to young children and their families.

(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.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; am. (1), (3) (b) 2., Register, April, 1997, No. 496, eff. 5−1−97; **am (1), r. and recr. (3), Register, September, 1999, No. 525, eff. 10−1−99.**

HFS 90.08 Evaluation. (1) DESIGNATION OF SERVICE COORDINATOR. When a child is referred to the birth to 3 program for evaluation and possible early intervention services, the county administrative agency shall as soon as possible designate a service coordinator for that child and the child's family.

(2) DETERMINATION OF ELIGIBILITY. A referred child shall be evaluated in accordance with the criteria under sub. (4) to determine the child's eligibility for early intervention services under the program.

(3) EI TEAM. (a) In consultation with the parent and based on the child's suspected needs, the service coordinator shall select at least 2 qualified personnel from those under par. (b) who, with the parent and service coordinator, will make up the EI team to perform the evaluation and make the determination of eligibility. Qualified personnel may be from different agencies and shall be from at least 2 different disciplines in areas of suspected need. The service coordinator may be one of the qualified personnel if the service coordinator is qualified as required under par. (b). At least one of the qualified personnel shall have expertise in the assessment of both typical and atypical development and expertise in child development and program planning.

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(b) Qualified personnel who are qualified to serve on the EI team are the following:

1. Audiologists with at least a master's degree in audiology from an accredited institution of higher education who are registered or licensed under ch. 459, Stats.;

2. Nutritionists registered as dietitians by or eligible for registration as dietitians by the American dietetic association;

3. Occupational therapists certified under ch. 448, Stats.;

4. Physical therapists licensed under ch. 448, Stats.;

5. Physicians licensed under ch. 448, Stats.;

6. Psychologists licensed under ch. 455, Stats.;

7. Rehabilitation counselors employed by the department's division of vocational rehabilitation as coordinators of hearing impaired services who have at least a master's degree in rehabilitation counseling or a related field;

8. Registered nurses with at least a bachelor's degree in nursing from an accredited institution of higher education and licensed under s. 441.06, Stats.;

9. School psychologists licensed under ch. 115 and ch. PI 3;

10. Social workers certified under ch. 457, Stats.;

11. Special educators, including early childhood exceptional education needs (ECEEN) educators, vision educators and hearing educators, licensed under ch. 115, Stats., and ch. PI 3;

12. Speech and language pathologists with at least a master's degree in speech and language pathology from an accredited institution of higher education and who are registered under ch. 459, Stats., or licensed under ch. 115, Stats., and ch. PI 3; and

13. Other persons qualified by professional training and experience to perform the evaluation and determine eligibility.

(4) ELIGIBILITY. A child is eligible for early intervention services under the birth to 3 program if the EI team determines under sub. (5) that the child is developmentally delayed or under sub. (6) that the child has a diagnosed physical or mental condition which will likely result in developmental delay.

(5) DETERMINATION OF DEVELOPMENTAL DELAY. (a) A determination of developmental delay shall be based upon the EI team's clinical opinion supported by:

1. A developmental history of the child and other pertinent information about the child obtained from parents and other caregivers;

2. Observations made of the child in his or her daily settings identified by the parent, including how the child interacts with people and familiar toys and other objects in the child's environment; and

3. Except as provided under par. (b), a determination of at least 25% delay in one or more areas of development as measured by a criterion referenced instrument, or a score of 1.3 or more standard deviation below the mean in one or more areas of development as measured by a norm−referenced instrument, and interpreted by a qualified professional based on informed clinical opinion. In this subdivision, "areas of development" mean:

a. Cognitive development;

b. Physical development, including vision and hearing;

c. Communication development;

d. Social and emotional development; and

e. Adaptive development which includes self−help skills.

(b) If the results of the formal testing under par. (a) 3. closely approach but do not equal the standard in par. (a) 3. for a developmental delay but observation by qualified personnel or parents indicates that some aspect of the child's development is atypical and is adversely affecting the child's overall development, the EI team may use alternative procedures or instruments that meet acceptable professional standards to document the atypical development and to conclude, based on informed clinical opinion, that the child should be considered developmentally delayed.

Note: Examples of atypical developments are asymmetrical movement, variant speech and language patterns, delay in achieving significant interactive milestones such as exhibiting a pleasurable response to a caregiver's attention, and presence of an unusual pattern of development such as a sleep disturbance or eating difficulties.

(6) DETERMINATION OF DIAGNOSED CONDITION. A determination of high probability that a child's diagnosed physical or mental condition will result in a developmental delay shall be based upon the EI team's informed clinical opinion supported by a physician's report documenting the condition. High probability implies that a clearly established case has been made for a developmental delay.

Note: Examples of these diagnosed conditions are chromosomal disorders such as Down syndrome, birth defects such as spina bifida, significant or progressive vision or hearing impairment, neuromotor disorders such as cerebral palsy, postnatal traumatic events such as severe head injuries, severe emotional disturbances, dysmorphic syndromes such as fetal alcohol syndrome, addiction at birth, a maternal infection transmitted to the fetus such as AIDS, neurological impairments of unknown etiology such as autism, untreated metabolic disorders such as PKU and certain chronic or progressive conditions.

(7) EI TEAM PROCEDURE. (a) The service coordinator shall ensure that the parents of the child are involved and consulted throughout the entire evaluation process.

(b) The EI team shall examine all relevant available data concerning the child, including the following:

1. Medical records and other health records concerning the child's medical history and health status, including physical examination reports, results of vision and hearing screenings, hospital discharge records and specialty clinic reports;

2. Any records and screening results of the child's developmental functioning in the following areas:

a. Cognitive development;

b. Physical development, including vision and hearing;

c. Communication development;

d. Social and emotional development; and

e. Adaptive development which includes self−help skills; and

3. Records of any previous interventions provided to the child, including therapy reports, treatment records and service plans.

(c) The EI team shall use additional observation, screening results and other testing instruments and procedures as needed, to determine the child's level of functioning in each of the following areas of development:

1. Cognitive development, as evidenced by play skills, manipulation of toys, sensorimotor schemes, attention, perceptual skills, memory, problem solving and reasoning;

2. Physical development, including hearing and vision, as evidenced by gross motor and fine motor coordination, tactility, health and growth. If there has not been a physical examination of the child in the past 2 months, one shall be requested if appropriate;

3. Communication development, as evidenced by understanding, expression, quantity and quality of speech sounds or words, and communicative intent through gestures. Communication development includes the acquisition of communications skills during pre−verbal and verbal phases of development; receptive and expressive language, including spoken, non−spoken and sign language means of expression; oral−motor development; auditory awareness skills and processing; the use of augmentative communication devices; and speech production and awareness.

4. Social and emotional development, as evidenced by temperament, mood attachment, self−soothing behaviors, adaptability, activity level, awareness of others and interpersonal relationships; and

5. Adaptive development which includes self−help skills, to include drinking, eating, eliminating, dressing and bathing.

(d) Testing instruments and other materials and procedures employed by the EI team shall meet the following requirements:

1. They shall be administered or provided in the child's or family's primary language or other mode of communication.

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When this is clearly not possible, the circumstances preventing it shall be documented in the child's early intervention record;

2. They may not be racially or culturally discriminatory;

3. They shall be validated for the specific purpose and age group for which they are used;

4. They shall be administered by trained personnel in accordance with instructions of the developer;

5. They shall be tailored to assess the specific area of development and not simply provide a single general intelligence quotient; and

6. In regard to tests, they shall be selected to ensure that when they are administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect what the tests purport to measure.

(e) No single procedure may be used as the sole criterion for determining eligibility.

(f) With the parent's consent, members of the EI team may consult with persons not on the EI team to help the EI team members determine if the child needs early intervention services.

(g) Following the evaluation, all members of the EI team shall jointly discuss their findings and conclusions and determine if there is documentation, data or other evidence that the child is developmentally delayed or has a condition which has a high probability of resulting in delayed development. If a member cannot be present, that member shall be involved through other means, such as participating in a conference call, or be represented by someone who is knowledgeable about the child and about the member's findings and conclusions.

(h) At the conclusion of the joint discussion under par. (g), the EI team shall prepare a report which shall include each member's findings and conclusions and be signed by all members of the team. If a member participated through a conference call, the signature may be by proxy. The report shall include:

1. Results of the evaluation, including levels of functioning in the areas of development under sub. (5) (a) 3.; and

2. A determination of either eligibility or non−eligibility, with a determination of eligibility accompanied by documentation of the child's developmental delay or diagnosed condition.

(i) The service coordinator shall provide the child's parent with a copy of the EI team's report.

(j) If the EI team finds that the child is not eligible, the EI team report shall in addition include:

1. An offer to re−screen the child within 6 months;

2. Information about community services that may benefit the child and family, such as day care, parent support groups or parenting classes; and

3. A statement that, if the parent requests it and consents to it, referral will be made to other programs from which the child and family may benefit and that the service coordinator will assist the parent in locating and gaining access to other services.

(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.

(8) EFFECT OF RELOCATION OF ELIGIBLE CHILD. When the family of a child who has been determined eligible for early intervention services based on an EI team evaluation moves to another county, the child shall remain eligible for services in the new county of residence on the basis of the original determination of eligibility. The services identified in the IFSP in effect on the date that the family moves to the new county shall be provided until a new IFSP is developed.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. am. (3) (b) 11., 12. and (8), cr. (3) (b) 13., r. (7) (h) 2., eff. 1−1−93; am. (3) (b) 11., 12. and (8), cr. (3) (b) 13., renum. (7) (h) 1. (intro.) to be (7) (h) (intro.), r. (7) (h) 2., Register, June, 1993, No. 450, eff. 7−1−93; am. (1), (3) (a), (b) 10., (5) (a) 3., (7) (b) 1., (g), (h) (intro.), Register, April, 1997, No. 496, eff. 5−1−97; **am. (7) (k), Register, September, 1999, No. 525, eff. 10−1−99.**

HFS 90.09 Assessment. (1) ASSESSMENT OF CHILD. (a) *Initial assessment.* 1. Once a child is determined under s. HFS 90.08 to be eligible for early intervention services, the EI team shall, as needed, carry out additional observations, procedures and testing to assess and determine the child's unique developmental needs. All assessment tests and other materials and procedures shall comply with s. HFS 90.08 (7) (d).

2. Following the assessment under subd. 1., the EI team shall prepare a report. This report need not be a separate document but may be made part of the EI team's report under s. HFS 90.08 (7) (h) or the IFSP under s. HFS 90.10. The report shall include:

a. A summary of the assessment, including the child's strengths and needs; and

b. A list of potential services needed.

3. The service coordinator shall provide the child's parent with a copy of the assessment report.

(b) *Ongoing assessment.* Ongoing assessments shall be carried on as needed by either the EI team or the IFSP team. All ongoing assessments shall meet the requirements in par. (a).

(c) *Discussion with nonparticipating parent.* If the parent chooses not to take part in the assessment or development of the report, the service coordinator shall meet with the parent upon completion of the assessment to discuss the findings and recommendations. 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 recommendations of the assessment report with the parents.

(2) FAMILY−DIRECTED ASSESSMENT. (a) Any assessment of the child's family shall be with the family's permission. The assessment shall be directed by the family and shall focus on the family's strengths, resources, concerns and priorities related to enhancing development of the child.

(b) An assessment of the family shall:

1. Be completed by the family alone with a choice of assessment tools offered to the family, or be completed by the family in collaboration with other personnel trained to make use of appropriate formal or informal methods and procedures;

2. Be based on information provided by family members through personal interviews; and

3. Incorporate the family members' description of the family's strengths, resources, concerns and priorities as these are related to enhancing the child's development.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; am. (2) (a), Register, June, 1993, No. 450, eff. 7−1−93; am. (1) (a), 2., Register, April, 1997, No. 496, eff. 7−1−97.

HFS 90.10 Development of service plan. (1) TIME LIMIT. Except as provided in sub. (2) (a), within 45 days after receiving a referral for initial evaluation of a child, the county administrative agency shall complete the evaluation under s. HFS 90.08 and the assessment under s. HFS 90.09 and the service coordinator shall convene a meeting to develop the initial IFSP.

(2) INTERIM IFSP. (a) *Delay in completing evaluation and assessment.* If exceptional circumstances directly affecting the child or the child's family, such as illness of the child or a parent or the parent's refusal to consent to a procedure, make it impossible to complete the evaluation and assessment within 45 days, the county administrative agency shall:

1. Document the exceptional circumstances in the child's early intervention record;

2. Ensure that the service coordinator, the parent, at least one of the qualified personnel directly involved in the child's evaluation and assessment and, as appropriate, persons who will be providing services for the child and family develop and implement an interim IFSP which includes the service coordinator's name, the

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early intervention services that are needed immediately and the circumstances and reasons for development of the interim IFSP;

3. Obtain the parent's written consent to the services, and to a revised deadline for completion of the evaluation and assessment; and

4. Complete the evaluation within the extended period agreed upon by the family and EI team.

(b) *Provision of services before completing evaluation and assessment.* Provision of early intervention services to an eligible child and the child's family may be started before the evaluation and assessment are completed if there is a clear and obvious need that can be addressed without waiting for completion of the formal evaluation and assessment and if the following conditions are met:

1. The parent gives written consent for the services;

2. An interim IFSP is developed and implemented by the service coordinator, parent, at least one of the qualified personnel directly involved in the child's evaluation and assessment and, as appropriate, persons who will be providing services for the child and family, which includes the service coordinator's name, the early intervention services that are needed immediately and the circumstances and reasons for development of the interim IFSP; and

3. The evaluation and assessment are completed within the time period prescribed in sub. (1).

(3) IFSP TEAM. The IFSP team shall consist of the parent, other family members requested by the parent, the service coordinator, an advocate if requested by the parent, at least one of the qualified personnel who took part in the evaluation and assessment of the child, at least one professional who has expertise in assessment of both typical and atypical development and expertise in child development and program planning, and appropriate service providers. If a professional who took part in the evaluation and assessment cannot be present at a meeting to develop the IFSP, the service coordinator shall ensure that the professional is involved through some other means.

(4) MEETING TO DEVELOP IFSP. The IFSP shall be developed on the basis of the evaluation and assessment by the IFSP team and with attention to the concerns and priorities of the parent. All meetings shall be conducted in settings and at times that are convenient to families, and the service coordinator shall ensure that written notice of a meeting is provided to all participants early enough before the meeting date so that they will be able to attend. If the parent wishes to attend but cannot attend at the scheduled time, the meeting shall be rescheduled.

(5) CONTENT. The IFSP may have several different sections that are completed at various times throughout the process. All sections of the IFSP shall be maintained in one file or binder. The parents shall be given a copy, the contents of which shall be fully explained to the parents and kept current. The IFSP shall contain:

(a) Information about the child's developmental status, including statements concerning the child's present levels of cognitive development, physical development, to include vision, hearing and health status, communication development, social and emotional development and adaptive development such as self−help skills, based on professionally acceptable objective criteria. This information shall be assembled from the initial evaluation and assessment reports and the results of any ongoing assessments.

(b) With the concurrence of the parent, a summary of the family's strengths, resources, concerns and priorities related to enhancing the development of the child;

(c) A statement of the outcomes expected to be achieved for the child and family, as identified by the IFSP team, and the criteria, procedures and timelines used to determine:

1. Progress being made toward achieving the outcomes; and

2. Whether modification of the outcomes or services is necessary;

(d) Identification of the specific early intervention services necessary to achieve the outcomes identified in par. (e), including:

1. The frequency and intensity of a service, to include the number of days or sessions it will be provided, the length of time the service will be provided during a session and whether the service will be provided on an individual or group basis;

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.

3. How a service will be provided;

4. Payment arrangements, if any;

5. If appropriate, medical and other services that the child needs that are not required under the birth to 3 program and the steps that will be taken to secure those services from public or private sources. This does not apply to routine medical services such as immunizations and well baby care unless a child needs those services and they are not otherwise available or being provided; and

6. The projected dates for initiating the services and the expected duration of the services;

(e) The name of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals. This may be the same service coordinator who was originally designated at the time the child was initially referred for evaluation or a new service coordinator;

(f) 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 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:

1. Discussing a prospective transition in advance with the parents and giving them information about the new setting and other matters related to the child's transition including the role of the family;

2. Implementing procedures to prepare the child for changes in service delivery, including helping with adjustment to and functioning in the new setting;

3. With parental consent, forwarding of information about the child to the local educational agency or other service agency to assure continuity of services; and

4. 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 preschool programs under subch. V of ch. 115, Stats., at least 90 days before the child reaches the age of 3, in order to:

a. Prepare a written transition plan to reflect decisions made at the conference and the roles of sending and receiving agencies; and

b. Review the child's program options for the period from the child's third birthday through the remainder of the school year.

Note: A child with exceptional educational needs, as defined in s. 115.76 (3), Stats., on reaching age 3 is entitled to a free appropriate public education in accordance with ch. PI 11.

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.

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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.

(g) Provision in accordance with sub. (7) for ongoing review, evaluation and, as necessary, revision of the plan.

(h) The projected dates for the periodic review and annual evaluation of the plan in accordance with sub. (7).

(6) CONSOLIDATED PLAN. If an eligible child is required to have both an IFSP and an individualized service plan under another federal or state program, the county administrative agency may develop a single consolidated document provided that the document contains all of the information required for the contents of the IFSP under sub. (5) and is developed in accordance with the requirements of this chapter.

(7) REVIEW AND EVALUATION. (a) *Periodic review.* A review of an IFSP shall take place every 6 months or more frequently if warranted or a parent requests it. The review shall be carried out at a meeting or by other means acceptable to the parent and other participants and shall involve at least the parent or parents and the service coordinator, other family members if requested by a parent, and an advocate or other person from outside the family if requested by a parent. If conditions warrant, provision shall be made to include persons directly involved in conducting the evaluation and assessment and, as appropriate, persons providing services to the child or family. The purpose of the review is to determine:

1. The progress being made toward achieving the planned outcomes; and

2. Whether modification or revision of the planned outcomes or services is necessary.

(b) *Annual meeting.* 1. At least annually the service coordinator shall convene a meeting at which the IFSP shall be evaluated and, as appropriate, revised. To the extent possible, participants shall be those persons who participated in the development of the IFSP or reviews under par. (a) and, in addition, a person or persons directly involved in conducting the evaluation and assessment and, as appropriate, persons providing services to the child or family. If a professional who was directly involved in the evaluation and assessment cannot be present at the annual meeting to evaluate the IFSP, the service coordinator shall ensure that the professional is involved through other means such as participating in a conference call, having a knowledgeable representative attend the meeting or making pertinent records available for the meeting.

2. The meeting shall be conducted in a setting and at a time that is convenient to families, and written notice of a meeting shall be provided to all participants early enough before the meeting date to ensure that they will be able to attend.

3. To ensure that parents fully understand and are active participants in the IFSP process, all meetings shall be conducted with someone present who can interpret for the family if the family's native language is different from the language at the meeting, unless this is not feasible.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. r. and recr. (2) (a) 2. and (5) (h), am. (2) (b) 2., (3), (5) (intro.), (g), (7) (a) (intro.) and (b) 1., cr. (7) (b) 3., eff. 1−1−93; r. and recr. (2) (a) 2. and (5) (h), am. (2) (b) 2., (3), (5) (intro.), (g), (7) (a) (intro.) and (b) 1., cr. (7) (b) 3., Register, June, 1993, No. 450, eff. 7−1−93; am. (5) (a) and (7) (a) (intro.), r. (5) (b), (c) and (h), renum. (5) (d) to (g) to be (5) (b) to (e) and (5) (i) to be (5) (g), cr. (5) (f) and (h), Register, April, 1997, No. 496, eff. 5−1−97; **r. and recr. (5) (d) 2., am. (5) (f) (intro.) and 4. (intro.), cr. (5) (f) 5., Register, September, 1999, No. 525, eff. 10−1−99.**

HFS 90.11 Service provision. (1) COORDINATION. (a) *Role of the service coordinator.* The service coordinator shall coordinate the delivery of all services across agency lines and serve as the single point of contact in helping a family obtain the services the child and family need as described in the IFSP.

(b) *Functions of the service coordinator.* Service coordination activities include:

1. Coordinating the performance of evaluation and assessments as described in ss. HFS 90.08 and 90.09;

2. Facilitating and participating in development, review and evaluation of the IFSP;

3. Assisting parents in identifying available service providers;

4. Facilitating access to services and coordinating and monitoring the timely provision of services;

5. Informing parents of the availability of advocacy services;

6. Coordinating with medical and other health care providers; and

7. Facilitating the development of transition plans under s. HFS 90.10 (5) (h).

(c) *Qualifications of the service coordinator.* 1. A service coordinator shall have at least one year of supervised experience working with families with special needs, and have demonstrated knowledge and understanding about:

a. Children in the age group birth to 3 who are eligible for the program;

b. Part C and the federal implementing regulations, 34 CFR Pt. 303, and this chapter; and

c. The nature and scope of services available under the birth to 3 program and how these are financed.

2. The service coordinator may be a person from the list of qualified personnel in s. HFS 90.08 (3) (b), another person with experience and training indicated under subd. 1. or a parent facilitator.

(2) EARLY INTERVENTION SERVICES—GENERAL CONDITIONS AND GENERAL ROLE OF PROVIDERS. (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 C requirements.

2. The county administrative agency shall provide or arrange for the provision of early intervention core services 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. HFS 65.05 (7).

3. Funds allocated for the birth to 3 program may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source if it were not for the establishment of the program. Funds allocated for the birth to 3 program may only be used for early intervention services that an eligible child needs but is not currently entitled to under any other federal, state, local government or private funding source.

Note: Federal law at 20 USC 1479 permits the use of birth to 3 program funds to provide a free and appropriate public education, in accordance with the requirements of 20 USC 1411 to 1420, to children with disabilities from their third birthday to the beginning of the following school year.

(b) *General role of early intervention service providers.* 1. A provider of early intervention services shall do all of the following:

a. Follow the requirements of this chapter;

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b. Consult with parents, other service providers and community agencies to ensure that the service is effective;

c. Educate parents, other service providers and community agencies in regard to the provision of that type of service;

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;

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

f. Make a good faith effort to assist each eligible child in achieving the outcomes of the child's IFSP.

2. Service providers, including service coordinators, shall attend or otherwise avail themselves of 5 hours of training each year related to early intervention. For service providers without previous experience with Wisconsin's early intervention program, the 5−hour training requirement in the first year of service provision shall include a basic orientation to the program. Training may be inservice training, conferences, workshops, earning of continuing education credits or earning of higher education credits.

3. A service provider is not liable if an eligible child does not achieve the growths projected in the child's IFSP.

(3) EARLY INTERVENTION CORE SERVICES. (a) County administrative agencies shall make the following core services available at no cost to all families that have a child who is eligible or may be eligible for the birth to 3 program:

1. Identification and referral;

2. Screening;

3. Evaluation;

4. Assessment for an eligible child;

5. Development of the IFSP for an eligible child and family;

6. Service coordination for an eligible child and family; and

7. Protection of parent and child rights by means of the procedural safeguards.

(b) With parent consent a third party may be billed for early intervention core services. The service coordinator shall ensure that the parent, prior to giving consent, is informed and understands that because of third party billing the parent may incur financial loss, including but not limited to a decrease in benefits or increase in premiums or discontinuation of the policy.

(4) OTHER EARLY INTERVENTION SERVICES. A county administrative agency shall provide or arrange for the provision of other early intervention services. The county administrative agency shall determine parental liability for the costs of these early intervention services in accordance with ch. HFS 1. 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). Parental liability for the costs of these services shall begin with services designated in IFSPs developed or reviewed on or after May 1, 1997. Types of other early intervention services include the following:

(a) *Assistive technology services and devices.* Assistive technology services and devices, to include:

1. Evaluating the needs of a child with a disability for an assistive technology device, including a functional evaluation of the child in the child's customary environment;

2. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices for children with disabilities;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for a child with disabilities or, if appropriate, the family of a child with disabilities, in the use of an assistive technology device; and

6. Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers and other individuals who provide services to or are otherwise substantially involved in the major life functions of children with disabilities.

(b) *Audiology services.* Audiology services, to include:

1. Identification of children with audiological impairment, using risk criteria and appropriate audiological screening techniques;

2. Determination of the range, nature and degree of hearing loss and communication functions by use of audiological evaluation procedures;

3. Referral for medical and other services necessary for habilitation or rehabilitation;

4. Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training;

5. Provision of services for prevention of hearing loss;

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

7. Provision of consultation to and training of parents, other service providers and community agencies in regard to audiology services.

(c) *Communication services.* Communication services, also called speech and language services, to include:

1. Identification, diagnosis and assessment of children with communicative or oral pharyngeal disorders or delays in development of communication skills, which include delays in the acquisition of communication skills during preverbal and verbal phases of development; in the development of receptive and expressive language, including spoken and non−spoken means of expression; in oral−motor development; and in auditory awareness and processing. This also includes identification of the need for the acquisition of sign language and augmentative communication devices or systems;

2. Referral for and coordination with medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral pharyngeal disorders and delays in development of communication skills;

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;

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

5. Provision of consultation to and training of parents, other service providers and community agencies in regard to communication services.

(d) *Family education and counseling services.* Family education and counseling services, to include:

1. Services provided by qualified personnel to assist the family or caregiver in caring for the child, understanding the special needs of the child, enhancing the child's development, modeling appropriate parent−child interactions and providing information on child development; and

2. Providing informal support and connecting parents with other parents. This may include parent to parent match programs and parent support groups.

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(e) *Health care services.* 1. Health care services necessary to enable a child to benefit from other early intervention services under this subsection while receiving those other early intervention services. These include:

a. Clean and intermittent catheterization; tracheotomy care; tube feeding, changing a dressing or colostomy collection bag and other health care services; and

b. Consultation provided by physicians to other service providers concerning the special health care needs of eligible children that have to be addressed in the course of providing early intervention services.

2. "Health care services" does not include:

a. Services that are surgical in nature such as cleft palate surgery or surgery for club foot;

b. Services that are purely medical in nature such as hospitalization for management of a congenital heart ailment or the prescribing of medicine or drugs for any purpose;

c. Devices necessary to control or treat a medical condition; or

d. Medical health services such as immunizations and "well baby" care that are routinely recommended for all children.

(f) *Medical services.* Medical services only for diagnostic or evaluation purposes. These are services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(g) *Nursing services.* Nursing services, to include:

1. The assessment of health status for the purpose of providing nursing care, including identification of patterns of human response to actual or potential health problems, and the assessment of home environment and parent−child interactions for the purpose of providing interventions and referrals to support parents and enhance the child's development;

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;

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

4. Provision of consultation to and training of parents, other service providers and community agencies in regard to nursing services.

(h) *Nutrition services.* 1. Nutrition services, to include:

a. Identifying dietary and nutritional needs;

b. Developing and monitoring appropriate nutritional plans based on assessment results;

c. Conducting individual assessments in nutritional history and dietary intake: anthropometric, biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences;

d. Providing nutritional treatment and intervention and counseling parents and caregivers on appropriate nutritional intake, based on assessment results; and

e. Making referrals to appropriate community resources to carry out nutritional goals.

2. "Nutrition services" does not include coverage of the cost of food supplements, vitamins or prescription formulations designed to improve or maintain a child's nutritional status.

(i) *Occupational therapy services.* Occupational therapy services that address the functional needs of a child related to the performance of self−help skills or to adaptive development, and to adaptive behavior and play, and sensory, motor and postural development. These services are designed to improve the child's functional ability in home and community settings and include:

1. Identification, assessment and intervention;

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;

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

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

(j) *Physical therapy.* Physical therapy services to promote sensorimotor functions through the enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaption. These services include:

1. Screening, evaluation and assessment of infants and toddlers to identify movement dysfunction;

2. Obtaining, interpreting and integrating information appropriate to program planning, to prevent, alleviate or compensate for movement dysfunctions and related functional problems;

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

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

(k) *Psychological services.* Psychological services, to include:

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;

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

3. Provision of consultation to and training of parents, other service providers and community agencies in regard to psychological services.

(L) *Social work services.* Social work services, to include:

1. Making home visits to evaluate a child's living conditions and patterns of parent−child interactions;

2. Preparing a social and emotional developmental assessment of the child within the family context;

3. Providing individual and family group counseling with parents and other family members, and appropriate social skill−building within the family context;

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

6. Provision of consultation to and training of parents, other service providers and community agencies in regard to social work services.

(m) *Special instruction.* Special instruction, to include:

1. Evaluation and assessment in all areas of development;

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;

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3. Curriculum planning, including the planned interaction of personnel, materials and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

4. Providing families with information, skills and support related to enhancing the skill development of the child;

5. Working with a child to enhance the child's development;

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;

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

8. Provision of consultation to and training of parents, other service providers and community agencies in regard to special instruction services.

(n) *Transportation and related costs of travel.* Transportation and related costs of travel, whether mileage or by taxi, common carrier or other means, and including tolls and parking, necessary to enable an eligible child and the child's family to receive early intervention services.

(o) *Vision services.* Vision services, to include:

1. Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays and abilities;

2. Referral for medical and other professional services necessary for habilitation or rehabilitation of visual functioning disorders, or both;

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

4. Provision of consultation to and training of parents, other service providers and community agencies in regard to vision services.

(5) SERVICE DELIVERY. (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.

(b) *Method of service delivery.* Early intervention services shall be provided in ways that are most appropriate for meeting the needs of eligible children and their families. These may include parent and child activities, group activities, one−to−one sessions, and provision of a resource such as staff time.

(6) QUALIFIED PERSONNEL. (a) Early intervention services for eligible children and their families may only be provided by qualified personnel listed in this subsection who meet Wisconsin requirements for practice of their profession or discipline or other professionally recognized requirements, as follows:

1. Audiologists shall have at least a master's degree in audiology from an accredited institution of higher education and be registered or licensed under ch. 459, Stats.;

2. Early intervention program assistants shall be at least 18 years of age and meet one of the following requirements:

a. Have at least 3 years of experience in supervising structured youth activities;

b. Have completed at least 3 years of college education;

c. Have a combination of education and experience under subds. 1. and 2. totaling 3 years; or

d. Have completed a 2−year program in child care and development approved by the Wisconsin department of public instruction.

2m. Marriage and family therapists shall be licensed [certified] under ch. 457, Stats.;

3. Nutritionists shall be registered or be eligible for registration as dietitians by the American dietetic association, and dietitian technicians shall have at least an associate degree from an accredited institution of higher education and be registered as dietitian technicians by the American dietetic association;

4. Occupational therapists shall be certified under s. 448.05 (5m) (a), Stats; and occupational therapy assistants shall be certified under s. 448.05 (5m) (b), Stats.;

5. Orientation and mobility specialists shall have completed an orientation and mobility program approved by the association for education and rehabilitation of the blind and visually impaired;

6. Parent facilitators shall be parents of children with disabilities who are hired by county administrative agencies or service providers on the basis of their demonstrated skills in planning, communicating and providing support to the parents of eligible children;

7. Pediatricians and other physicians shall be licensed under ch. 448, Stats., and physician assistants shall be certified under s. 448.05 (5), Stats.;

8. Physical therapists shall be licensed under ch. 448, Stats., and physical therapist assistants shall have graduated from a 2−year college level program approved by the American physical therapy association;

9. Psychologists shall be licensed under ch. 455, Stats.;

10. Registered nurses shall be licensed under s. 441.06, Stats., and within 5 years after July 1, 1992, shall have at least a bachelor's degree in nursing from an accredited institution of higher education, and licensed practical nurses shall be licensed under s. 441.10, Stats.;

11. Rehabilitation counselors shall be employed by the department's division of vocational rehabilitation as coordinators of hearing impaired services and have at least a master's degree in rehabilitation counseling or a related field;

12. School psychologists shall be licensed under ch. 115, Stats., and ch. PI 3;

13. Social workers shall be certified under ch. 457, Stats.;

14. Special educators, including early childhood exceptional education needs (ECEEN) educators, vision educators and hearing educators, shall be licensed under ch. 115, Stats., and ch. PI 3, within 5 years after the effective date of this chapter; and

15. Speech and language pathologists shall have at least a master's degree in speech and language pathology from an accredited institution of higher education and be registered or licensed under ch. 459, Stats., or shall be licensed under ch. 115, Stats., and ch. PI 3.

(b) Early intervention personnel under par. (a) 2., 3., 4., 6., 7., 8. and 10. who are paraprofessionals shall work under supervision as defined by standards of the profession or standards developed by the department.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. r. and recr. (1) (b), (2), (3), (4) (intro.), (a), (b), (e), (j), (n) and (o); am. (4) (c) (intro.), 3., (d) 1., (i) (intro.) and (5) (a), renum. (6) to be (6) (a) and am. (6) (a) 6., cr. (6) (b), eff. 1−1−93; r. and recr. (1) (b), (2), (3), (4) (intro.), (a), (b), (e), (h), (j), (n) and (o); am. (4) (c) (intro.), 3., (d) 1., (i) (intro.) and (5) (a), renum. (6) to be (6) (a) and am. (6) (a) 6., cr. (6) (b), Register, June, 1993, No. 450, eff. 7−1−93; am. (2) (b) 2., (4) (intro.) (6) (a) 13., r. (2) (b) 4., renum. (3) (intro.) to be (3) (a) (intro.) and am., cr. (3) (b) and (6) (a) 2m., Register, April, 1997, No. 496, eff. 5−1−97; **am. (1) (c) 1. b., (2) (a) 1., 2., (b) 1. d., (4) (b) 5., 6., (c) 3., 4., (g) 2., 3., (i) 2., 3., (j) 2., 3., (k) 1., 2., (L) 4., 5., (m) 2., 6., 7., (o) 2., 3. and (5) (a), renum. (2) (b) 1. e. to be (2) (b) 1. f., cr. (2) (b) 1. e., (4) (b) 7., (c) 5., (g) 4., (i) 4., (j) 4., (k) 3., (L) 6., (m) 8., (o) 4., Register, September, 1999, No. 525, eff. 10−1−99; corrections in (2) (a) 2. and (4) (intro.) made under s. 13.93 (2m) (b) 7., Stats, Register, September, 1999, No. 525.**

HFS 90.12 Procedural safeguards for parents. (1) PRIOR NOTICE. (a) A reasonable time before a county administrative agency or service provider proposes or refuses to initiate or change any of the following, the county administrative agency or service provider shall provide written notice to the parent and ensure that the parent understands the notice:

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1. Identification, evaluation or placement of a child; or

2. Provision of early intervention services to the child and the child's family.

(b) The notice under par. (a) shall provide sufficient detail to inform the parent about:

1. The proposed or refused action;

2. The reasons for taking the action, including a description of other options considered and reasons for rejecting them;

3. The information upon which the proposed or refused action is based;

4. Their right to refuse consent to an evaluation or a service; and

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.

(c) 1. The notice under par. (a) shall be in language understandable to the general public.

2. If the parent's proficiency in English is limited, the notice under par. (a) shall also be provided in the language normally used by the parent unless this is clearly not feasible.

3. If the language or other mode of communication normally used by the parent is not written, the county agency or service provider shall take steps to ensure that:

a. The notice is translated orally or by other means into the language the parent normally uses or other mode of communication;

b. The parent understands the notice; and

c. There is written evidence of notice that complies with this subsection.

4. If a parent is deaf or blind, the mode of notifying the parent shall be the mode of communication normally used by the parent, such as sign language, braille or oral communication.

(2) CONSENT. (a) *For evaluation and assessment.* 1. The county administrative agency shall obtain the parent's written consent before conducting the initial evaluation and assessment of a child. This consent shall continue in effect until revoked by the parent or until the child is no longer receiving early intervention services.

2. The county administrative agency requesting a parent's written consent to the evaluation and assessment shall inform the parent of the following:

a. The purpose of the evaluation and assessment, the procedures to be employed and the types of professionals who will be involved;

b. Any likely effects on the parents of the evaluation or assessment such as need to provide transportation for the child; and

c. If consent is not given, the child will not receive the evaluation or assessment.

3. The parent may refuse to give consent for a particular evaluation or assessment procedure. If a parent refuses consent, the county administrative agency may not carry out that procedure. The county administrative agency may not limit or deny the use of a particular procedure because the parent has refused to consent to another procedure. If the county administrative agency believes that a particular evaluation or assessment procedure to which a parent has refused consent would provide important information to assist in determining appropriate service needs, the agency shall develop a timeline and procedure with the parent for how consent would again be requested. The county shall keep written documentation of efforts to obtain consent as well as written documentation of the agreed timeline and procedure.

4. If a parent refuses consent for evaluation or assessment and the refusal falls within the scope of s. 48.981 (2), Stats., the county administrative agency or service provider may take action in accordance with s. 48.981 (2), Stats.

(b) *For services.* 1. The county administrative agency shall develop the IFSP in collaboration with the parent and obtain the parent's written consent for the delineated services before early intervention services are provided to the eligible child and family. This consent shall continue in effect until revoked by the parent or until the child is no longer receiving early intervention services.

2. The county administrative agency requesting a parent's written consent for services shall inform the parents of the following:

a. The purpose of each service to be provided and the manner in which the service will be provided. The parent's written consent shall specify each service the parent has authorized;

b. The known cost to the parents of the services, if there are any costs, whether direct or indirect;

c. Any likely effects on the parents of each service;

d. The possible consequences of not consenting to each proposed service; and

e. If consent is not given, the child will not receive the services.

3. A parent may consent to some services and reject others. If the parent objects to a proposed service, the program may not provide that service. The county administrative agency may not limit or deny the provision of a particular service because the parent has refused to consent to another service.

(c) *For billing a third party.* With the parent's consent, a third party may be billed for early intervention services as long as the services are provided at no cost to parents. The service coordinator shall ensure that the parent, prior to giving consent, is informed of and understands that because of third party billing the parent may incur financial loss, including but not limited to a decrease in benefits or increase in premiums or discontinuation of the policy.

(3) CONFIDENTIALITY. (a) Personally identifiable information about a child, a parent of the child or other member of the child's family is confidential at all stages of record development and maintenance, including information collection, storage, disclosure and destruction.

(b) The county administrative agency is responsible for maintaining the confidentiality of a child's early intervention records wherever those records are located. Any interagency agreement or contract with a service provider shall set forth the service provider's responsibility to keep early intervention records confidential. One staff member at each agency maintaining early identification records shall be designated to ensure that personally identifiable information is kept confidential. The county administrative agency shall provide training to staff concerning the policies of early intervention record maintenance and confidentiality.

(c) Parents may review the early intervention records of their child.

(d) A county administrative agency or service provider may disclose confidential information from early intervention records, without parental consent, only to those of its employes who have a legitimate need for the information in the performance of their duties and to representatives of the department who require the information for purposes of supervising and monitoring services provision and enforcing this chapter. Each county administrative agency shall maintain a list attached to the early intervention record which identifies by name the parents and by name and title those employes of the agency and service providers who are identified in the child's IFSP as having a legitimate need for access to the early intervention record and who will have unrestricted access to that record. Each county administrative agency shall also maintain a log as part of an early intervention record, on which the name of any other employe or representative given

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access to the record or to whom information from the record was disclosed shall be recorded, along with the date of access or disclosure and the purpose of the access or disclosure.

(e) The parent's written consent consistent with s. 51.30 (2), Stats., is required to disclose confidential information except as authorized in par. (d). If a parent refuses consent to release confidential information and the refusal falls within the scope of s. 48.981, Stats., the county administrative agency or service provider may take action in accordance with s. 48.981, Stats.

(f) The county administrative agency shall annually give notice to fully inform parents about the types of personally identifiable information that will be collected, maintained and distributed about participants in the early intervention system or information compiled during child find activities. This notice shall:

1. Be given in the native languages of the various population groups and list the languages in which the notice is available;

2. Contain a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the agency intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;

3. Contain information regarding storage, disclosure to third parties and retention and destruction of personally identifiable information; and

4. Contain a description of all the rights of parents and children regarding this information, including rights under 34 CFR 99.

(g) The county administrative agency shall inform the parent when personally identifiable information contained in the early intervention record is no longer needed to provide early intervention services. The information shall be destroyed at the request of the parent except that a permanent record of the child's name, address, phone number and dates of enrollment in the program may be maintained. In this paragraph, "destruction" means physical destruction or removal of personally identifiable information from the early intervention record.

Note: For the information of interested persons, the confidentiality provisions of ch. HFS 90 meet the confidentiality requirements of Part B of the Individuals with Disabilities Education Act, 20 USC ch. 33, and 34 CFR 300.560 to 300.576 and the requirement of 34 CFR Pt. 99, with the following modifications:

(1) Any reference in those places to "state education agency" or "SEA" means the department;

(2) Any reference to "education of all children with disabilities" or"provision of free appropriate public education to all children" means provision of services to eligible children and families;

(3) Any reference to "local education agencies" or "LEAs" or to"intermediate education units" means county administrative agencies;

(4) Any reference to 34 CFR 300.128 on identification, location and evaluation of children with disabilities means 34 CFR 303.164 and 303.321, comprehensive child find system; and

(5) Any reference to 34 CFR 300.129 on confidentiality of personally identifiable information means 34 CFR 303.460, confidentiality of information.

(4) OPPORTUNITY TO EXAMINE RECORDS. (a) The parent of a child may review all early intervention records concerning the child unless the county administrative agency has been advised that the parent does not have the authority under state law to review a record.

(b) When a child's parent asks to review the child's early intervention records, the county administrative agency or service provider shall:

1. Make the records available to the parent without unnecessary delay but not later than 15 working days following the date of the request except that, if the request is in connection with a meeting on the individualized family service plan or a hearing to resolve a dispute or complaint involving the parent and the county agency or service provider, the records shall be made available at least 5 days before the meeting or hearing but in no case later than 15 working days following the date of the request;

2. Permit the parent to have a representative of the parent's choosing review the record with the parent or, with the parent's written consent, in place of the parent; and

3. Respond to reasonable requests of the parent or parent's representative for explanations and interpretations of the record.

(c) If an early intervention record includes information on more than one child, the parent may review the information relating only to the parent's child or, if this is not separable, the information shall not be disclosed to the parent but the parent shall be informed of the contents as it relates to the parent's child.

(d) The county administrative agency shall provide a parent, at the parent's request, with a list of the types and locations of early intervention records.

(e) No fee may be charged for parent review of an early intervention record or for information disclosed to a parent or for the search for or retrieval of a record. If a parent requests a copy of the record, one copy shall be supplied free of charge. A fee may be charged for each additional copy if the fee does not prevent the parent from exercising the right to inspect and review the record.

(f) 1. A child's parent may request that particular information in the child's record be amended or deleted on grounds that it is inaccurate or misleading, or violates the privacy or any other right of the child, a parent or other family member.

2. The county administrative agency or service provider shall respond in writing to a request for amendment or deletion of information as soon as possible but not later than 30 days after the request is made.

3. If the county administrative agency or service provider refuses to amend or delete the information as requested, the administrative agency shall inform the parent that the parent may appeal that decision within 14 days after being notified of it by asking the county administrative agency in writing or in the parent's normal mode of communication for a hearing on it.

4. The county administrative agency shall hold a hearing in accordance with 34 CFR 99.22 on an appeal under subd. 3. within a reasonable time after receiving the request and shall provide the parent with a written decision within a reasonable period after the hearing.

5. If as a result of the hearing the agency determines that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child or family, the agency shall amend the information in the record and inform the parent in writing of the amendment.

6. If the information is not finally amended or deleted as requested, the administrative agency shall inform the parent of the parent's right to request the county administrative agency or service provider to include in the record a statement prepared by the parent commenting on the information in question and giving the parent's reasons for disagreeing with the decision not to amend or delete the information. The county administrative agency or service provider shall then maintain that statement as part of the record and shall disclose it with the contested information whenever that information is disclosed.

(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.

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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.

(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.

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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;

d. 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

e. 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.d.

(e) *Civil action.* Either party aggrieved by the decision under par. (d) 4. d. 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.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. am. (1) (b) 5., (3) (a), (b), (d), (4) (a), (b) 1., (c), (e), (f) 3., (5) (a) 1., 2. and (d) 3., r. and recr. (2) (a) 3., cr. (2) (a) 4., (c), (3) (f), (g), (4) (f) 5. and (5) (d) 4. b., renum. (4) (f) 5., (5) (d) 4. b., c., and (e) 2. to be (4) (f) 6., (5) (d) 4. c., d., and (e) and am. (4) (f) 6. and (5) (e), r. (5) (e) 1., eff. 1−1−93; am. (1) (a), (b) 1., 3. and 5., (2) (a) 3., (3) (a), (b), (d) and (e), (4) (a), (b) 1., (c), (e) and (f) 3., (5) (a) 1., 2. and (d) 3., cr. (2) (a) 4., (c), (3) (f), (g), (4) (f) 5. and (5) (d) 4. b., renum. (4) (f) 5., (5) (d) 4. b., c., and (e) 2. to be (4) (f) 6., (5) (d) 4. c., d., and (e) and am. (4) (f) 6. and (5) (e), r. (5) (e) 1., Register, June, 1993, No. 450, eff. 7−1−93; am. (3) (d), (e), (f) (intro.), (5) (c) 1. and 3., Register, April, 1997, No. 496, eff. 5−1−97; **r. and recr. (5), cr. (6), Register, September, 1999, No. 525, eff. 10−1−99; corrections in (6) made under s. 13.93 (2m) (b) 1., Stats., Register, September, 1999, No. 525.**

HFS 90.13 Surrogate parent. (1) APPOINTMENT. (a) The county administrative agency shall, in accordance with this section, appoint in writing a person to serve as a surrogate parent to represent the interests of an eligible child or of a child who is suspected of being eligible for early intervention services under this chapter if one of the following applies:

1. The county administrative agency cannot identify a parent of the child;

2. The county administrative agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

3. The child is under the legal custody or guardianship of the state, a county or a child welfare agency pursuant to ch. 48, 767 or 880, Stats., and the state, county or child welfare agency has the authority to make service decisions for the child.

(b) A surrogate parent shall be appointed for an indefinite period of time and shall continue to serve until he or she resigns, the appointment is terminated by the county administrative agency or the child is no longer eligible for early intervention services.

(2) QUALIFICATIONS. A person appointed to serve as a child's surrogate parent shall:

(a) Be at least 18 years of age;

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

(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;

Removed by Register April 2001 No. 544. For current adm. code see: http://docs.legis.wisconsin.gov/code/admin_code.

(d) Have no other interest that conflicts with the interests of the child;

(e) Be of the same ethnic background as the child or be sensitive to factors in the child's ethnic background that may be relevant for services provision and receipt;

(f) Have knowledge or skills that enable him or her to provide adequate representation for the child;

(g) Be familiar with available early intervention services;

(h) Be committed to acquaint himself or herself with the child and the child's early intervention service needs; and

(i) Not be a surrogate parent for more than 4 children at any one time.

(3) FUNCTIONS. A surrogate parent may represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) The development and implementation of the child's IFSP, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the child; and

(d) The working of the other procedural safeguards under s. HFS 90.12.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92; emerg. am. (1) (a) (intro.), eff. 1−1−93, am. (1) (a) (intro.), Register, June, 1993, No. 450, eff. 7−1−93; am. (1) (a) 3., Register, April, 1997, No. 496, eff. 5−1−97; **renum. (2) (b) to (h) to be (2) (c) to (i), cr. (2) (b), am. (2) (c), Register, September, 1999, No. 525, eff. 10−1−99.**

Next page is numbered 281