

The Governor approved this Statement of Scope on August 26, 2015.

STATEMENT OF SCOPE
DEPARTMENT OF HEALTH SERVICES

Rule No.: DHS 90

Relating to: Early intervention services for children from birth to age 3 with developmental needs

Rule Type: Permanent

Type of Statement of Scope: Original

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable.

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rulemaking is to update ch. DHS 90 to be consistent with federal regulations for early intervention services for infants and toddlers with disabilities and to clarify requirements for implementing Wisconsin's early intervention services for children from birth to age 3 with developmental needs.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The department, under ch. DHS 90, s. 51.44 (1m), Stats., and 34 CFR 303 implements Wisconsin's early intervention services for children from birth to age 3 with developmental needs, also known as the Birth to 3 Program, using grant funds distributed under the federal Individuals with Disabilities Education Act. Effective October 28, 2011, 34 CFR 303 was revised including in areas of child find, screening, individualized family service plans, transition, conflict resolution, and parental rights. The department proposes to update ch. DHS 90 to be consistent with 34 CFR 303.

Chapter DHS 90 also includes requirements with respect to staff licensing, parental cost share, county responsibilities, and eligibility specifics. To clarify procedures and to reduce inconsistency of implementation, the department proposes to revise ch. DHS 90 to add provisions in the areas of evaluation and assessment, county responsibilities, transition, documentation, and fiscal.

There are no reasonable alternatives to rulemaking. The department is required under s. 51.44 (1m), Stats., to develop and implement early intervention services by rule.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 51.44 (1m) and (5) (a), (am), and (b), Stats., reads:

(1m) The department is the lead agency in this state for the development and implementation of a statewide system of coordinated, comprehensive multidisciplinary programs to provide appropriate early intervention services under the requirements of 20 USC 1431 to 1444.

(5) The department shall do all of the following:

(a) Promulgate rules for the statewide implementation of the program under this section that do all of the following:

1. Specify the population of children who would be eligible for services under the program.
2. Define the term "early intervention services".
3. Establish personnel standards and a comprehensive plan for the development of personnel providing services in the program.
4. Establish procedures for the resolution of complaints by clients in the program.
5. Specify data collection requirements, including a system for making referrals to service providers.
6. Establish monitoring and supervision authority.
7. Establish policies and procedures for the implementation of individual family services plans and case management services.
8. Develop requirements for local coordination and interagency agreements at state and local levels.
9. Establish requirements for public awareness activities and a statewide directory of services.

(am) Promulgate rules that define the term "service coordinator".

(b) Ensure that the children eligible for early intervention services under this section receive all of the following services:

1. A multidisciplinary evaluation.
2. An individualized family service plan.
3. Assignment of a service coordinator, as defined by the department by rule, to provide case management services.

Section 227.11 (2) (a), Stats., reads: Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department estimates it will take 850 hours to develop the rule. The department will seek input from the Governor appointed Birth to 3 Program Interagency Coordinating Council.

6. List with description of all entities that may be affected by the proposed rule :

The entities affected by the rules include local governmental units, county Birth to 3 Programs and their contracted providers, children and families participating in the Birth to 3 Program, interpreters, Department of Administration-Division of Hearings and Appeals, mediation service providers, Department of Public Instruction, licensed professionals such as early childhood special educators and therapists, and early intervention referral sources including physicians, public health, child care, etc.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

34 CFR 303 provides financial assistance to states for developing and implementing an early intervention program for children under the age of 3 with delays or disabilities. The regulation outlines the processes each state must follow when implementing the program, from development of the program to monitoring and enforcement of the program. Under the authority of s. 51.44 (1m) and (5) (a), (am), and (b), Stats., ch. DHS 90 includes additional requirements with respect to staff licensing, parental cost share, county responsibilities, and eligibility.

8. Anticipated economic impact of implementing the rule :

The proposed rule is anticipated to have little to no economic impact if promulgated. The proposed rule is not anticipated to have an impact on small businesses.

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