

Clearinghouse Rule 08-057

PROPOSED ORDER OF DEPARTMENT OF HEALTH AND FAMILY SERVICES TO ADOPT RULES

The Wisconsin Department of Health and Family Services proposes to repeal HFS 90.06 (1) and (2) (i); to amend HFS 90.06 (2) (h) and 90.11 (2) (a) 2., and (4) (intro.); and to create HFS 1.065 (1) (d), relating to parental payment limits for early intervention services for children from birth to 3 with developmental delays or disabilities.

SUMMARY OF PROPOSED RULE

Statute interpreted: Section 51.44 (5), Stats.

Statutory authority: Sections 46.03 (18), 46.10 (1) to (14) (a), 51.44 (5) (a), and 227.11 (2), Stats.

Explanation of agency authority:

- Section 46.03 (18), requires the Department to establish a uniform system of fees for services provided or purchased by the Department, or a county department under s. 46.215, 46.22, 51.42, or 51.437, Stats.
- Section 46.10 (1) to (14) (a) establishes parental liability for services provided or purchased by the Department or county department to their minor children and requires fees for services received by minor children to be paid in accordance with the fee schedule established by the Department. Section 46.10 (1) to (14) (a) also establishes requirements for fee collection.
- Section 51.44, (5) (a) Stats., requires the Department to promulgate rules for the statewide implementation of the early intervention services program.
- Section 227.11 (2), Stats., provides state agencies with general rulemaking authority.

Related statute or rule: See the “Statute interpreted” section.

Plain language analysis:

Families with children who have functional needs receive services from a number of programs implemented by county human and social services agencies. These programs include early intervention services for children from birth to 3 with developmental needs; the family support program; the community options program; the children’s home and community based services waivers; various locally funded services such as respite care and community inclusion activities for children; and other children’s long term support programs.

Federal, state, and county funds pay a portion of the costs for these services. Parents of children who receive these services also pay a portion of these costs. Parents of children who receive early intervention services are required s. under s. 51.44 (5) (a), Stats., and s. HFS 90.06 (2) (i) to pay a portion of these costs as assessed by the county providing services. Counties have determined that implementing the early intervention services and other children’s long-term support services under

three different payment systems, used by the various programs listed in the above paragraph, is administratively and fiscally burdensome. In addition, the Department has determined that the current system for calculating the parental payment limits for early intervention services results in families not paying a fee in proportion to their incomes and services received.

To decrease the burden on county agencies in implementing the various services for children who have functional needs, and to ensure that families, in proportion to their incomes, share in the costs of their child's services, the Department proposes to permit counties to use the schedule established under s. HFS 1.03 (13m) to assess parental payments limits for early intervention program services. Except for early intervention core services, such as service coordination and evaluation, the proposed consolidation and change may result in an increase in costs to families receiving early intervention services due to the change in the process for calculating the parents' share of costs. The current parental payment limits for early intervention services range between \$300 to \$1,800 per year based on family annual income and family size relative to federal poverty guidelines. The new calculation will continue to be based on family annual income and family size relative to federal poverty guidelines, but the parental payment limits will also be a percentage of actual costs for services based on the family's income and size instead of a flat fee. Under the proposed schedule, parental payments will be assessed for families at or above 330% of the federal poverty level, beginning at 1% of service costs and can progress up to 41% of service costs for families at 1580% or greater of the federal poverty level. Parental payments would not be collected from families who have annual incomes below 330% of the federal poverty level.

The parental payment limits would be determined by counties after calculating the parent's annual gross income, adjusted by a standard allowance; or actual medical or dental expenses claimed on the parent's federal income tax form Schedule A, whichever is higher, the family's poverty level for the family size, and the child's individual family service plan costs. Families continue to have the option of allowing their private insurance companies to be billed for the payment of therapy services provided.

Overall, the proposed rule would result in parents paying in proportion to their income levels and individual family service plan costs. For counties serving families with children with functional needs, participating in either early intervention or other children's long term support services, a unified system for calculating parental payments would be implemented.

The proposed rule would not result in a loss of services nor any changes to services to families.

The chart below shows the percentage of service plan costs, based on the federal poverty level, that parents may be assessed by counties under ch. HFS 1.

Adjusted Gross Income (% of FPL)			Percentage of Service Plan Cost
Less than 300% FPL			0.0%
330%	to less than	355%	1.0%
355%	to less than	380%	1.8%
380%	to less than	405%	2.6%
405%	to less than	430%	3.4%
430%	to less than	455%	4.2%
455%	to less than	480%	5.0%

480%	to less than	505%	5.8%
505%	to less than	530%	6.6%
530%	to less than	555%	7.4%
555%	to less than	580%	8.2%
580%	to less than	605%	9.0%
605%	to less than	630%	9.8%
630%	to less than	655%	10.6%
655%	to less than	680%	11.4%
680%	to less than	705%	12.2%
705%	to less than	730%	13.0%
730%	to less than	755%	13.8%
755%	to less than	780%	14.6%
780%	to less than	805%	15.4%
805%	to less than	830%	16.2%
830%	to less than	855%	17.0%
855%	to less than	880%	17.8%
880%	to less than	905%	18.6%
905%	to less than	930%	19.4%
930%	to less than	955%	20.2%
955%	to less than	980%	21.0%
980%	to less than	1005%	21.8%
1005%	to less than	1030%	22.6%
1030%	to less than	1055%	23.4%
1055%	to less than	1080%	24.2%
1080%	to less than	1105%	25.0%
1105%	to less than	1130%	25.8%
1130%	to less than	1155%	26.6%
1155%	to less than	1180%	27.4%
1180%	to less than	1205%	28.2%
1205%	to less than	1230%	29.0%
1230%	to less than	1255%	29.8%
1255%	to less than	1280%	30.6%
1280%	to less than	1305%	31.4%
1305%	to less than	1330%	32.2%
1330%	to less than	1355%	33.0%
1355%	to less than	1380%	33.8%
1380%	to less than	1405%	34.6%
1405%	to less than	1430%	35.4%
1430%	to less than	1455%	36.2%
1455%	to less than	1480%	37.0%
1480%	to less than	1505%	37.8%
1505%	to less than	1530%	38.6%
1530%	to less than	1555%	39.4%
1555%	to less than	1580%	40.2%
1580% and above			41.0%

Note: The federal poverty guidelines are adjusted yearly by the federal Office of Management and Budget under 42 USC § 9902 (2) and are published annually in the Federal Register. The federal poverty guidelines and the CLTS Parental Payment Limit Worksheet are distributed annually by the Department to counties for use in calculating the parental payment limit. To receive the current federal poverty guidelines and the CLTS Parental Payment Limit Worksheet, contact the Children's Services Section, at the Division of Long Term Care, P.O. Box 7851, Madison, WI 53707-7851, or call 608-261-78208276, or fax 608-261-8884 or visit the Department's website at <http://dhfs.wisconsin.gov/bdds/clts/index.htm>

Summary of, and comparison with, existing or proposed federal regulations:

The Individuals with Disabilities Education Act (20 USC § 1432 et seq.) allows states to create a system of payments for families. Federal Regulations at 34 CFR §§ 303.520 and 303.521 provide policies related to payment for early intervention services. Under the federal regulations, the Department is responsible for establishing policies relating to how services to eligible children and their families will be paid for under the Wisconsin's early intervention program. The Department is required to specify the functions and services that will be provided at no cost to all parents; the functions or services that are subject to a system of payments; the payment system and schedule of sliding fees that will be used; the basis and amount of payments; and an assurance that the inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family. The federal requirements are currently met under ch. HFS 90, and will continue to be met under the proposed order.

Comparison with rules in adjacent states:

Illinois:

Rules for early intervention services in Illinois are under 89 Ill. Adm. Code 500. The fees are set on a sliding fee schedule similar to that proposed under this order, with the exception that under the proposed order parental payments would be based on annual service plan costs in addition to federal poverty level family size and income guidelines. Illinois' fee schedule is based strictly on the federal poverty level size and income guidelines with fees starting at 185% of the federal poverty level. Parental payments under this proposed order would begin at 330% of federal poverty level.

Parental payments under the Illinois system is collected in monthly fee installments from \$10.00 - \$200.00. Under this proposed order, parental payments would also be collected in monthly installments, and for some families may be higher than currently paid because payments are based on federal poverty level size and income guidelines and annual service plan costs. Parents would be assessed monthly payments from 1% to 41% of the cost of the plan depending on their family size and income under federal poverty level guidelines.

Iowa:

There are no proposed or existing state regulations that include a family system of payment for the birth to three program in Iowa.

Michigan:

There are no proposed or existing state regulations that include a family system of payment for the birth to three program in Michigan.

Minnesota:

There are no proposed or existing state regulations that include a family system of payment for the birth to three program in Minnesota.

Summary of factual data and analytical methodologies:

The proposed rule is the result of Department consultations over several years with the Governor-appointed Interagency Coordinating Council, an advisory committee to the Department. The committee consists of public and private providers, parents, public members, and representatives from Head Start, the Office of Commissioner of Insurance, the Department of Public Instruction, the Department of Workforce Development, Early Intervention Preparation, county government, Council of Developmental Disabilities, and the Wisconsin legislature.

Analysis and supporting documents used to determine effect on small business:

The proposed rules would not affect businesses.

Effect on small business:

The proposed rules would not affect businesses.

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. HFS 1.065 (1) (d) is created to read:

HFS 1.065 (d) This section applies to early intervention services provided under ch. HFS 90 and s. 51.44 (5) (a), Stats., which govern the birth to 3 program.

SECTION 2. HFS 90.06 (1) is repealed.

SECTION 3. HFS 90.06 (2) (h) is amended to read:

HFS 90.06 (2) (h) Other early intervention services as identified in s. HFS 90.11 (4) are provided in accordance with the IFSP. County administrative agencies shall determine ~~the parental cost share of~~ parental payment limit for early intervention services costs not met by third party payers in accordance with ~~par. (i) s. HFS 1.065. Parental cost share for early intervention services shall begin with services designated in IFSPs developed or reviewed on or after March 1, 2002.~~

SECTION 4. HFS 90.06 (2) (i) is repealed.

SECTION 5. HFS 90.11 (2) (a) 2. is amended to read:

HFS 90.11 (2) (a) 2. The county administrative agency shall provide or arrange for the provision of early intervention core services at no cost to the child's parent 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 the ~~parental cost share of~~ payment limit for early intervention services costs not met by third party payers in accordance with s. ~~HFS 90.06 (2) (i)~~ HFS 1.065.

SECTION 6. HFS 90.11 (4) (intro.) is amended to read:

HFS 90.11 (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 the ~~parental cost share of~~ payment limit for early intervention services costs not met by third party payers in accordance with s. ~~HFS 90.06 (2) (i)~~ HFS 1.065. ~~Parental cost share for early intervention services shall begin with services designated in IFSPs developed or reviewed on or after March 1, 2002.~~ Types of other early intervention services include the following:

EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and Family Services

Dated:

Karen E. Timberlake, Department Secretary

SEAL: