

# Clearinghouse Rule 95-235

## CERTIFICATE

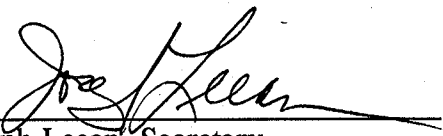
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND FAMILY SERVICES )

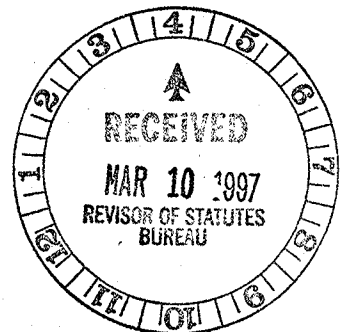
I, Joseph Leean, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the Birth to 3 Program were duly approved and adopted by this Department on March 10, 1997.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 10th day of March 1997.

SEAL:

  
Joseph Leean, Secretary  
Department of Health and Family Services



95-235  
5-1-97

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

To repeal HSS 90.10(5)(b), (c) and (h) and 90.11(2)(b)4.; to renumber HSS 90.06(2)(h) to (o) and 90.10(5)(d) to (g) and (i); to renumber and amend HSS 90.11(3) (intro.); to amend HSS 90.03(15), 90.05(4)(a), 90.06(2)(g), 90.07(1) and (3)(b)2., 90.08(1), (3)(a) and (b)10., (5)(a)3. and (7)(b)1., (g) and (h)(intro.), 90.09(1)(a)2., 90.10(5)(a) and (7)(a)(intro.), 90.11(2)(b)2., (4)(intro.) and (6)(a)13., 90.12(3)(d), (e) and (f)(intro.), (5)(c)1. and 3. and 90.13(1)(a)3.; to repeal and recreate HSS 90.03 (26)(Note); and to create HSS 90.06(2)(h), 90.10(5)(f) and (h) and 90.11(3)(b) and (6)(a)2.m., relating to early intervention services for children in the age group birth through 2 who are found to be developmentally delayed or to have a diagnosed condition which will likely result in developmental delay.

Analysis Prepared by the Department of Health and Family Services

These are amendments to the Department's rules for operation of a statewide system of services, called the Birth to 3 Program, under s. 51.44, Stats., for children with disabilities. The amendments provide that fees will be charged for services, except for core services, based on the family's ability to pay. The amendments also clarify requirements and modify procedures based on experience in implementing the rules since the last revision in mid-1993, and add marriage and family therapists as a new type of qualified personnel authorized to provide early intervention services to eligible children and their families.

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

SECTION 1. HSS 90.03(15) is amended to read:

HSS 90.03(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.

SECTION 2. HSS 90.03(26)(Note) is repealed and recreated to read:

HSS 90.03(26) Note: The term "parent" is being used in the singular throughout this chapter for reasons of convenience of expression.

SECTION 3. HSS 90.05(4)(a) is amended to read:

HSS 90.05(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 H 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 Community Services, P.O. Box 7851, Madison WI 53707.

SECTION 4. HSS 90.06(2)(g) is amended to read:

HSS 90.06(2)(g) ~~Appropriate early intervention services, including core~~ Core services are provided, ~~and they are provided~~ at no cost to the parent.

SECTION 5. HSS 90.06(2)(h) to (o) are renumbered 90.06(2)(i) to (p).

SECTION 6. HSS 90.06(2)(h) is created to read:

HSS 90.06(2)(h) Other early intervention services as identified in s. HSS 90.11(4) are provided in accordance with the IFSP. County administrative agencies shall determine parental liability for the costs of these early intervention services in accordance with ch. HSS 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. HSS 65.05(7). Parental liability for the costs of these services

shall begin with services designated in IFSPs developed or reviewed on or after [revisor to insert effective date of this rule].

SECTION 7. HSS 90.07(1) and (3)(b)2. is amended to read:

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

(3)(b)2. Before a service provider formally screens a child as part of the intake process or refers a child to another agency for screening or evaluation, the service provider shall obtain written ~~consent~~ permission from the parent.

SECTION 8. HSS 90.08(1), (3)(a) and (b)10., (5)(a)3 and (7)(b)1., (g) and (h)(intro.) are amended to read:

HSS 90.08(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.

(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, ~~in addition to~~ 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. ~~The service coordinator may be one of the qualified personnel if the service coordinator is qualified as required under par. (b).~~

(b)10 Social workers ~~with at least a bachelor's degree in social work from a college or university accredited or approved by the council on social work education certified under ch. 457, Stats.;~~

(5)(a)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 ~~appropriate norm-referenced instruments a~~ norm-referenced instrument, and

interpreted by a qualified professional based on informed clinical opinion. In this subdivision, "areas of development" mean:

(7)(b)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;

(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 ~~participate~~ be present, the 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)(intro.) 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:

SECTION 9. HSS 90.09(1)(a)2. is amended to read:

HSS 90.09(1)(a)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. HSS 90.08(7)(h) or the IFSP under s. HSS 90.10. The report shall include:

SECTION 10. HSS 90.10(5)(a) is amended to read:

HSS 90.10(5)(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 professional acceptable objective criteria. This information shall be assembled from the initial evaluation and assessment reports and the results of any ongoing assessments.

SECTION 11. HSS 90.10(5)(b) and (c) are repealed.

SECTION 12. HSS 90.10(5)(d) to (g) are renumbered 90.10(5)(b) to (e).

SECTION 13. HSS 90.10(5)(f) is created to read:

HSS 90.10(5)(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 early childhood special education programs, and other services that may be available. 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. Convening, with the approval of the family, a conference involving the family, the county administrative agency and the local educational agency responsible for early childhood special education programs, 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 #1:** While subd. 4 pertains to a child who may be eligible for special education, whenever there is a change in an agency providing services, the county administrative agency is encouraged 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 roles of the agencies.

**Note #2:** 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.

SECTION 14. HSS 90.10(5)(h) is repealed.

SECTION 15. HSS 90.10(5)(i) is renumbered 90.10(5)(g).

SECTION 16. HSS 90.10(5)(h) is created to read:

HSS 90.10(5)(h) The projected dates for the periodic review and annual evaluation of the plan in accordance with sub. (7).

SECTION 17. HSS 90.10 (7)(a)(intro.) is amended to read:

HSS 90.10(7)(a) Periodic review. (intro.) 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:

SECTION 18. HSS 90.11(2)(b)2. is amended to read:

HSS 90.11(2)(b)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 in service training, conferences, workshops, earning of continuing education credits or earning of higher education credits.

SECTION 19. HSS 90.11(2)(b)4. is repealed.

SECTION 20. HSS 90.11(3) (intro.) is renumbered 90.11(3)(a) (intro.) and amended to read:

**HSS 90.11(3) EARLY INTERVENTION CORE SERVICES. (intro.)**  
**(a)(intro.) 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:**

SECTION 21. HSS 90.11(3)(b) is created to read:

HSS 90.11(3)(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.

SECTION 22. HSS 90.11(4)(intro.) is amended to read:

**HSS 90.11 (4) OTHER EARLY INTERVENTION SERVICES. (intro.)** A county administrative agency shall provide or arrange for the provision of other early intervention services. ~~Early intervention services are the core services under sub. (3) and other early intervention services.~~ The county administrative agency shall determine parental liability for the costs of these early intervention services in accordance with ch. HSS 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. HSS 65.05(7). Parental liability for the costs of these services shall begin with services designated in IFSPs developed or reviewed on or after [revisor to insert effective date of this amendment]. Types of other early intervention services include the following:

SECTION 23. HSS 90.11(6)(a)2.m. is created to read:

HSS 90.11(6)(a)2.m. Marriage and family therapists shall be licensed under ch. 457, Stats.;

SECTION 24. HSS 90.11(6)(a)13. is amended to read:

~~HSS 90.11(6)(a)13. Social workers shall have at least a bachelor's degree in social work from a college or university accredited or approved by the council on social work education~~ be certified under ch. 457, Stats.;

SECTION 25. HSS 90.12(3)(d), (e) and (f)(intro.) and (5)(c)1. and 3. are amended to read:

HSS 90.12(3)(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 have 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 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) No county administrative agency or service provider may disclose confidential information to any other agency or individual except as authorized in par. (d), as required in s.115.80(1)(a) to (e), Stats., or with the~~ 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)(intro.) The county administrative agency shall give adequate~~ 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:

(5)(c) Referral of complaint to impartial decisionmaker. 1. Upon receipt of a written complaint from a parent under par. (b), the county administrative agency shall promptly refer the complaint to an impartial decisionmaker and send a copy of the written complaint to the department's birth to 3 program coordinator.



3. The parent is not obliged to accept mediation, but if the parent does accept it, the impartial decision maker, with the agreement of the parent and the county administrative agency, ~~may serve as~~ shall identify a mediator or select someone else to serve as mediator. If through mediation a solution satisfactory to the parent and the county administrative agency is found and committed to writing, the complaint shall be considered resolved.


SECTION 26. HSS 90.13(1)(a)3. is amended to read:

HSS 90.13(1)(a)3. The child ~~was made a ward~~ is under the legal custody or guardianship of the state ~~or~~, a county or a child welfare agency ~~under~~ pursuant to ch. 48, 767 or 880, Stats., or was placed in the legal custody of the state or a county or a child welfare agency under ch. 48 or 767, Stats., and the state, county or child welfare agency has the authority to make service decisions for the child.

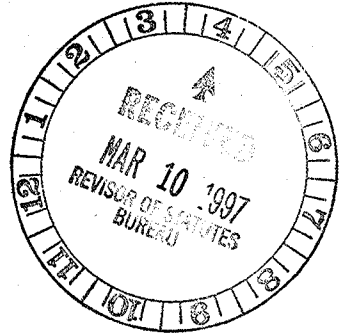
The repeals and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and  
Family Services

Dated: March 10, 1997

By:   
Joseph Lee  
Secretary

SEAL:

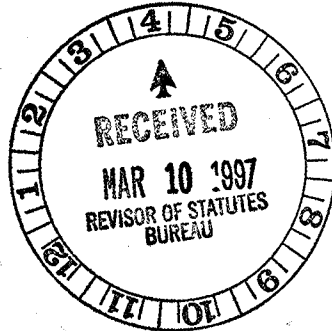




State of Wisconsin  
**Department of Health and Family Services**

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Tommy G. Thompson, Governor  
Joe Leean, Secretary



March 10, 1997

Mr. Bruce E. Munson  
Revisor of Statutes  
131 W. Wilson St., Suite 800  
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. HSS 90, administrative rules relating to the Birth to 3 Program.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Leean", with a long horizontal line extending to the right.

Joseph Leean  
Secretary

Enclosure