

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

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

Analysis Prepared by the Department of Health and Family Services

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

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

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

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

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

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

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

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

SECTION 1. HFS 90.06 (1) is renumbered 90.06 (1m).

SECTION 2. HFS 90.06 (1) is created to read:

HFS 90.06 (1) DEFINITIONS. In this section:

(a) "Annual income after disability deductions" means the annual parental income less a deduction of \$3,300 for each member of the family participating in the birth to 3 program and each child under 19 years of age with a disability as defined in s. HFS 65.02 (5).

(b) "Annual parental income" means total income of the legally responsible parent or parents as reported on the parent's most recent federal individual tax return.

(c) "Family" means people who share a residence and are any of the following:

1. A child eligible for the Birth to 3 Program.
2. A parent of a person in subd. 1.
3. Any minor in the residence for whom a person in subd. 2. is legally responsible.

(d) "Federal poverty guidelines" means the administrative version of the federal poverty measure, adjusted for families of different size, that are issued annually by the U.S. Department of Health & Human Services.

(e) "Full financial information" means information about parental income, expenses, and assets that the county administrative agency requests to determine the parental cost share.

(f) "Parent" means a child's adoptive or biological mother or father who has legal responsibility for the child.

(g) "Parental cost share" means an annual amount of money the county administrative agency determines to be due and payable currently from the parents.

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 liability for the costs cost share of these early intervention services costs not met by third party payers in accordance with ~~ch. HFS 1par. (i).~~ 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 cost share for early intervention~~the costs of these services~~ shall begin with services designated in IFSPs developed or reviewed on or after ~~May 1, 1997~~[revisor to insert effective date].

SECTION 4. HFS 90.06 (2) (i) to (p) are renumbered 90.06 (2) (j) to (q).

SECTION 5. HFS 90.06 (2) (i) is created to read:

HFS 90.06 (2) (i) 1. Parental cost shares are determined. The county administrative agency shall have billing, revenue collection and revenue tracking responsibility for the parental cost share unless the county administrative agency delegates these responsibilities to a service provider by written agreement specifying the conditions of the delegation. A county administrative agency shall make an assessment of the parental cost share for services to an eligible child in the following manner:

- a. Determine the annual income of the parents. When the legally responsible parents live in separate households and the child eligible for the birth to 3 program resides in both households, the family size is determined for each household. There is a separate parental cost share determined for each household
- b. Determine the annual income after disability deduction.
- c. Determine the federal poverty guidelines for the annual income after disability deduction and family size.

d. Determine the percent above or below the federal poverty guidelines determined in subd. par. c., the family's annual income after disability deduction determined in subd. par. b., and assign the parental cost share according to Table HFS 90.06.

e. The maximum parental cost share is \$1,800 per year without regard to the number of children in the birth to 3 program in the family. When the legally responsible parents live in separate households and the child eligible for the birth to 3 program resides in both households, combined cost shares may not exceed \$1,800. The cost shares shall be divided between the parents based on the parents' relative income.

**Table HFS 90.06
Assignment of Parental Cost Share**

Annual Income After Disability Deduction	Annual Cost Share	Monthly Cost Share Payment
At or below 250% of the Federal Poverty Guideline (FPG)	None	None
Over 250% of the FPG and at or below 300% of the FPG	\$300	\$25 per month
Over 300% and at or below 350% of the FPG	\$420	\$35 per month
Over 350% of the FPG and at or below 400% of the FPG	\$600	\$50 per month
Over 400% of the FPG and at or below 500% of the FPG	\$900	\$75 per month
Over 500% of the FPG and at or below 600% of the FPG	\$1200	\$100 per month
Over 600% of the FPG and at or below 700% of the FPG	\$1500	\$125 per month
Over 700% of the FPG	\$1800	\$150 per month

Note: The Federal Poverty Guidelines are adjusted yearly and are published annually in the Federal Register. The Department will distribute the applicable Federal Poverty Guidelines information that is effective each year. To receive the current Federal Poverty Guidelines, contact the Birth to 3 Program Coordinator at the Division of Supportive Living, P.O. Box 7851, Madison, WI 53707, or call 608-266-8276, or fax 608-261-6752.

2. A parent who is informed of his or her rights and who knowingly refuses to provide full financial information is held liable for the maximum parental cost share.

3. A parental cost share for early intervention services is assessed unless the parents have financial liability for other services subject to the uniform fee system that are provided to the eligible child.

4. Parents are informed of their right to request a waiver of the parental cost share in part or in whole if the request is based on unique circumstances of the child or family.

5. Parents are informed as early as is administratively feasible of the parents' rights and responsibilities under the cost share system. The department shall provide sample brochures to county administrative agencies to assist the agencies in informing parents.

6. Revenue received from payments of the parental cost share is used only for early intervention services within the county and do not supplant county funds required under s. 51.44 (3) (c), Stats.

SECTION 6. 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 liability for cost share for the cost of~~ ~~theof~~ early intervention services ~~costs not met by third party payers~~ in accordance with ~~ch. HFS 4.~~ ~~s. HFS 90.06 (2) (i).~~ ~~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).~~

SECTION 7. 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 liability for the costs of these~~ ~~cost share of~~ early intervention services ~~costs not met by third party payers~~ in accordance with ~~ch. HFS 4.~~ ~~s. HFS 90.06 (2) (i).~~ ~~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 cost share the costs of these~~ ~~for~~ early intervention services shall begin with services designated in IFSPs developed or reviewed on or after ~~May 1, 1997~~ [revisor to insert effective date]. Types of other early intervention services include the following:

SECTION 8. HFS 90.12 (2) (c) is amended to read:

HFS 90.12 (2) (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.

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

Wisconsin Department of Health
and Family Services

Dated: January 8, 2002

By: _____
Phyllis J. Dubé
Secretary

SEAL: