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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 01-106

AN ORDER to renumber HFS 90.06 (1) and (2) (i) to (p); to amend HFS 90.06 (2) (h), 90.11 (2) (a) 2. and (4) (intro.) and 90.12 (2) (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.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

09-11-01 RECEIVED BY LEGISLATIVE COUNCIL.

10-09-01 REPORT SENT TO AGENCY.

RNS:LR:jal;wu





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## CLEARINGHOUSE RULE 01-106

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

- a. In s. HFS 90.06 (1) (b), the parenthetical term should be deleted. A note could explain that maintenance is the same as alimony.
- b. In s. HFS 90.06 (2) (i), the first three subdivisions could be consolidated to one introductory paragraph. The subdivision paragraphs could then be renumbered as subdivisions.
- c. In s. HFS 90.06 (2) (i) 3. b., all the material after "adjusted annual income" should be deleted. Because "adjusted annual income" is defined in the definitions section of the rule, it is not necessary to include the additional material.
- d. Section HFS 90.06 (2) (i) 3. (intro.) should be rewritten in the active voice. It could begin with: "A county administrative agency shall make . . ."
- e. In s. HFS 90.06 (2) (i) 3. c., the word "federal poverty threshold" is initially used. It may be useful to define this term since it, as well as its acronym, "FPT," is used several times throughout this provision of the rule.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

The analysis to the rule states that federal policies governing "Birth to 3" programs require participating states to administer a statewide early intervention system and do not allow a

county to bill a family's insurance without the family's consent. It might be useful to provide a citation to the policy that prohibits counties from billing a family's insurance without the family's consent. In addition, it may also be useful to provide citations to the relevant provisions in the Code of Federal Regulations governing policies related to payment for services, especially 34 C.F.R. ss. 303.520, 303.521 and 303.527.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

There are gaps between the adjusted income levels shown in Table HFS 90.06. For example, adjusted income of 200.5% of the federal poverty threshold (FPT) is not covered, nor is 300%. It is suggested that the second listing be "over 200% of the FPT and at or below 300% of the FPT. Other listings should be redrafted in a similar manner, so that there are no gaps.

PROPOSED 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 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 policies governing "Birth to 3" programs require participating states to administer a statewide early intervention system and do not allow a county to bill a family's insurance without the family's consent. Chapter HFS 1, however, requires that a family's insurance benefits be billed; a contradiction of 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 threshold.

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 threshold, 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 200% of the federal poverty level will be billed for part of the early intervention services their children receive. Families with adjusted incomes below 200% of the federal poverty threshold 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) "Adjusted annual income" means the 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 income" means gross earnings, including money, wages or salary, net income from non-farm self-employment, net income from farm self-employment, as well as unearned income, including social security, dividends, interest on savings or on money loaned, income from estates or trusts, net rental income or royalties, public assistance, pensions or annuities, unemployment compensation, workers' compensation, maintenance (alimony), child support, *parents - use not*, special needs adoption subsidy, veterans' pensions, and educational grants given for living expenses. Income from self-employment or rent shall be the total net income after expenses.

Depreciation on farm, business or rental property and wages paid to members of the family are not expenses. Actual principal payments on capital equipment and depreciated property are an expense.

(c) "Family" means the people who share a residence, and includes at least one child eligible for the birth to 3 program and his or her parent

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

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

(f) "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 cost share of these early intervention services costs not met by third party payers in accordance with ch. HFS 4 par. (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 4, 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. A parental cost share is determined.

2. The county administrative agency shall have billing and collection responsibility for the parental cost share unless the county administrative agency delegates billing and collection responsibility to a service provider by written agreement specifying the conditions of the delegation.

*active* 3. An assessment of the parental cost share for services to an eligible child shall be made by a county administrative agency in the following manner:

a. Determine the annual income of the parents.

b. Determine the adjusted annual income by subtracting from the annual income as determined in subd. par. a. \$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).

c. Determine the federal poverty threshold for the adjusted annual income and family size.

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

Table HFS 90.06

Assignment of Parental Cost Share

Adjusted Income	Cost Share
At or below 200% of the Federal Poverty Threshold (FPT)	None
Over 201% of the FPT and below 300% of FPT	\$25 per month cost share.
Over 301% of FPT and below 400% of FPT	\$50 per month cost share.
Over 401% of FPT and below 500% FPT	\$75 per month cost share.
Over 501% FPT and below 600% FPT	\$100 per month cost share.
Over 601% FPT and below 700% FPT	\$125 per month cost share.
Over 701% FPT	\$150 per month cost share.

200.5% not covered  
 300% not covered  
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**Note:** The Federal Poverty Threshold is adjusted yearly and is published annually in the Federal Register. The Department will provide the applicable Federal Poverty Threshold information that is effective January 1 of the coming year. To receive the current Federal Poverty Threshold, contact the Birth to 3 Program Coordinator at the Division of Supportive Living, P.O. Box 7851, Madison, WI 53707, or call 608-267-8276, or fax 608-261-6752.

4. A parent who is informed of his or her rights and who knowingly refuses to provide full financial information shall be liable for the maximum parental cost share.
5. The county administrative agency may not assess a parental cost share for early intervention services if the parents have financial liability for other services subject to the uniform fee system that are provided to the eligible child.
6. The county administrative agency may waive the parental cost share in part or in whole if the county administrative agency determines the goals of an early intervention service would be significantly impaired by the imposition of a parental cost share.
7. The county administrative agency shall ensure 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.

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 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 the parental liability for cost share for the cost of the 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 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 1s. 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:

By: \_\_\_\_\_  
Phyllis J. Dubé  
Secretary

SEAL: