

CR 93-3

CERTIFICATE

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

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to early intervention services for children with disabilities in the age group birth up to 3 were duly approved and adopted by this Department on May 25, 1993.

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 25th day of May, 1993.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

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Revisor of Statutes
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ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING
AND CREATING RULES

To repeal HSS 90.08(7)(h)2 and 90.12 (5)(e)1; to renumber HSS 90.03(8)(c) and (d), 90.05 (2)(e)1 and 2 and (3)(c), 90.06 (2)(m), 90.11 (6)(intro.) and (a) to (o) and 90.12 (4)(f)5 and (5)(d) 4 b and c and (e)2; to amend HSS 90.03 (1), (2), (6), (8)(c) and (d), as renumbered, (10), (16), (19), (28) and (33), 90.05 (2)(c), (3)(d), as renumbered, and (4)(a), 90.06 (1) and (2)(c), (g) and (n), 90.08 (3)(b) 11 and 12 and (8), 90.10 (2)(b)2, (3), (5)(intro.) and (g) and (7)(intro.) and (b)1, 90.11 (4)(c)(intro.) and 3, (d)1 and (i)(intro.), (5)(a) and (6)(a)6, as renumbered, 90.12 (1)(a) and (b)1 and 5, (2)(a)3, (3)(a), (b), (d) and (e), (4)(a), (b)1, (c), (e) and (f)3 and 6, as renumbered and (5)(a)1 and (d) 3 and 90.13 (1)(a)(intro.); to repeal and recreate HSS 90.03(25), 90.10 (2)(a) 2 and (5)(h), 90.11 (1)(b), (2), (3) and (4)(intro.), (a), (b), (e), (h), (j), (n) and (o); and to create HSS 90.03 (2m), (24m) and (28m), 90.05 (2)(e)1 and (3)(c) and (e), 90.06 (2)(m)2, 90.08(3)(b)13, 90.10 (7)(b)3, 90.11(6)(b) and 90.12 (2)(a)4 and (c), (3)(f), (g) and Note, (4)(f)5 and (5)(d)4 b, 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 for which there is a high probability that it will result in developmental delay.

Analysis Prepared by the Department of Health and Social Services

These are amendments to the Department's rules for operation of the Birth to 3 Program under s. 51.44, Stats., for children with disabilities. The amendments implement modifications made to s. 51.44, Stats., by 1991 Wisconsin Act 269, in particular the change that provides for full implementation beginning January 1, 1993 of the statewide system of early intervention services; make adjustments in the rules to meet federal government requirements; and clarify, correct and otherwise improve rule language on the basis of experience with the rules that went into effect on an emergency basis on October 1, 1991, and as permanent rules on July 1, 1992.

The Department's authority to repeal, renumber, amend, repeal and recreate, and create these rules is found in s.51.44(5)(a), Stats., as created by 1991 Wisconsin Act 39, and s. 227.11(2) Stats. The rules interpret s. 51.44, Stats., as created by 1991 Wisconsin Act 39 and amended by 1991 Wisconsin Act 269.

SECTION 1. HSS 90.03 (1) and (2) are amended to read:

HSS 90.03 (1) "Assessment" means the initial and ongoing procedures used by qualified personnel and family members, following determination of eligibility, to determine an eligible child's unique strengths and needs and the nature and extent of early intervention services required by the child and the child's family to meet those needs.

(2) "Assistive technology device" means an item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve the functional capability of an eligible child.

SECTION 2. HSS 90.03 (2m) is created to read:

HSS 90.03 (2m) "Assistive technology service" means a service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device.

SECTION 3. HSS 90.03(6) is amended to read:

HSS 90.03(6) "Child" means a person in the age group birth to 3 with a disability developmental delay or disability as determined in accordance with criteria under s. HSS 90.08(5) or (6).

SECTION 4. HSS 90.03(8)(c) and (d) are renumbered 90.03(8)(d) and (c) and, as renumbered, are amended to read:

HSS 90.03(8)(d) Understands that the granting of consent is voluntary and may be revoked at any time; ~~and~~ .

(c) Agrees in writing to the activity for which consent is sought and the written consent describes that activity and lists the records, if any, that will be released in this connection, and to whom the records will be released-; and

SECTION 5. HSS 90.03(10), (16) and (19) are amended to read:

HSS 90.03 (10) "County administrative agency" means the s. 46.21, 46.22, 46.23, 51.42 or 51.437, Stats., department, the local public health agency or any other public agency either designated by a county board of supervisors or acting under contract or agreement with the county board of supervisors to operate the birth to 3 program in the county and provide or contract for early intervention services for eligible children in that county.

(16) "Early intervention services" means services provided under public supervision that are designed to meet the special developmental needs of an eligible child and the needs of the child's family related to the child's development and selected in collaboration with the parent.

(19) "Evaluation" means the process used by qualified professionals to determine a child's initial and continuing eligibility for early intervention services under s. 51.44, Stats., and this chapter.

SECTION 6. HSS 90.03 (24m) is created to read:

HSS 90.03 (24m) "Native language" means the language or other mode of communication normally used by the parent.

SECTION 7. HSS 90.03(25) is repealed and recreated to read:

HSS 90.03(25) "Natural environment" means settings that are natural or normal for the child's age peers who have no disability.

SECTION 8. HSS 90.03(28) is amended to read:

HSS 90.03(28) "Part H" means the federal grant program to help states establish statewide comprehensive systems of early intervention services for children in the age group birth to 3 and their families, 20 USC 1471-1485, which was added to the Individuals with Disabilities Education Act, 20 USC ch. 33, by PL 99-457 and amended by PL 102-119.

SECTION 9. HSS 90.03(28m) is created to read:

HSS 90.03(28m) "Personally identifiable information" means the name of the child or the child's parent or other family member, the address of the child or the child's parent or other family member, any personal identifier such as the child's or parent's social security number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

SECTION 10. HSS 90.03(33) is amended to read:

HSS 90.03 (33) "Service coordinator" means the person appointed designated by a county administrative agency and responsible to that agency to ~~coordinate~~ for coordinating the evaluation of a child, the assessment of the child and family and the development of an individualized family service plan, and to assist for assisting and enable enabling the eligible child and the child's family to receive early intervention and other services and procedural safeguards under this chapter. A "service coordinator" is called a "case manager" for purposes of reimbursement for services under chs. HSS 101 to 108.

SECTION 11. HSS 90.05 (2)(c) is amended to read:

HSS 90.05 (2)(c) Undertake public awareness and other child find activities that focus on identification, location or evaluation of children who are eligible to receive early intervention services. The department shall endeavor to make the public aware of the rationale for early intervention services, the availability of those services, how to make referrals and how a family might obtain the services, through various means such as public service announcements and the distribution of brochures and other printed materials. Before undertaking any statewide child find activity that focuses on the identification, location or evaluation of children, the department shall ensure that adequate notice is published in newspapers or other media with circulation adequate to notify parents throughout the state of the activity;

SECTION 12. HSS 90.05 (2)(e) 1 and 2 are renumbered 90.05 (2)(e) 2 and 3.

SECTION 13. HSS 90.05(2)(e) 1 is created to read:

HSS 90.05 (2)(e) 1. Understanding the basic components of early intervention services available in the state.

SECTION 14. HSS 90.05(3)(b) is amended to read:

HSS 90.05(3)(b) Have ready access to county administrative agency files and staff and the files and staff of service providers under contract or agreement with the county administrative agency; ~~and~~

SECTION 15. HSS 90.05 (3)(c) is renumbered 90.05 (3)(d) and, as renumbered, is amended to read:

HSS 90.05 (3)(d) Ensure that deficiencies identified through monitoring are corrected by means that may include technical assistance, negotiations, corrective action plans and the threat or imposition of sanctions as allowed by law to achieve compliance including withholding of funds under s. 46.031(2r), Stats.; and

SECTION 16. HSS 90.05 (3)(c) and (e) are created to read:

HSS 90.05 (3)(c) Make an independent on-site investigation if the department determines it is necessary;

(e) Resolve disputes between local agencies that cannot be resolved locally. One or both parties may ask the department, in writing, to resolve a dispute or, if the department determines that a dispute between local agencies adversely affects or threatens to adversely affect the delivery of services to families, the department may, on its own initiative, act to resolve the dispute.

SECTION 17. 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.

Note # 1: 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.

Note # 2: Procedures for resolution of parent complaints are described in s. HSS 90.12(5).

SECTION 18. HSS 90.06 (1) and (2)(c) and (g) are amended to read:

HSS 90.06 (1) DESIGNATION BY COUNTY BOARD. The county board of each county shall designate a county department under s. 46.21, 46.22, 46.23, 51.42 or 51.437, Stats., a local public health agency or any other county agency or enter into a contract or agreement with any other public agency to be the administrative agency in the county for the birth to 3 program. That

designation or notice of other arrangement shall be made by letter to the department.

(2)(c) A service coordinator is ~~appointed~~ designated for every child referred for evaluation. The service coordinator need not be an employe of the county administrative agency but shall be accountable to the county administrative agency;

(g) ~~The~~ Appropriate early intervention services, including core services, are provided, and they are provided at no cost to the parent;

SECTION 19. HSS 90.06 (2)(m) is renumbered 90.06 (2)(m)1.

SECTION 20. HSS 90.06 (2)(m)2 is created to read:

HSS 90.06 (2)(m)2. The early intervention record is kept separate from other records on the child maintained by the agency unless the parent specifically agrees in writing that another record and the early intervention record be kept together. Other records that might be kept with the early intervention record are the family support assessment and plan under s. 46.985, Stats., and ch. HSS 65, and the community options program assessment under s. 46.27 (6), Stats.

SECTION 21. HSS 90.06 (2)(n) is amended to read:

HSS 90.06(2)(n) Local birth to 3 program records are maintained, including interagency agreements, records of how funds were budgeted and expended, records of personnel qualifications, records related to state training plan implementation and copies of contracts and agreements with service providers, and these are made available for inspection by representatives of the department; and

SECTION 22. HSS 90.08(3)(b)11 and 12 are amended to read:

HSS 90.08(3)(b)11. Special educators, including early childhood exceptional education needs (ECEEN) educators, vision educators and hearing educators, licensed under ch. 115, Stats., and ch. PI 3; ~~and~~

12. Speech and language pathologists with at least a master's degree in speech and language pathology from an accredited institution of higher education and ~~registration~~ who are registered under ch. 459, Stats., or licensed under ch. 115, Stats., and ch. PI 3-; ~~and~~

SECTION 23. HSS 90.08(3)(b)13 is created to read:

HSS 90.08(3)(b)13. Other persons qualified by professional training and experience to perform the evaluation and determine eligibility.

SECTION 24. HSS 90.08(7)(h)1(intro.) is renumbered 90.08(7)(h)(intro.).

SECTION 25. HSS 90.08 (7)(h)2 is repealed.

SECTION 26. HSS 90.08(8) is amended to read:

HSS 90.08(8) EFFECT OF RELOCATION OF ELIGIBLE CHILD. When the family of a child who has been determined eligible for early intervention services based on an EI team evaluation moves to another county, the child shall remain eligible for services in the new county of residence on the basis of the original IFSP determination of eligibility. The services identified in the IFSP in effect on the date that the family moves to the new county shall be provided until a new IFSP is developed.

SECTION 27. HSS 90.09(2)(a) is amended to read:

HSS 90.09(2)(a) Any assessment of the child's family shall be with the family's ~~consent~~ permission. The assessment shall be directed by the family and shall focus on the family's strengths, resources, concerns and priorities related to enhancing development of the child.

SECTION 28. HSS 90.10 (2)(a) 2 is repealed and recreated to read:

HSS 90.10 (2)(a) 2. Ensure that the service coordinator, the parent, at least one of the qualified personnel directly involved in the child's evaluation and assessment and, as appropriate, persons who will be providing services for the child and family develop and implement an interim IFSP which includes the service coordinator's name, the early intervention services that are needed immediately and the circumstances and reasons for development of the interim IFSP;

SECTION 29. 90.10(2)(b)2, (3) and (5)(intro.) and (g) are amended to read:

HSS 90.10(2)(b)2 An interim IFSP is developed and implemented by the service coordinator and, parent, at least one of the qualified personnel directly involved in the child's evaluation and assessment and, as appropriate, persons who will be providing services for the child and family, which includes the service coordinator's name, the early intervention services that are needed immediately and the circumstances and reasons for development of the interim IFSP; and

(3) IFSP TEAM. The IFSP team shall consist of the parent, other family members requested by the parent, the service coordinator, an advocate if requested by the parent, at least one of the qualified personnel who took part in the evaluation and assessment of the child, at least one professional who has expertise in assessment of both typical and atypical development and expertise in child development and program planning, and appropriate service providers ~~as appropriate~~. If a professional who took part in the evaluation and assessment cannot be present at a meeting to develop the IFSP, the service coordinator shall ensure that the professional is involved through some other means.

(5)(intro.) CONTENT. The IFSP may have several different sections that are completed at various times throughout the process. All sections of the IFSP shall be maintained in one file or binder. The parents shall be given a

copy, the contents of which shall be fully explained to the parents and kept current. The IFSP shall contain:

(g) The name of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals. This may be the same service coordinator who was originally designated at the time the child was initially referred for evaluation or a new service coordinator;

SECTION 30. HSS 90.10 (5)(h) is repealed and recreated to read:

HSS 90.10 (5)(h) 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 ensure continuity of services;

4. Convening, with the approval of the family, a conference involving the county administrative agency, the family and the local educational agency responsible for early childhood special education programs or other service agency at least 90 days before the child reaches the age of 3;

5. Update the written transition plan to reflect decisions made at the conference under subd. 4 and the roles of sending and receiving agencies; and

6. Reviewing the child's program options for the period from the child's third birthday through the remainder of the school year; and

Note: 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 31. HSS 90.10 (7)(a) (intro.) and (b) 1 are amended to read:

HSS 90.10 (7) REVIEW AND EVALUATION. (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:

(b) Annual meeting. 1. At least annually the service coordinator shall convene a meeting at which the IFSP shall be evaluated and, as appropriate, revised. To the extent possible, participants shall be those persons who participated in the development of the IFSP or reviews under par. (a) and, in addition, a person or persons directly involved in conducting the evaluation and assessment and, as appropriate, persons providing services to the child or family. If a professional who was directly involved in the evaluation and assessment cannot be present at the annual meeting to evaluate the IFSP, the service coordinator shall ensure that the professional is involved through other means such as participating in a conference call, having a knowledgeable representative attend the meeting or making pertinent records available for the meeting.

SECTION 32. HSS 90.10 (7)(b) 3 is created to read:

HSS 90.10 (7)(b) 3. To ensure that parents fully understand and are active participants in the IFSP process, all meetings shall be conducted with someone present who can interpret for the family if the family's native language is different from the language at the meeting, unless this is not feasible.

SECTION 33. HSS 90.11 (1)(b), (2), (3) and (4)(intro.), (a) and (b) are repealed and recreated to read:

HSS 90.11 (1)(b) Functions of the service coordinator. Service coordination activities include:

1. Coordinating the performance of evaluation and assessments as described in ss. HSS 90.08 and 90.09;
2. Facilitating and participating in development, review and evaluation of the IFSP;
3. Assisting parents in identifying available service providers;
4. Facilitating access to services and coordinating and monitoring the timely provision of services;
5. Informing parents of the availability of advocacy services;
6. Coordinating with medical and other health care providers; and
7. Facilitating the development of transition plans under s. HSS 90.10 (5)(h).

(2) EARLY INTERVENTION SERVICES -- GENERAL CONDITIONS AND GENERAL ROLE OF PROVIDERS. (a) General conditions for early intervention services. 1. Appropriate early intervention services for an eligible child and the child's

family, provided to the maximum extent appropriate to the needs of the child in natural environments, including the home and community settings in which children without disabilities participate, shall be based on the developmental needs of the child and shall be provided with the written consent of the parent. Services shall be provided in collaboration with the parent, by qualified personnel, and in compliance with this chapter and Part H requirements.

2. The county administrative agency shall provide or arrange for the provision of early intervention core services and other early intervention services identified in a child's IFSP at no cost to the child's family.

3. Funds allocated for the birth to 3 program may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source if it were not for the establishment of the program. Funds allocated for the birth to 3 program may only be used for early intervention services that an eligible child needs but is not currently entitled to under any other federal, state, local government or private funding source.

Note: Federal law at 20 USC 1479 permits the use of birth to 3 program funds to provide a free and appropriate public education, in accordance with the requirements of 20 USC 1411 to 1420, to children with disabilities from their third birthday to the beginning of the following school year.

(b) General role of early intervention service providers. 1. A provider of early intervention services shall do all of the following:

- a. Follow the requirements of this chapter;
- b. Consult with parents, other service providers and community agencies to ensure that the service is effective;
- c. Educate parents, other service providers and community agencies in regard to the provision of that type of service;
- d. When a member of the team, participate in the EI team's assessment of a child, any family-directed assessment of the family and development of integrated goals and outcomes for the IFSP; and
- e. Make a good faith effort to assist each eligible child in achieving the outcomes of the child's IFSP.

2. Service providers, including service coordinators, shall attend or otherwise avail themselves of 5 hours of training each year related to early intervention. Training may be inservice training, conferences, workshops, earning of continuing education credits or earning of higher education credits.

3. A service provider is not liable if an eligible child does not achieve the growths projected in the child's IFSP.

4. With the parent's consent, third parties may be billed for early intervention services as long as the services are provided at no cost to families. A parent may not be compelled to consent to the billing of third parties. The service coordinator shall ensure that the parent, prior to giving his or her consent, is informed and understands that in consequence 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.

(3) EARLY INTERVENTION CORE SERVICES. County administrative agencies shall make the following services available to all families that have a child who is eligible or may be eligible for the birth to 3 program:

- (a) Identification and referral;
- (b) Screening;
- (c) Evaluation;
- (d) Assessment for an eligible child;
- (e) Development of the IFSP for an eligible child and family;
- (f) Service coordination for an eligible child and family; and
- (g) Protection of parent and child rights by means of the procedural safeguards.

(4) OTHER EARLY INTERVENTION SERVICES. (intro.) A county administrative agency shall provide or arrange for the provision of early intervention services. Early intervention services are the core service under sub. (3) and other early intervention services. Types of other early intervention services include the following:

(a) Assistive technology services and devices. Assistive technology services and devices, to include:

1. Evaluating the needs of a child with a disability for an assistive technology device, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices for children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for a child with disabilities or, if appropriate, the family of a child with disabilities, in the use of an assistive technology device; and

6. Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers and other individuals who provide services to or are otherwise substantially involved in the major life functions of children with disabilities.

(b) Audiology services. Audiology services, to include:

1. Identification of children with audiological impairment, using risk criteria and appropriate audiological screening techniques;
2. Determination of the range, nature and degree of hearing loss and communication functions by use of audiological evaluation procedures;
3. Referral for medical and other services necessary for habilitation or rehabilitation;
4. Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training;
5. Provision of services for prevention of hearing loss; and
6. Determination of the child's need for individual amplification, including selecting, fitting and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

SECTION 34. HSS 90.11 (4)(c)(intro.) and 3 and (d) 1 are amended to read:

HSS 90.11 (4)(c) Communication services. (intro.) Communication services, also called speech and language services, to include:

3. Services for the habilitation, rehabilitation or prevention of communicative or ~~oral-pharyngeal~~ oropharyngeal disorders and delays in development of communication skills, including services directed at the acquisition of sign language, the development of auditory awareness skills and speech production and the use of augmentative communication devices; and

(d) 1. Services provided by qualified personnel to assist the family or caregiver in caring for the child, understanding the special needs of the child, enhancing the child's development, modeling appropriate parent-child interactions and providing information on child development; and

SECTION 35. HSS 90.11(4)(e) and (h) are repealed and recreated to read:

HSS 90.11 (4)(e) Health care services. 1. Health care services necessary to enable a child to benefit from other early intervention services under this subsection while receiving those other early intervention services. These include:

a. Clean and intermittent catheterization, tracheotomy care, tube feeding, changing a dressing or colostomy collection bag and other health care services; and

b. Consultation provided by physicians to other service providers concerning the special health care needs of eligible children that have to be addressed in the course of providing early intervention services.

2. "Health care services" does not include:

a. Services that are surgical in nature such as cleft palate surgery or surgery for club foot;

b. Services that are purely medical in nature such as hospitalization for management of a congenital heart ailment or the prescribing of medicine or drugs for any purpose;

c. Devices necessary to control or treat a medical condition; or

d. Medical health services such as immunizations and "well baby" care that are routinely recommended for all children.

(h) Nutrition services. 1. Nutrition services, to include:

a. Identifying dietary and nutritional needs;

b. Developing and monitoring appropriate nutritional plans based on assessment results;

c. Conducting individual assessments in nutritional history and dietary intake: anthropometric, biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences;

d. Providing nutritional treatment and intervention and counseling parents and caregivers on appropriate nutritional intake, based on assessment results; and

e. Making referrals to appropriate community resources to carry out nutritional goals.

2. "Nutrition services" does not include coverage of the cost of food supplements, vitamins or prescription formulations designed to improve or maintain a child's nutritional status.

SECTION 36. HSS 90.11 (4)(i)(intro.) is amended to read:

HSS 90.11 (4)(i) Occupational therapy services. (intro.) Occupational therapy services that address the functional needs of a child related to the performance of self-help skills, or to adaptive development, and to adaptive behavior and play, and sensory, motor and postural development. These services are designed to improve the child's functional ability in home and community settings and include:

SECTION 37. HSS 90.11 (4)(j), (n) and (o) are repealed and recreated to read:

HSS 90.11 (4)(j) Physical therapy. (intro.) Physical therapy services to promote sensorimotor functions through the enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaption. These services include:

1. Screening, evaluation and assessment of infants and toddlers to identify movement dysfunction;
2. Obtaining, interpreting and integrating information appropriate to program planning, to prevent, alleviate or compensate for movement dysfunctions and related functional problems; and
3. Providing individual and group services and treatment to prevent, alleviate or compensate for movement dysfunctions and related functional problems.

(n) Transportation and related costs of travel. Transportation and related costs of travel, whether mileage or by taxi, common carrier or other means, and including tolls and parking, necessary to enable an eligible child and the child's family to receive early intervention services.

(o) Vision services. Vision services, to include:

1. Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays and abilities;
2. Referral for medical and other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
3. Communication skills training for all environments, visual training, independent living skills training and additional training to activate visual motor abilities.

SECTION 38. HSS 90.11 (5)(a) is amended to read:

HSS 90.11 (5) SERVICE DELIVERY. (a) Location of services. To the maximum extent appropriate to the needs of the child, early intervention services shall be provided in the child's natural environments, including home and community settings where children without disabilities participate. ~~The reasons for not~~ If reasons exist for providing services in settings other than the child's natural environments, those reasons shall be documented in the child's IFSP.

SECTION 39. HSS 90.11 (6)(intro.) and (a) to (o) are renumbered 90.11 (6)(a)1 to 15, and HSS 90.11 (6)(a)6, as renumbered, is amended to read:

HSS 90.11 (6)(a)6. Parent facilitators shall be parents of ~~disabled~~ children with disabilities who are hired by county administrative agencies or service providers on the basis of their demonstrated skills in planning, communicating and providing support to the parents of eligible children;

SECTION 40. HSS 90.11 (6)(b) is created to read:

HSS 90.11 (6)(b) Early intervention personnel under par. (a) 2, 3, 4, 6, 7, 8 and 10 who are paraprofessionals shall work under supervision as defined by standards of the profession or standards developed by the department.

SECTION 41. HSS 90.12(1)(a) and (b)1, 3 and 5 and (2)(a)3 are amended to read:

HSS 90.12 (1) PRIOR NOTICE. (a) A reasonable time before a county administrative agency or service provider ~~does~~ proposes or refuses to initiate or change any of the following, the county administrative agency or service provider shall provide written notice to the parent and ensure that the parent understands the notice:

1. ~~Identifies or evaluates~~ Identification, evaluation or placement of a child; or

2. ~~Provides~~ Provision of early intervention services to the child and the child's family;

3. ~~Makes a change in the early intervention services a child receives;~~

4. ~~Refuses to identify or evaluate a child; or~~

5. ~~Refuses to provide early intervention services to a child.~~

(b) 1. The proposed or refused action;

3. The information upon which the proposed or refused action is based;

5. ~~The~~ All procedural safeguards the parent has under this ~~section~~ chapter, including the right to file a complaint regarding the proposed or refused action.

(2)(a)3. The parent may refuse to give consent for a particular evaluation or assessment procedure. If a parent refuses consent, the county administrative agency may not carry out that procedure. The county administrative agency may not limit or deny the use of a particular procedure because the parent has refused to consent to another procedure. If the county administrative agency believes that a particular evaluation or assessment procedure to which a parent has refused consent would provide important information to assist in determining appropriate service needs, the agency shall develop a timeline and procedure with the parent for how consent would again be requested. The county shall keep written documentation of efforts to obtain consent as well as written documentation of the agreed timeline and procedure.

SECTION 42. HSS 90.12(2)(a)4 and (c) are created to read:

HSS 90.12(2)(a)4 If a parent refuses consent for evaluation or assessment and the refusal falls within the scope of s. 48.981(2), Stats., the county administrative agency or service provider may take action in accordance with s. 48.981(2), Stats.

(c) For billing of 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.

SECTION 43. HSS 90.12 (3)(a), (b), (d) and (e) are amended to read:

HSS 90.12 (3) CONFIDENTIALITY. (a) Personally identifiable information about a child, a parent of the child or other member of the child's family is confidential at all stages of record development and maintenance, including information collection, storage, disclosure and destruction.

(b) The county administrative agency is responsible for maintaining the confidentiality of a child's early intervention records wherever those records are located. Any interagency agreement or contract with a service provider shall set forth the service provider's responsibility to keep early intervention records confidential. One staff member at each agency maintaining early identification records shall be designated to ensure that personally identifiable information is kept confidential. The county administrative agency shall provide training to staff concerning the policies of early intervention record maintenance and confidentiality.

(d) A county administrative agency or service provider may disclose confidential information from early intervention records, without parental consent, only to those of its employees 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 employees of the agency and service providers who have a legitimate need for access to the early intervention record and who will have unrestricted access to that record. A log shall be maintained. Each county administrative agency shall also maintain a log as part of an early intervention record, on which the name of each 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 (c), Stats., or with

the parent's written consent consistent with s.51.30(2), Stats. 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 ~~shall~~ may take action in accordance with s.48.981, Stats.

SECTION 44. HSS 90.12 (3)(f), (g) and Note are created to read:

HSS 90.12 (3)(f) The county administrative agency shall give adequate 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:

1. Be given in the native languages of the various population groups and list the languages in which the notice is available;
2. Contain a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the agency intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;
3. Contain information regarding storage, disclosure to third parties and retention and destruction of personally identifiable information; and
4. Contain a description of all the rights of parents and children regarding this information, including rights under 34 CFR 99.

(g) The county administrative agency shall inform the parent when personally identifiable information contained in the early intervention record is no longer needed to provide early intervention services. The information shall be destroyed at the request of the parent except that a permanent record of the child's name, address, phone number and dates of enrollment in the program may be maintained. In this paragraph, "destruction" means physical destruction or removal of personally identifiable information from the early intervention record.

Note: For the information of interested persons, the confidentiality provisions of ch. HSS 90 meet the confidentiality requirements of Part B of the Individuals with Disabilities Education Act, 20 USC ch. 33, and 34 CFR 300.560 to 300.576 and the requirement of 34 CFR Pt. 99, with the following modifications:

- (1) Any reference in those places to "state education agency" or "SEA" means the department;
- (2) Any reference to "education of all children with disabilities" or "provision of free appropriate public education to all children" means provision of services to eligible children and families;
- (3) Any reference to "local education agencies" or "LEAs" or to "intermediate education units" means county administrative agencies;

(4) Any reference to 34 CFR 300.128 on identification, location and evaluation of children with disabilities means 34 CFR 303.164 and 303.321, comprehensive child find system; and

(5) Any reference to 34 CFR 300.129 on confidentiality of personally identifiable information means 34 CFR 303.460, confidentiality of information.

SECTION 45. HSS 90.12 (4)(a), (b)1, (c), (e) and (f)3 are amended to read:

HSS 90.12 (4) OPPORTUNITY TO EXAMINE RECORDS. (a) The parent of a child may review all early intervention records concerning the child unless the county administrative agency has been advised that the parent does not have the authority under state law to review a record.

(b) Make the records available to the parent without unnecessary delay but not later than 15 working days following the date of the request except that, if the request is in connection with a meeting on the individualized family service plan or a hearing to resolve a dispute or complaint involving the parent and the county agency or service provider, the records shall be made available at least 5 days before the meeting or hearing but in no case later than 15 working days following the date of the request;

(c) If an early intervention record includes information on more than one child, the parent may review the information relating only to the parent's child or, if this is not separable, the information shall not be disclosed to the parent but the parent shall be informed of the contents as it relates to the parent's child.

(e) No fee may be charged for parent review of an early intervention record or for information disclosed to a parent or for the search for or retrieval of a record. If a parent requests a copy of the record, one copy shall be supplied free of charge. A fee may be charged for each additional copies copy if the fee does not prevent the parent from exercising the right to inspect and review the record.

(f)3. If the county administrative agency or service provider refuses to amend or delete the information as requested, the administrative agency shall inform the parent that the parent may appeal that decision within 14 days after being notified of it by asking the county administrative agency in writing or in the parent's normal mode of communication for a hearing on it.

SECTION 46. HSS 90.12(4)(f)5 is renumbered 90.12(4)(f)6 and, as renumbered, is amended to read:

HSS 90.12(4)(f)6. If the information is not finally amended or deleted as requested, ~~the parent~~ administrative agency may ask shall inform the parent of the parent's right to request the county administrative agency or service provider to include in the record a statement prepared by the parent commenting on the information in question and giving the parent's reasons for disagreeing with the decision not to amend or delete the information. The county administrative agency or service provider shall then maintain that

statement as part of the record and shall disclose it with the contested information whenever that information is disclosed.

SECTION 47. HSS 90.12 (4)(f)5 is created to read:

HSS 90.12 (4)(f)5. If as a result of the hearing the agency determines that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child or family, the agency shall amend the information in the record and inform the parent in writing of the amendment.

SECTION 48. HSS 90.12 (5)(a)1 and 2 and (d)3 are amended to read:

HSS 90.12 (5)(a) 1. Is knowledgeable about the requirements of this chapter, including complaints process management requirements, and the needs of and services available for eligible children and their families;

2. Is not an employe of the county administrative agency or of any other agency or program involved in the provision of early intervention services or care for the child, although he or she may be paid by the agency or program to provide impartial decisionmaker services; and

(d)3. Either party at the hearing ~~may~~ has the right to obtain a written or electronic verbatim transcript of the proceedings and a copy of the written findings of fact and the decision.

SECTION 49. HSS 90.12 (5)(d) 4 b and c are renumbered 90.12 (5)(d) 4 c and d.

SECTION 50. HSS 90.12 (5)(d) 4 b is created to read:

HSS 90.12(5)(d)4 b. Attempt to reach a timely resolution of the complaint.

SECTION 51. HSS 90.12(5)(e)1 is repealed.

SECTION 52. HSS 90.12 (5)(e)2 is renumbered 90.12 (5)(e) and, as renumbered, is amended to read:

HSS 90.12 (5)(e) Either party aggrieved by the decision under ~~subd. 1 par. (d)4c~~ may bring a civil action in state or federal court to have that decision overturned.


SECTION 53. HSS 90.13 (1)(a) (intro.) is amended to read:

HSS 90.13 (1) APPOINTMENT. (a) (intro.) The county administrative agency shall, in accordance with this section, appoint in writing a person to serve as a surrogate parent to represent the interests of an eligible child or of a child who is suspected of being eligible for early intervention services under this chapter if one of the following applies:

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
Social Services

Dated: May 25, 1993

By: 
Gerald Whitburn
Secretary

SEAL:

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