

## WISCONSIN'S BIRTH TO 3 PROGRAM - PARENT AND CHILD RIGHTS

Wisconsin's Birth to 3 Program is an early intervention program operated under state and federal law. The early intervention program is administered at the local level by an agency selected by the County Board. This public agency responsible for the Birth to 3 Program is known as the county administrative agency. The county administrative agency has ultimate authority for the Birth to 3 Program, although it may contract with other public or private agencies to coordinate the program and/or provide services.

Families participating in the Birth to 3 Program have the following rights.

### A. RECEIVE INFORMATION (Prior Notice)

Notice must be sent to the parent before:

1. The program proposes to determine or change a child's eligibility for early intervention services (evaluation.)
2. The program is going to begin or change a child's early intervention services.
3. The program refuses to take any of the above actions when requested by a parent.
4. The program proposes to bill private insurance.

The notice must be in writing, must be received a reasonable time before the proposed action, and must include:

1. A description of the proposed action.
2. An explanation of why the action is proposed and of other options that were considered and the reasons for rejecting them.
3. Any other relevant factors, such as the purpose of each service, how the services will be provided, known costs of services, whether direct or indirect, and the information on which the action is based.
4. A statement of parent and child rights.

The notice must be written in terms understandable to the general public, and provided in the parent's native language or other principal method of communication. If the parent's method of communication is not a written language, they have the right to have the notice translated orally or provided by other means. The early intervention program will keep written documentation that the parent understands the content of this notice.

### B. GIVE CONSENT

Parental consent is required before an early intervention program can perform evaluation or assessment procedures, provide services to a child or family, or to bill private insurance.

1. Parental consent must be given in writing.
2. A parent may refuse permission for all or parts of the proposed evaluation, assessment, services, or refuse consent to have their insurance billed.
3. Parental consent is voluntary and stays in effect until revoked, but may be revoked at any time. If a parent withdraws consent for a particular service after once providing it, that service may not be provided. Withdrawing consent for a particular service does not jeopardize the provision of other services.
4. Reasonable efforts must be made to inform the parent of the possible effects of giving or not giving consent.

The parent must be informed of all information about the activity for which consent is sought.

### **C. PARTICIPATE IN THE EVALUATION AND ASSESSMENT**

1. The agency shall obtain the parent's written consent before conducting the initial evaluation and assessment of the child. The agency shall inform the parent of the purpose of the evaluation and assessment, the procedures to be employed, and the types of professionals who will be involved. The agency will also notify the parent of any likely effects, such as the need to provide transportation.
2. The parent(s) shall be involved and consulted in the evaluation and assessment process.
3. Parent(s) shall be invited to participate in the evaluation team (EI-Team) meetings. If a parent is unable to attend a meeting of an EI-Team, he or she may request a conference to discuss the team's findings. Parents shall be fully informed of the EI-Team meetings and findings.
4. Parents have the right to have an interpreter or translator if their primary language is not English or if they are deaf or hearing impaired.
5. All evaluation or assessment tests and procedures will be appropriately selected and adapted for children with impaired sensory, manual or speaking skills and will not be racially or culturally discriminating.
6. Tests and similar evaluation procedures will be administered in the native language of the family or other mode of communication.
7. All evaluations and assessments must consider the specific area of development. No single procedure will be used to determine a child's eligibility for early intervention services.

### **D. PARTICIPATE IN THE DEVELOPMENT OF THE INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)**

1. A meeting to develop an IFSP must be held within 45 days of receipt of a referral for evaluation.
2. IFSP meetings must be at a mutually agreeable time and place for the family. IFSP meetings will not take place without the parents or their designee. Written notice will be provided early enough to ensure parent and other appropriate persons' attendance at the meeting.
3. Parents may bring other family members, friends, or advisors to the IFSP meeting.
4. Parents have the right to have an interpreter or translator if their primary language is not English or if they are deaf or hard of hearing.
5. The program must ensure that parents understand what is said at the IFSP meeting.
6. Early intervention services must be based on the IFSP.
7. The IFSP will be reviewed at least every 6 months.
8. A parent signs the IFSP or another form to indicate consent for services. The IFSP or other consent form shall specify each service the parent has authorized and the known costs of the services, whether direct or indirect.
9. The parent will be informed of any likely effects of each service, the possible consequences of not consenting to each service, and that if consent is not given the child will not receive the service(s).

### **E. REVIEW RECORDS**

Early intervention records are confidential. Parental consent is required before confidential information is shared with individuals outside the county administrative agency or with service providers indicated on the IFSP.

Parents, or their representatives, have the right to inspect and review all their child's early intervention records including those which relate to the identification, evaluation, assessment, and the provision of early intervention services for their child. Parents will receive a summary of the county administrative agency record policy that includes information about the maintenance and disclosure of records.

1. The early intervention program must comply with a parent's request for review:
  - a. without unnecessary delay but no later than 15 days after the request.

- b. before any meeting regarding an IFSP or hearing relating to the identification, evaluation, or services for the child/family.
2. Parental rights to review these records include:
  - a. Receiving explanations and interpretations of the records by early intervention staff as reasonably requested.
  - b. The right to request copies of records.
  - c. The right to have a representative review the records.
  - d. The right to review records unless the early intervention program has been informed that the parent does not have the right under state law.
  - e. The right to only review information relating to their child, when an early intervention record includes information on more than one child.
  - f. Being informed by the early intervention program of the types and locations of early intervention records collected, maintained, or used by the program.
3. Parents may receive one copy of the early intervention record free of charge but may be charged for the cost of additional records unless that charge prevents them from exercising their right to review records. They may not be charged for the search and retrieval of records.
4. Parents may request that the information in a record be amended if they believe that the information is inaccurate, misleading, or violates the privacy or other rights of their child. If the early intervention program agrees to amend the record, it must be amended within a reasonable time.
5. If the county administrative agency refuses to amend the record as requested, it must inform the parents of the refusal and their right to a hearing according to law. If, as a result of the hearing, it is decided the information:
  - a. is inaccurate, misleading, or a violation of privacy, the program must amend the record and inform the parents of the amendment in writing.
  - b. is not inaccurate, misleading, or a violation of privacy, the parents must be informed of their right to place a statement in the records that sets forth the reasons for disagreement with the decision. The statement must be maintained with the contested portion of the record as part of the early intervention record as long as the record is maintained and must be included with any disclosures of the record.
6. A record must be kept of who, besides parents and authorized early intervention program personnel, obtains access to each child's records. The record must indicate the party's name, date, and purpose of the access.
7. Personally identifiable information will be protected according to law when the information is collected, used, or maintained.
8. Parents will be informed that they may request the destruction of their child's records when they are no longer needed to provide early intervention services.

## **F. FILE COMPLAINTS**

Any person has the right to file a written complaint under federal and state law. If a person believes the county administrative agency or the state agency has violated an early intervention program law or regulation, complaints can be made to the:

Birth to 3 Program  
Division of Disability and Elder Services  
Department of Health and Family Services  
PO Box 7851  
Madison, WI 53707

## **G. PARTICIPATE IN MEDIATION**

Mediation is a process in which a neutral and impartial third party, a *mediator*, helps parties resolve their disputes in a private setting. The mediation system provides a voluntary form of dispute resolution. If an agreement is reached, the agreement is put into writing and signed by both parties. Implementation of the agreement is the responsibility of both the parties. There is no cost to either party for mediation.

1. Mediation may be used when disputes arise concerning the determination of eligibility, the evaluation or assessment process, or the provision of appropriate early intervention services.
2. Either a parent or a county administrative agency, or both, may request mediation in writing. The process begins by completing a *Request for Mediation* form (DDE-2432) and sending it to the Birth to 3 Program. These forms can be obtained from the service coordinator or on the Internet.
3. The mediation session will be conducted at a neutral site, at a time and day convenient to all participants.
4. If the parties resolve part or all of the dispute, the mediator will ensure that the agreement is in writing and signed by the parties.
5. The discussions may not be used as evidence in any subsequent impartial hearings or civil proceedings. The fact that a party did not consent to mediation or withdrew from mediation or that the mediation did not result in a resolution of the dispute can not affect the judgment of impartial decision-makers.

## **H. REQUEST A HEARING**

A parent may challenge a county administrative agency's proposal, or refusal, to evaluate or provide services to the child or family. The parent may file a written Request for a Hearing (DDE-2433) with the Department of Health and Family Services (DHFS). The complaint should identify the activity that is being challenged and the reasons for objecting to the activity.

The county administrative agency program is responsible for the costs of the hearing. An impartial decision-maker may not have a personal or professional conflict of interest. The impartial decision-maker is selected by the DHFS. Parents have the right to be informed of available free or low-cost legal services or other relevant services.

A hearing will be conducted by the impartial decision-maker and a written decision issued within 45 days of the request for a hearing. The impartial decision-maker will set a time and place for the hearing that is agreeable to the parties and reasonably convenient for the parents and child.

The impartial decision-maker will send a copy of the decision to each party with a notice of the parties' appeal rights. A hearing decision will consist of finding of fact, conclusions of law, and will be based on the evidence.

The decision of the impartial decision-maker is final unless appealed by either party within 30 days to federal district court or the circuit court for the county in which the child resides.

The child's early intervention services may not be changed during the hearing process unless the parent and the county administrative agency agree. If the hearing involves initial admission to the early intervention program, the child, with the consent of the parent, must receive undisputed early intervention services until the completion of the proceedings.

The parent involved in a hearing has the right to:

1. Be accompanied and advised by counsel and/or individuals with knowledge of early intervention services.
2. Open the hearing to the public.

3. Present evidence and confront, cross-examine, and compel the attendance of witnesses and the production of relevant documents.
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.
5. Receive a free copy from another party of each document offered into evidence by that party.
6. Access any reports, records, or clinical evaluations on which a decision was based or which could have a bearing on the correctness of the decision.
7. Obtain a written verbatim record of the hearing and the findings of fact and the decision.

**I. A CHILD HAS A RIGHT TO BE REPRESENTED BY A SURROGATE PARENT WHEN NEEDED**

The county administrative agency will determine whether a surrogate parent is needed to represent the interests of a child. The county administrative agency will appoint a person to act as a surrogate parent when the child's parent cannot be identified or located or when the child is under the legal custody or guardianship of the state or county child welfare agency. The surrogate parent may represent a child in all matters related to the evaluation and assessment of the child, the development of the IFSP, the provision of early intervention services, and the exercise of procedural safeguards.

**Any person may request a complete copy, without cost, of the law and rules implementing the early intervention program. Requests can be made to the county administrative agency or the DHFS Birth to 3 Program Office.**