

**Notice of Public Hearing**  
**Department of Health Services/Birth to 3 Program**  
**OPT OUT POLICY**

NOTICE IS HEREBY GIVEN that pursuant to Individuals with Disabilities Act (IDEA) Sec. 612(a)(19) and 34 CFR §303.110 – 34 CFR §303.112, the Department of Health Services will hold a public hearing to consider a State policy allowing families the ability to “opt out” of the required LEA Notification process while participating in the Birth to 3 Program.

**Hearing Date(s) and Location(s):**

<b>Date and Time</b>	<b>Location</b>
June 30, 2009 3:00 PM – 6:00 PM	UW-Waukesha Room C103 1500 University Dr. Waukesha WI 53188
	UW-LaCrosse Communications Bldg – Wing 102 1725 State St LaCrosse WI 54601
	UW-Menasha Fox Valley Room 1838 1478 Midway Rd. Menasha WI 54852
	UW-Wausau Marathon County Room 218 518 S 7 <sup>th</sup> Ave. Wausau WI 54401
	UW-Madison Pyle Center – Room 227 702 Langdon St Madison WI 53706

**Accessibility**  
**English**

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Lori Wittemann at 608-267-5150. You must make your request at least 7 days before the activity.

### **Spanish**

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Lori Wittemann al número 608-267-5150. Debe someter su petición por lo menos 7 días de antes de la actividad.

### **Hmong**

DHS yog ib tus tswv Hadj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muja mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv. Koj yuav tau thov kev pab uas yog hu rau Lori Wittemann ntawm 608-267-5150. Koj yauv tsum thov qhov kev pab yam tsawg Kang 7 hnuv ua ntej qhov hauj lwm ntawd.

### **Place Where Written Comments May be Submitted**

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the DHS Birth to 3 Website at [www.B3wisconsin.org](http://www.B3wisconsin.org) Click on the link, “2009 Proposed Wisconsin Opt Out Policy.”

### **Deadline for Comment Submission**

Comments may be submitted from May 19, 2009 through June 30, 2009 at 4:30 PM.

## **Analysis Prepared by the Department of Health Services**

### **Explanation of agency authority:**

- Under the IDEA section 637(a)(9)(A)(ii)(I), 34 CFR §303.148(b)(1), and the Office of Special Education Program's 2004 Letter to Elder, the lead agency must disclose limited child find information (i.e. child's name, date of birth, parent contact information) to the local education agency (LEA) where the child resides unless the lead agency has adopted an opt out policy and the parent opts out. The lead agency may not require affirmative parental consent for this limited disclosure.
- To adopt an opt out policy for parents participating in the Birth to 3 Program, IDEA section 612(a)(19) and 34 CFR §303.110 – 303.112 requires States to post the policy, accepting public comment including through a public hearing.

### **Plain language analysis:**

Families with children who have delays or disabilities and are under the age of three may be eligible for services through the federal and state mandated program called Early Intervention Services or Birth to 3. This program is designed to support families in understanding and meeting their child's needs. When a child and family transitions out of the program, families are

supported in accessing services the child and family may need. Children typically transition out of the program at the age of three.

To increase the opportunities of children transitioning from the B-3 program to receive supports or services from which the children may benefit, Birth to 3 Programs are required by IDEA to send the child's name, date of birth, and parental contact information (limited contact information) to the LEA or school district that serves children over age three with disabilities.

In Wisconsin, families are an integral part of the transition process. With this philosophy in mind, the Wisconsin Birth to 3 Program proposes an opt out policy that allows families that do not want the limited contact information provided to the LEA to be able to "opt out" of having this information sent.

The Birth to 3 Program staff would provide the family with information about the LEA Notification process early in the child's participation in the program. If the family chooses to "opt out," they would sign and return the "opt out" form. If the "opt out" form is returned to the Birth to 3 Program before the child is 30 months of age, the limited contact information would not be sent to the LEA. If the "opt out" form is not received by the time the child is 30 months of age, then the requirement to send limited contact information to the LEA would be carried out by the Birth to 3 Program.

Overall, the proposed policy allows for those families that choose to "opt out" of limited contact information being shared with the LEA to document this decision and stop the information being sent to the LEA. For Birth to 3 programs serving families with children with delays or disabilities participating in early intervention services, the additional work requirements are limited--the Birth to 3 programs would assure that families are given the information about the LEA Notification process and the Opt out option and then, if a parent-signed "opt out" form is received, the Birth to 3 program would need to document this objection.

### **Fiscal Estimate**

There is no fiscal impact on Birth to 3 Programs as the information is to be incorporated into already existing processes.

### **Text of Proposed Opt Out Policy**

IDEA section 637(a)(9)(A)(ii) requires States to have policies and procedures that ensure a smooth transition for children receiving Part C early intervention services to Part B preschool or other appropriate services. Policies and procedures also must include how the Part C lead agency will notify the local education agency (LEA) for the area in which each child resides that the child will shortly reach the age of eligibility for preschool services under Part B, as determined by State law.

The WI Birth to 3 Program ensures that each child in the Birth to 3 Program has LEA Notification sent to the local education agency (LEA) in which the child resides as the child closely approaches the age of eligibility for Part B services which for the State of Wisconsin is

three years old. LEA Notification is sent to the LEA with the child's name, date of birth, and parent's name and contact information, unless the parents "opt out". This information is sent to the LEA unless the parent indicates in writing on the "Opting Out of LEA Notification" form that they "opt out" of the LEA receiving identifying information. This policy and the "Opting Out of LEA Notification" form is given to the family when a child is determined to be eligible for the Birth to 3 program, after an initial Individualized Family Service Plan (IFSP) is developed. If the family "opts out" from this LEA notification, the family is asked to return the signed "Opting Out of LEA Notification" form within 10 days after the receipt of the "Opting Out of LEA Notification" form. If the parent-signed "Opting Out of LEA Notification" form is not received at the county Birth to 3 Program by the time a child is 30 months old, LEA Notification is sent to the LEA when the child is 30 months old. If a child's initial eligibility is determined within the six-month period before the third birthday, the county administrative agency will notify the LEA as soon as possible after determining the child's eligibility for Part C, unless the family signs the "Opting Out of LEA Notification" form and returns it within the specified ten days.

In addition, during the Transition Planning Conference or meeting to determine eligibility for special education services through the LEA, if the family chooses to provide consent for the transfer of additional information in the child's record, the family will sign a release that authorizes what additional information is to be shared, which could include (at the family's discretion):

1. services child received while in the Birth to 3 program
2. where the Birth to 3 program provided those services
3. exit data on child outcomes
4. the developmental concerns the Birth to 3 program has regarding the child
5. The Individualized Family Service Plan (IFSP)
6. Progress Reports/Plan of Care
7. Evaluation Reports from: speech therapists, occupational therapists, physical therapists, special education teachers and others, as indicated

**Agency contact person:**

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