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DEPARTMENT OF EDUCATION

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700 Governors Drive  
Pierre, SD 57501-2291

T 605.773.3134  
F 605.773.6139  
www.doe.sd.gov

June 25, 2009

Senator Jean Hunhoff, Co-chair  
Representative Larry Tidemann, Co-chair  
Joint Committee on Appropriations  
500 E. Capitol Avenue  
Pierre, SD 57501

Dear Senator Hunhoff and Representative Tidemann:

Enclosed please find the final report from the Birth to Three Connections administrative review as directed by the Joint Committee on Appropriations' April 6, 2009 Letter of Intent. Also enclosed are the minutes from each of the stakeholders' meetings.

We will provide quarterly updates on the recommendations specified in the final report.

If you have questions, please do not hesitate to contact me.

Sincerely,

Tom Oster  
Secretary

Enclosures

# South Dakota Department of Education's Administrative Review Birth to Three Connections Program

## Final Report

July 1, 2009

Introduction: The Joint Committee on Appropriations directed the Department of Education to conduct an administrative review of the Birth to Three program. The review was directed to include the effectiveness of the program in serving children and reimbursement options to help support the program. The review was directed to include input from parents and other stakeholders on recommended changes to the program.

A stakeholder's workgroup convened in May and June of 2009 to review and make recommendations on the following items: billing Medicaid for Birth to Three services; travel time reimbursement for providers; and the feasibility of family fees. The workgroup also reviewed constituent concerns which included services, personnel, and accountability. The workgroup included representation from parents; providers; service coordinators; the Birth to Three Interagency Coordinating Council; the Department of Social Services; and the Department of Education. There were 19 members in the workgroup. The workgroup reached consensus on each of the following recommendations:

**Recommendation #1: Provide additional training for Birth to Three providers on Medicaid: how to bill for Birth to Three services; and understanding Medicaid's definition of Medical Necessity. The training should be open to both providers and parents.**

Background: Birth to Three providers were required to enroll as Medicaid providers if they qualified to do so (occupational therapists, physical therapists, Master's level speech language pathologists, etc.) as of October 23, 2008. Before that date the majority of Birth to Three private providers did not bill Medicaid due to a much higher Birth to Three rate. As of October 23, 2008, Birth to Three rates aligned with Medicaid rates and providers were required to bill Medicaid. Providers are confused about the billing process and Medicaid's definition for determining 'medical necessity.'

Kim Malsam-Rysdon, Deputy Secretary for the Department of Social Services, provided an overview of Medicaid in South Dakota to the workgroup. The presentation included what Medicaid is and is not, who is eligible for covered services, the state Medicaid plan, optional services, and the Federal Medicaid Assistance Percentages (FMAP) for South Dakota. There are technical assistance resources for providers with questions about Medicaid, including help through a toll free line and a specific contact person for Birth to Three providers with questions.

Revi Warne, Program Manager for the Division of Medical Services, explained that providers must enroll with Medicaid as Birth to Three providers and bill using a Birth to Three taxonomy code. This code is used to track the Birth to Three services so that the Department of Education can be billed for the federal match share. Revi reviewed ARSD 67:16:01:06.02 and explained each of the five components which define medical necessity. He also explained that a physician's referral and provider progress notes must support services billed to Medicaid. A discussion from the workgroup brought up issues about when and how a provider determines the services are no longer medically necessary and what is appropriate for the level and intensity and duration of services.

While representatives from the Department of Social Services reviewed the medical necessity requirements for services billed to Medicaid, Secretary Oster explained that services under the Birth to Three program are not considered medically necessary when the IFSP goals have been met. However, if the IFSP team determines the child still requires services to increase their level of functioning to age appropriate standards, new goals could be developed for the IFSP. If the service is funded by Medicaid, the services must be ordered by a physician and meet the criteria of ARSD 67:16:01:06:02.

The Department of Education representatives further explained that parents cannot direct the IFSP team to continue services when the services are deemed no longer medically necessary. Parents are an important part of the IFSP team but represent only part of the team. If parents disagree with the recommendations of the team, they have the due process rights to challenge the decision.

***Consensus:*** *The workgroup came to consensus that more training and education is needed for Birth to Three providers. The Department of Social Services agreed to schedule and provide training specifically for Medicaid requirements and archive the training for future use by providers.*

**Recommendation #2: Establish a flat fee per service for travel time reimbursement and structure the administrative rule so that the travel time reimbursement rates increase at the same rate of provider inflation.**

Background: When the Birth to Three therapy rates were aligned with Medicaid rates, providers were required to bill Medicaid. The travel time was increased to 90 percent of the therapy rate provided during the therapy session. This was done to offset the lower Medicaid rate and still remain within the budget. (ARSD 24:14:04:13). If more than one therapy is provided during a session, the provider is allowed to calculate their travel time on the highest therapy rate.

A flat rate for travel time would ensure correct billing for travel time and simplify the process.

The proposed flat rate is based on the most often billed therapy rate for occupational and physical therapy, speech and language therapy, and special instruction. These categories were used to determine a flat rate that would be fair to providers because they capture most of the Birth to Three services. There was discussion about how the flat rate could be increased if provider rates increase in the future. A revised administrative rule could be worded so that the travel time rate would increase at the same percentage as the provider rates. For example, if providers receive an inflationary cost of living increase of 3 percent, then the travel time reimbursement would be increased by that same percentage.

The following proposed flat rates would not have a detrimental effect on the overall budget.

**Proposed Flat Rate for Travel Time**

	Most Commonly Billed Therapy p/15 min.	Travel Time Flat Rate p/15 min.
OT & PT	16.70	15.05
Sp L	12.81	11.55
Spec. Instruct.	8.00	7.25

**Formula for calculating travel time:**

Using odometer reading, determine how many miles the provider has traveled and whether it is in-city or outside of city limits.

**In-city formula:** Mileage x 3 = \_\_\_\_\_ ÷ 15 = unit of travel

Number of miles x 3 (one mile per 3 minutes to allow for traffic) = number of minutes of travel time. Then ÷ by 15 minutes (one unit).

Example, the provider travels 5 in-city miles to the child's home. 5 miles x 3 = 15. The provider can bill for 15 minutes or 1 unit of travel time.

**Outside of city limits formula** = number of miles x 1 (one mile per minute) = the number of minutes of travel time ÷ by 15 minutes (one unit).

Example, the provider travels 120 miles outside of city limits to the child's home. 120 miles x 1 = 120 minutes ÷ by 15 minutes (one unit). The provider can bill for 8 units.

Mileage reimbursement was not addressed by the workgroup, but is added to this report for clarification. Mileage reimbursement at state rates is paid to providers as a separate item in addition to travel time reimbursement. Mileage is reimbursable for travel outside of city limits. No mileage reimbursement is paid for in-city travel.

A more comprehensive explanation and tip sheet for providers is available on the Birth to Three website at <http://doe.sd.gov/oess/Birthto3/servcoord.asp>. The workgroup came to consensus that a flat rate for travel time as proposed should be pursued through the administrative rule process.

***Consensus:** The workgroup supports a flat rate for travel time reimbursement and recommends that ARSD 24:14:04:13 be revised as proposed by the Department of Education and the flat rate will increase at the same rate as the provider inflationary increase.*

**Recommendation #3: Charging family fees for Birth to Three services is not feasible.**

Background: The workgroup reviewed data from other states. Only fourteen states out of fifty charge a family fee. Of those fourteen, seven states with demographics or unique features similar to South Dakota were surveyed. The survey was conducted by Mountain Plains Regional Resource Center which provides technical assistance to early intervention programs. The questions asked were "Is collecting the fee worth the administrative cost?" and "Are families choosing not to access early intervention services because of the fees?" Seven states responded with varying answers from very few fees are collected; to some families choose not to participate in the program due to fees, and others who discontinue services when they fall behind on payments.

Also surveyed were the South Dakota Department of Health and the South Dakota Department of Human Services. The Department of Health eliminated family fees for the children's special health program after several years. They were never able to recover the cost of administering family fees and there was no benefit to the program. The Department of Human Services does not charge fees for their family support program or the respite care program for children with disabilities.

The workgroup analyzed the data from two different fee scenarios: fees based on a percentage of the services utilized; and a flat fee based on income, regardless of the level of services utilized. Excel spreadsheets were projected on large screens for the workgroup to analyze the various family incomes, units of service utilized, and monthly fees generated. The spreadsheets allowed various scenarios to be entered so that the workgroup could immediately see the results of the calculations and the total amount generated by each scenario. Fifty –five percent of all Birth to Three families are on Medicaid. Those families were exempt from any fees in the scenarios. (See Attachments 1 and 2.)

The workgroup made the following assumptions as they worked through the fee scenarios: various income brackets as reported by the U.S. Census Bureau 2005-2007 American Community Survey matched the percentage of Birth to Three families in those same brackets, for example, if 23 percent of all households in South Dakota earned \$60,000 in gross income, then 23 percent of all families in the Birth to Three Program would fall in that same income bracket; and each household had four family members. These are assumptions only as the program does not collect family income or household member information from participating families.

The average number of service units per family was calculated by dividing the total number of service units by the total number of children served. In FY 2008, the average monthly utilization per child for occupational therapy was 1.11 units; physical therapy 1.86 units; and speech therapy 4.31 units.

The various percentages used to calculate a fee ranged anywhere from 25% to 50%, depending on the income bracket of the family and the annual amount the Department estimated to make the process feasible. The same process was used for the flat fee scenario. Flat fees ranged from \$20 to \$100 per month. The Excel spreadsheets used for the analysis are included as an attachment to this report.

Based on the two scenarios, the workgroup raised the following concerns:

- on-going verification of family income;
- adjustments when family income changes;
- determining exemptions from family income, i.e. child support payments, medical costs, education and child care costs;
- cost of developing a data system to generate monthly bills;
- collection of fees;
- sanctions for families who have been determined as able to pay, but do not pay;
- families who drop out of the program because of fees;
- flat monthly fee vs. level of services and “fairness”; and
- additional FTE needed by the Department of Education to administer a family fee pay structure.

It was the opinion of the providers in the workgroup that family fees could negatively impact the relationship between parents and providers. The philosophy of early intervention services in the home is that it involves parents who can, with instruction from the therapist, incorporate specific activities into the child's daily routines in-between the therapist's regular visits.

The workgroup's major concern was for those children whose families decline services because of the cost (the family may not admit that is the reason), or drop out of the program when they fall behind on payments. Research shows that for every dollar spent on early intervention, at least four to eleven dollars are saved, depending on the various studies. Research shows that providing early intervention services saves the state money in both the short-term and long-term. Additionally, if parents decline services or drop out of the program, the state is held accountable by the federal Office of Special Education Programs (OSEP) for the numbers of children served in the birth to age one category and the birth to age three category.

The workgroup recognized that South Dakota has achieved a 100% score for meeting or exceeding federal requirements in identifying and serving children three years in a row. The consensus of the group was that the program is successful as currently structured and a family fee is not the best approach to serving children in South Dakota. A suggestion was made to consider establishing a charitable contribution fund if there are parents and other interested individuals who want to contribute to the Birth to Three program.

***Consensus:*** *Based on the analysis of the limited number of families who could be charged a fee, the amount of revenue which could be generated, and the negative impact charging a family fee could have on children, the workgroup recommended not to impose family fees.*

**Additional Discussion:** Issues raised by constituents regarding service provision, adequate personnel, and accountability were discussed by the workgroup. Although no recommendations were made to the Legislature regarding these concerns, the Department of Education is committed to continuing outreach to families, ensuring that all services are fulfilled by qualified personnel, and that appropriate transition from the program continues to occur. The program will continue to monitor services for each child and hold each regional Birth to Three program to a high standard of accountability. The fact that South Dakota was in 100% compliance for monitoring timely services, meeting the 45-day timeline from initial referral to initial IFSP meeting, timely transition meetings, and monitoring complaints speaks to the excellent work of the Birth to Three Service

Coordinators and providers, and the Department of Education's Birth to Three staff.

The workgroup made specific suggestions to enhance outreach activities. These suggestions will be presented at the quarterly Birth to Three Interagency Coordinating Council meeting. All Interagency Coordinating Council meetings are open to the public and advertised in all major newspapers in the state.

Secretary Oster thanked the workgroup for their insights and hard work. The process was time well spent and their recommendations to the department will help strengthen the administration of the Birth to Three program.

Birth to Three Cost Share Based on a Percentage of Service Costs

Median Family Income \$ 53,806  
 Total Number of families 205,964 % Medicaid # Medicaid # Non-Medicaid  
 Number of Birth to Three Families 1,128 55% 620.40 507.60

Service	FY08 Units	Average Units/Child/ Year	Average Monthly Units/Child
OT	28,631	25.38	2.12
PT	39,499	35.02	2.92
SL	72,039	63.86	5.32

Income Level	# of Families	Est. % of Families over \$45,000	Est. # Birth to Three Families	Average Number of B3 Children in Family	th		Est. Average Total Monthly Expended/ Family	% of Cost Share Paid by Family	Est Total Monthly Income From Fees	Est. Annual Income From Fees	Est. Cost per Family per Month	Est. Cost per Family per year
					Average PT/OT Units Per Month	Average SL Units per Month						
Less than \$10,000	8,442		65.06	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$10,000 to \$14,999	7,392		56.97	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$15,000 to \$19,999	8,570		66.05	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$20,000 to \$24,999	10,955		84.43	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$25,000 to \$29,999	11,282		86.95	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$30,000 to \$34,999	11,534		88.89	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$35,000 to \$39,999	11,339		87.39	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$40,000 to \$44,999	10,983		84.65	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$45,000 to \$49,999	11,874	9%	48.04	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$50,000 to \$59,999	25,020	20%	101.22	1	5.04	5.32	\$ 141.73	0%	\$ -	\$ -	\$ -	\$ -
\$60,000 to \$74,999	29,104	23%	117.75	1	5.04	5.32	\$ 141.73	20%	\$ 3,337.82	\$ 40,053.84	\$ 28.35	\$ 340.16
\$75,000 to \$99,999	30,150	24%	121.98	1	5.04	5.32	\$ 141.73	25%	\$ 4,322.15	\$ 51,865.80	\$ 35.43	\$ 425.20
\$100,000 to \$149,999	19,898	16%	80.50	1	5.04	5.32	\$ 141.73	30%	\$ 3,422.86	\$ 41,074.32	\$ 42.52	\$ 510.24
\$150,000 to \$199,999	4,330	3%	17.52	1	5.04	5.32	\$ 141.73	35%	\$ 869.11	\$ 10,429.32	\$ 49.61	\$ 595.28
\$200,000 and over	5,091	4%	20.60	1	5.04	5.32	\$ 141.73	40%	\$ 1,167.88	\$ 14,014.56	\$ 56.69	\$ 680.32
# Families over \$45,000 Income	125,467	100%	507.61						\$ 13,120	\$ 157,438		

Note - there may be some variances in amounts due to rounding issues

**Birth to Three Cost Share Based a Flat Fee Sliding Scale**

<b>Median Family Income</b>	<b>\$ 53,806</b>			
<b>Total Number of families</b>	<b>205,964</b>	% Medicaid	# Medicaid	# Non-Medicaid
<b>Number of Birth to Three Families</b>	<b>1,128</b>	55%	620.40	507.60

Income Level	# of Families	Est. % of Families over \$45,000	Est. # Birth to Three Families	Monthly Family Fee	Est Monthly Income	Est. Annual Income	Cost per Family per year
Less than \$10,000	8,442		65.06	-	\$ -	\$ -	\$ -
\$10,000 to \$14,999	7,392		56.97	-	\$ -	\$ -	\$ -
\$15,000 to \$19,999	8,570		66.05	-	\$ -	\$ -	\$ -
\$20,000 to \$24,999	10,955		84.43	-	\$ -	\$ -	\$ -
\$25,000 to \$29,999	11,282		86.95	-	\$ -	\$ -	\$ -
\$30,000 to \$34,999	11,534		88.89	-	\$ -	\$ -	\$ -
\$35,000 to \$39,999	11,339		87.39	-	\$ -	\$ -	\$ -
\$40,000 to \$44,999	10,983		84.65	-	\$ -	\$ -	\$ -
\$45,000 to \$49,999	11,874	9%	48.04	-	\$ -	\$ -	\$ -
\$50,000 to \$59,999	25,020	20%	101.22	-	\$ -	\$ -	\$ -
\$60,000 to \$74,999	29,104	23%	117.75	20	\$ 2,355.00	\$ 28,260.00	\$ 240.00
\$75,000 to \$99,999	30,150	24%	121.98	30	\$ 3,659.00	\$ 43,908.00	\$ 360.00
\$100,000 to \$149,999	19,898	16%	80.50	40	\$ 3,220.00	\$ 38,640.00	\$ 480.00
\$150,000 to \$199,999	4,330	3%	17.52	70	\$ 1,226.00	\$ 14,712.00	\$ 840.00
\$200,000 and over	5,091	4%	20.60	100	\$ 2,060.00	\$ 24,720.00	\$ 1,200.00
<b># Families over \$45,000 Income</b>	<b>125,467</b>	<b>100%</b>	<b>507.61</b>		<b>\$ 12,520</b>	<b>\$ 150,240</b>	

Note - there may be some variances in amounts due to rounding issues

The estimated monthly and annual income from family fees assumes we would impose a flat monthly fee on households at 300% or more of FPG, regardless of how many or how few services. Also assumed is that %'s of households in the B3 program match the %'s as shown above. These %'s are based on the number of households in these income brackets as reported to the US Census Bureau, 2005-2007 American Community Survey. In other words, if 23% of non-Medicaid households in SD make between \$60,000 and \$74,999, then we assumed that 23% of 508 families in the B3 program also make between \$60,000 and \$74,999. Since we do not collect family income information from Birth to Three families, these are assumptions used for this scenario.

South Dakota Department of Education's  
Administrative Review

Birth to Three Connections Program

May 22, 2009

Pierre, South Dakota

**Stakeholders Meeting .....**

**Purpose of Meeting**—Respond to the Legislature’s request for a stakeholder group to provide suggestions and advice on various aspects of the South Dakota Birth to Three Connections Program.

**Outcomes**—Stakeholders will provide advice regarding

- Travel Time Reimbursement Rates,
- Review Feasibility of Implementing Family Fees, and
- Medicaid Issues.

**Facilitator**—John Copenhaver

..... **Agenda**

8:30–9:00	Registration and Networking	
9:00–9:30	Welcome and Introductions, Review of Agenda/Materials, Ground Rules	
9:30–9:45	Introductory Remarks and Overview of Legislative Request to Conduct an Administrative Review of the Birth to Three Connections Program	<i>Tom Oster, Secretary of Education</i>
9:45–10:00	Role and Responsibilities of Stakeholders	<i>John Copenhaver</i>

*Between 10:00 a.m.–3:00 p.m. the stakeholder group will hear information and provide advice on three critical issues:*

1. Medicaid Issues
2. Review Feasibility of Implementing Family Fees
3. Travel Time Reimbursement Rates

*The process will involve the following:*

- Receive information on the issues from South Dakota Department of Education staff.
- Ask questions and discuss the issue.
- Move to a consensus on a recommendation.

### **Topic 1—Medicaid Issues**

### **Topic 2—Family Fees**

### **Topic 3—Travel Time**

11:30–12:00 Public Comment Period/Ground Rules

12:00–1:00 Lunch Provided

1:00–2:45 Continue Topical Discussions  
and Recommendations

2:45–3:00 Closing Comments and Next Steps

*Tom Oster*

3:00 Adjourn

# South Dakota Department of Education's Administrative Review Birth to Three Connections Program

Stakeholders' Meeting – May 22, 2009

## Minutes

**Facilitator:** Ron Dughman of Mountain Plains Regional Resource Center, facilitated the meeting. Ron introduced himself and explained to the workgroup that the Mountain Plains Regional Resource Center has a contract with the US Department of Education, Office of Special Education Programs, to provide technical assistance to lead agencies which administer the special education programs for the state.

**Introductions:** Ron welcomed the workgroup and asked each participant to introduce themselves and identify their organization and stakeholder group. Workgroup members present at the meeting were as follows:

**Representing Providers:**

- 1) Kari Diamond, Speech Therapist
- 2) Becky Deelstra-Speck, Childrens Care and Hospital and School (CCHS)
- 3) Dan Guericke, Director, Mid-Central Educational Cooperative

**Representing Parents:**

- 4) Mona Drolc
- 5) Lisa Sanderson, Family to Family Coordinator, SD Parent Connection

**Representing Service Coordinators:**

- 6) Donna Brown, Three Rivers Educational Cooperative
- 7) Kelly Bradberry, SD Cares, Inc.
- 8) Bonnie Christensen, Black Hills Special Services

**Representing the Birth to Three Interagency Coordinating Council:**

- 9) Dr. David Calhoon, Chair

**Representing Dept. of Social Services:**

- 10) Kim Malsam-Rysdon, Deputy Secretary
- 11) Revi Warne, Program Manager, Medical Services

Representing Dept. of Education:

- 12) Tom Oster, Secretary
- 13) Deb Barnett, Deputy Secretary
- 14) Janet Ricketts, Division Director,  
Office of Support Services
- 15) Tami Darnall, Division Director,  
Finance and Management
- 16) Susan Sheppick, Director, Birth to  
Three Connections Program

Absent were Rosalyn Goodwin, provider; and Michelle Guelde, parent.

**Role of the Workgroup:** Ron stated the role of the workgroup is as an advisory body to the Department of Education. As an advisory body, the workgroup is there to advise and assist in the decision making process, knowing the final decision rests with the Department. Achieving consensus on each item on the agenda through discussion and deliberation is the goal. Consensus is an agreement by the group as a whole that the recommended course of action is the best possible solution given the circumstances surrounding the issue.

Ron reviewed the following ground rules for the workgroup:

- Be present for the discussion
- Respect the time allowed and the opinion of others
- Hear all opinions
- Be open and non-judgmental
- Silence cell phones
- Take personal breaks as needed
- The process: an overview of the topic; questions and discussion from stakeholders; public comment at the specified time; and reaching consensus on any recommendations

**Purpose of May 22, 2009 Meeting:** The purpose of the meeting is to respond to a directive from the Legislature to the Department of Education to conduct an administrative review of the Birth to Three program and include input from parents and other stakeholders in the program. The Department will submit a report to the Legislature by July 1, 2009.

The workgroup packets contain the following items: today's agenda; Medicaid's definition of Medical Necessity (ARSD 67:16:01:06.02); most commonly billed Medicaid codes for Birth to 3 services; family fee information; family fee concerns; a proposal to establish a Birth to Three charitable contribution fund; NECTAC article on family fees; a travel time reimbursement comparison; Early Intervention administrative rules (ARSD 24:14); and correspondence from VOICES, providers, and legislators outlining items of concern not included on today's agenda.

**Next Meeting Schedule:** To address those items of concern not on today's agenda, a second meeting will be held June 12, 2009, 10:00 AM Central Time, Conference Room 3, Kneip Bldg., 700 Governors Drive, Pierre, SD.

**Comments by Secretary Oster:** Secretary Oster welcomed the workgroup. He explained how the Birth to Three program had been slated to be cut due to a lack of revenue. The Legislature was forced to look at every possible option to save money. In the end, the Legislature restored the funding to the program, and directed the Dept. of Education to conduct an administrative review to ensure that the program is managed in the most efficient way possible. The three major concerns heard during the legislative session were issues related to providers billing Medicaid, the need for a flat fee for providers' travel time, and whether a family fee should be imposed. Secretary Oster stated those are the issues we are here to address today.

**Today's Agenda Items:** Today's discussion will be specific to the items on the agenda: 1) understanding medical necessity; 2) the feasibility of family fees; and 3) revising travel time reimbursement.

**1. Medicaid:** Kim Malsam-Rysdon began the discussion by providing an overview of Medicaid in South Dakota as follows:

- What is Medicaid?
- Who is eligible?
- Covered services
- State plan
- Optional Services
- FMAP

Kim provided an excellent handout to the workgroup as a reference to the presentation.

**Medical Necessity:** Revi Warne explained Birth to Three providers must enroll with Medicaid as Birth to Three providers and bill using a Birth to Three taxonomy code. This code is used to track the Birth to Three services so that the Dept. of Education can be billed for the federal match share. Revi went through ARSD 67:16:01:06.02 and explained each of the five components which define medical necessity. He also explained that a physician's referral and provider progress notes must support services billed as medically necessary. A discussion from the workgroup brought issues up about when and how a provider determines the services are no longer medically necessary.

Sec. Oster stated that when the goals of the child have been met, and the progress is noted by the provider in the progress notes, the services are no longer medically necessary. However, if additional goals are written, the physician's referral is still valid, the progress notes support the need for continued services, and the services continue to meet all five criteria of ARSD 67: 16:01:06.02, then the services continue to be medically necessary. If the parent wants the services to continue, but the provider says the child has met the goals and is caught up with same age peers, the services no longer meet the

definition of medical necessity. If the parent disagrees, they have the right to have a due process hearing.

The workgroup discussed the various issues parents and providers struggle with over the level and intensity of services and the duration of services. The group came to consensus that more training and education is needed. It was suggested that the use of DDN and webinars would be an efficient way to deliver the training.

**Consensus:** The workgroup came to consensus that training is needed on Medicaid in general and medical necessity specifically for Birth to Three providers. The Dept. of Education will work with the Dept. of Social Services to schedule the training.

**2. Feasibility of Family Fees:** Susan Sheppick gave an explanation of the difference between family cost participation and family fees. Family cost participation refers to all funding sources available to the program through public and private health insurance and family fees. Family fees refer to a flat monthly fee, a percentage charged based on services, or some other type of sliding fee scale. Only 14 states out of 50 have a family fee.

Of those 14, seven states with demographics or unique features similar to South Dakota were surveyed. The questions asked were "Is collecting the fee worth the administrative cost?" and "Do families not access early intervention services because of the fees?" Seven states responded with varying answers from very few fees are collected, to some families choose not to continue when they get behind on payments.

The South Dakota Dept. of Health responded to the survey also. They eliminated family fees for the children's special health program after several years. They stated they were never able to recover the cost of administering family fees and there was no benefit to the program.

Other concerns voiced by the workgroup included the collection of fees; sanctions for families who have been determined as able to pay, but do not pay; families who drop out of the program because of fees; and a flat monthly fee vs. level of services and "fairness".

Administration concerns were additional FTE to administer family fees; on-going verification of family income; adjustments when family income changes; determining exemptions from family income, i.e. child support payments, medical costs, etc.; and the cost of developing a data system to generate monthly bills.

An item for discussion was whether to recommend establishing a charitable contribution fund for Birth to Three services.

The workgroup asked the Dept. of Education to develop some scenarios based on SD population, numbers of families who would be effected by a fee, and what the annual

income generated by a fee might look like. The workgroup will review the information at the June 12 meeting before making a recommendation.

**Consensus:** The workgroup came to consensus that additional information was needed before a recommendation can be made regarding family fees.

**3. Travel Time Reimbursement:** Tami Darnall gave some history of how the travel time reimbursement was calculated at 90% of the therapy rate. When the Birth to Three therapy rates were aligned with Medicaid rates, providers were required to bill Medicaid. The travel time was increased to 90% to offset the lower rate. (ARSD 24:14:04:13).

Secretary Oster stated that he heard from legislators and others that travel time should be set at a flat rate. The perception is that the current process opens the door for abuse by some providers. A flat rate for travel time would ensure that does not happen, as well as simplifying the process.

The proposed flat rate is based on the most often billed therapy rate for Occupational Therapy and Physical Therapy, Speech and Language Therapy, and Special Instruction. The majority of all Birth to Three services fall into the three categories. These three categories were used to determine a flat rate that would be fair to providers. There was discussion about how the flat rate could be increased if provider rates increase in the future. Tami stated the revised administrative rule could be worded so that the travel time rate would increase at the same percentage as the provider rates. For example, if providers receive an inflationary cost of living increase of say 3%, then the travel time reimbursement would be increased by that same amount. The following rates were proposed:

**Proposed Flat Rate for Travel Time**

	Average Therapy Rates p/15 min.	Travel Time Flat Rate p/15 min.	Total p/15 min.
OT & PT	16.70	15.05	31.75
Sp L	12.81	11.55	24.36
Spec. Instruct.	8.00	7.25	15.25

Tami stated the proposed flat rates do not have an effect on the overall budget. The workgroup suggested the formula for calculating travel time as well as mileage be made available to legislators and others during the administrative rules process for clarification. A tip sheet for providers is available on the Birth to Three website at <http://doe.sd.gov/oess/Birthto3/servcoord.asp>. The workgroup came to consensus that a flat rate for travel time as proposed should be pursued through the administrative rule process.

**Consensus:** The workgroup supports a flat rate for travel time reimbursement and recommends that ARSD 24:14:04:13 be revised as proposed by the Dept. of Education, and that the flat rate will increase at the same rate as the provider inflationary increase.

**Additional Comments:** The report that is submitted to the Legislature on or before July 1 will be posted on the Birth to Three website at <http://doe.sd.gov/oess/Birthto3/index.asp> .

The Birth to Three Interagency Coordinating Council meets quarterly and the public is invited to attend.

**Meeting Adjourned**

South Dakota Department of Education's  
Administrative Review

Birth to Three Connections Program

June 12, 2009

Pierre, South Dakota

# Stakeholders Meeting .....

**Purpose of Meeting**—Respond to the Legislature’s request for a stakeholder group to provide suggestions and advice on various aspects of the South Dakota Birth to Three Connections Program.

**Outcomes**—Stakeholders will provide advice regarding

- Feasibility of Implementing Family Fees, and
- A Response to VOICES Parent Group, Provider, and Legislator concerns

**Facilitator**—Ron Dughman

## ..... Agenda

9:30-10:00	Registration and Networking	
10:00-10:30	Welcome and Introductions, Review of Agenda/Materials, Ground Rules	<i>Ron Dughman</i>
10:30-10:45	Recap May 22 Recommendations	<i>Tom Oster, Secretary of Education</i>

*Between 10:45 a.m.–2:00 p.m. the stakeholder group will hear information and provide advice on the following issues:*

1. Feasibility of Implementing Family Fees

2. A Response to concerns from VOICES Parent Group, Provider, and Legislator

*The process will involve the following:*

- Receive information on the issues from South Dakota Department of Education staff.
- Ask questions and discuss the issue.
- Move to a consensus on a recommendation.

**Topic 1—Family Fees (discussion continued from May 22)**

**Topic 2—Additional Concerns from constituents**

- **Outreach Activities**
- **Adequate Provision of Services and Rates**
- **Recruitment/Retention of Service Providers**
- **Transitioning from Birth to Three**
- **Stimulus funds**
- **SPP/APR 100% Compliance**
- **Open Communication**
- **Monitoring Service Provision**

10:45–11:30	Feasibility of Family Fees (discussion continued from May 22)	<i>Susan Sheppick</i>
11:30-12:00	Public Comment Period/Ground Rules	
12:00–12:45	Lunch Provided	
12:45-1:45	Continue Topical Discussions and Recommendations	
1:45–2:00	Closing Comments and Next Steps	<i>Tom Oster</i>
2:00	Adjourn	

# South Dakota Department of Education's Administrative Review Birth to Three Connections Program

Stakeholders' Meeting – June 12, 2009

## Minutes

**Facilitator:** Ron Dughman of Mountain Plains Regional Resource Center, facilitated the meeting.

**Introductions:** Ron welcomed the workgroup and asked each participant to introduce themselves and identify their organization and stakeholder group. Workgroup members present at the meeting were as follows:

**Representing Providers:**

- 1) Kari Diamond, Speech Therapist
- 2) Becky Deelstra-Speck, Childrens Care and Hospital and School (CCHS)
- 3) Dan Guericke, Director, Mid-Central Educational Cooperative
- 4) Roz Goodwin, Special Instruction

**Representing Parents:**

- 5) Mona Drolc
- 6) Lisa Sanderson, Family to Family Coordinator, SD Parent Connection

**Representing Service Coordinators:**

- 7) Donna Brown, Three Rivers Educational Cooperative
- 8) Kelly Bradberry, SD Cares, Inc.
- 9) Bonnie Christensen, Black Hills Special Services

**Representing Dept. of Social Services:**

- 10) Revi Warne, Program Manager, Medical Services

**Representing Dept. of Education:**

- 11) Tom Oster, Secretary
- 12) Deb Barnett, Deputy Secretary
- 13) Janet Ricketts, Division Director, Office of Support Services
- 14) Susan Sheppick, Director, Birth to Three Connections Program

Absent were Michelle Guelde, parent; Kim Malsam-Rysdon, Deputy Secretary, DSS; and Dr. David Calhoon, Chair, Birth to Three Interagency Coordinating Council

**Role of the Workgroup:** Ron stated the role of the workgroup is as an advisory body to the Department of Education. As an advisory body, the workgroup is there to advise and assist in the decision making process, knowing the final decision rests with the Department. Achieving consensus on each item on the agenda through discussion and deliberation is the goal. Consensus is an agreement by the group as a whole that the recommended course of action is the best possible solution given the circumstances surrounding the issue.

Ron reviewed the following ground rules for the workgroup:

- Be present for the discussion
- Respect the time allowed and the opinion of others
- Hear all opinions
- Be open and non-judgmental
- Silence cell phones
- Take personal breaks as needed
- The process: an overview of the topic; questions and discussion from stakeholders; public comment at the specified time; and reaching consensus on any recommendations

**Purpose of June 12, 2009 Meeting:** The purpose of the meeting is to respond to a directive from the Legislature to the Department of Education to conduct an administrative review of the Birth to Three program and include input from parents and other stakeholders in the program. The Department will submit a report to the Legislature by July 1, 2009.

Today's agenda will continue the discussion the workgroup began at the May 22 meeting on the feasibility of family fees, and address concerns raised in the correspondence from VOICES, providers, and a legislator.

**Comments by Secretary Oster:** Secretary Oster welcomed the workgroup and recapped the consensus reached during the May 22 meeting on the need for more training on Medicaid billing issues and medical necessity, and the recommendation for a flat travel time rate. Secretary Oster stated the last main objective was to come to consensus about a family fee for services. Following that, the workgroup would address the concerns in the correspondence from VOICES, providers, and a legislator. These concerns would be addressed and included in the final report, but do not require a consensus.

Revi Warne stated that DSS is working with the Birth to Three program to organize provider training on Medicaid issues to be delivered late summer.

**Today's Agenda Items:** 1) the feasibility of family fees; and 2) address concerns raised in the correspondence from VOICES, providers, and a legislator

1. **Feasibility of Family Fees:** Susan Sheppick stated two scenarios were created for purposes of discussion using US Census data for South Dakota and applying those same percentages to the families who would be effected if a fee were imposed. The calculations exempted families who are on Medicaid or who make less than \$60,000 annually. The workgroup analyzed scenarios for a cost share percentage based on services, and a flat fee. Based on the analysis it was decided that family fees that would be affordable to the majority of families would not generate enough income to cover the additional administrative burden.

Other concerns voiced by the workgroup included who would collect the fees; what happens to the child if a family does not pay; the impact it would have on family involvement if they viewed the fee as "paying" the provider to do the therapy.

Administration concerns were additional FTE to administer family fees; on-going verification of family income; adjustments when family income changes; determining exemptions from family income, i.e. child support payments, medical costs, etc.; and the cost of developing a data system to generate monthly bills.

Susan stated that the Dept. of Human Services does not charge a family fee for family support services or the respite care program. The Dept. of Health did away with family fees after several years for the children's special health program. The administrative costs outweighed the income generated by the fees collected.

An option for the future may be to develop a mechanism whereby individuals could contribute to the Birth to Three program.

**Consensus:** Based on an analysis of the limited revenue family fees would generate and the negative impact on families, the workgroup does not support imposing family fees.

2. **Additional Concerns:** The following concerns were specified in a letter from VOICES, a parent and provider group who advocate for families and children with special needs:

Outreach and Identification: What is SD doing to identify children for Birth to Three services?

Although SD exceeded the state and national goals for identifying and serving children, the workgroup discussed ways in which Birth to Three can improve the dissemination of information to families. Suggestions included the following:

- Research how other states disseminate early intervention information
- Training for the NICUs, doctors, nurses, hospital outreach coordinator
- Present Birth to Three information at medical conferences
- Ensure up-to-date Birth to Three information is included in Bright Start boxes
- PSAs
- Work with DOH to require all hospitals to provide families with Birth to Three information

- Set up a visitation program whereby Service Coordinators would visit every family in the NICU
- Work with SD Parent Connection to develop a DVD for families on Birth to Three services

Services and Funding: Is SD providing an adequate level of services?

The research conducted by the Legislature Research Council in 2009 was presented in response to this question. LRC was asked to provide any comparative statistics as to what SD spends on its Birth to Three programs relative to other states. LRC's response was as follows:

*"On October 22, 2008, administrative rules were adopted that aligned the provider rates with Medicaid rates, established travel time reimbursement rates at 90% of the approved Medicaid service rate, and revised the eligibility criteria to include children born at 28 weeks gestation or less. Effectively, this change reduced the hourly rate from \$72.00 to \$51.24, and increased the travel time rate from \$43.20/hr. to \$47.16/hr. Many of the other states use their approved Medicaid reimbursement rates for this program, but others use rates outside the Medicaid umbrella. Staff could not find a central location which contained figures for all of the states, so it is difficult to ensure that similar services are being compared. For example, Oklahoma's reimbursement rate is \$55.00/hr for physical therapy, speech therapy and occupational therapy, whereas New Mexico's rates vary from \$39.00/hr to \$93.00/hr. for the three services. Some of the rates include in-home services and others do not."*

Secretary Oster stated that every service as prescribed on the IFSP must be fulfilled. It is a team decision regarding the frequency and intensity of services. There are also avenues a parent can pursue if they feel their child is not getting the services they need through SD Parent Connection, the Navigator program, and SD Advocacy.

Service Providers: What effect have the changes to the program had on the availability of providers and what should be done to recruit and retain high quality providers?

Susan stated the change in rates, and the requirement to bill Medicaid, caused some providers to leave the program. However, the number has been minimal -- nine providers out of approximately 280, and the Dept. continues to gain new providers each month. All services as prescribed in each IFSP for all 1,128 families in the program are being fulfilled.

Regarding provider qualifications, Physical Therapists, Occupational Therapists, and Speech and Language Therapists must meet state certification and licensure requirements. Special Instructors must have at least a bachelor's degree in SPED with an Early Childhood endorsement. Part C follows Part B requirements for Special Instruction qualifications, which can be found at ARSD 24:15:06:23.

The Dept. is exploring ways in which they can partner with USD to provide additional speech therapy. The idea being that undergraduate students in the Hearing and

Communication Disorders program and who are supervised by a doctorate level instructor, could provide the hands on therapy for early intervention speech services. These conversations have just begun, but seem to have merit.

Transition: How effective is SD in transitioning children out of the program and into the next level of educational therapy?

Susan stated that South Dakota has met every marker required in the transition process. From the time a child in the program is from 9 months to 90 days away from his/her third birthday, the Service Coordinator begins the conversation with parents and the school district about transitioning the child to the next level. The consensus of the workgroup is that this is a Part B issue, and should be taken up with Part B staff. There is a feeling among parents and providers, that the schools need more parent training on what to expect when their child leaves Birth to Three and enters the school system.

Stimulus: What happens when the stimulus money runs out?

The Dept. is not relying on stimulus dollars to pay for direct service costs. Those will be met through the normal federal Part C grant and the general funds appropriated by the Legislature. Secretary Oster said the financial data on the savings generated from Medicaid is not yet available because providers have up to one year to bill Medicaid.

Susan reported that SD received \$2,139,844 in stimulus dollars which must be obligated and spent over a three year period. A portion of the stimulus money will be kept by the Dept. to pay for the Birth to Three administrative costs, and an upgraded data system. The remaining portion will be subgranted to regional Birth to Three programs with the proven capacity to meet all Part C assurances. Training, professional development, and equipment purchases are some of the suggested uses for the stimulus dollars.

Secretary Oster addressed the complaint about the composition of the workgroup. He stated that he understood some were upset because they were not invited to be part of the workgroup. Secretary Oster stated he wanted the workgroup to be representative of all stakeholders, and he believed that had been achieved. He stated that he was very impressed with the knowledge and experience the workgroup brought to the table, and the input that had been provided. The concerns outlined in Roz Goodwin's email were previously addressed in the prior discussions. Senator Hunhoff's concerns about how services are monitored were answered in the November 19 letter to Senator Gant and the Government Operations and Audit Committee. A copy of the letter was provided as a handout.

Secretary Oster thanked the workgroup for their hard work. He again stated his appreciation for their knowledge and perspective on the issues. The report to the Legislature is due by July 1 and will be posted on the Birth to Three website at <http://doe.sd.gov/oess/Birthto3/index.asp> .

Meeting Adjourned