


Supersedes DSL Memo Series
2002-25 – In Part: (Sections
regarding the COP, CIP II/COP-
W CBRF variance processes.)

To: Listserv

For: Area Administrators/Human Service Area Coordinators
County COP Coordinators
County Departments of Community Programs Directors
County Department of Developmental Disabilities Services Directors
County Department of Human Services Directors
County Department of Social Services Directors
County Long Term Support Planning Committee Chairs
Tribal Chairpersons/Human Services Facilitators
DLTC Bureau Directors
DLTC Section Chiefs

From: Sinikka Santala 
Administrator

Subject: Use of COP/COP-W/CIP-II Funding in Community Based Residential Facilities (CBRFs)

Document Summary

This memo introduces and streamlines COP/COP-W/CIP-II variance processes for elderly individuals to reside in a community based residential facility (CBRF) that is structurally connected to a nursing home or in a facility that is larger than 20 beds. The new variance approval will be person specific and applies to elderly participants only. Current variance policies remain unchanged for persons with physical or developmental disabilities who are under age 65 and served by COP/COP-W/CIP – II funds. In addition, this policy change does not affect the CIP 1A/1B/BIW programs where waiver funds cannot be used in CBRFs with more than eight beds or in those facilities connected to nursing homes or other institutions.

A. Conditions for the use of COP, COP-W, CIP-II funding in any size CBRF

The Community Options Programs are home-care programs intended to provide assistance and support to individuals so that they can continue to live at home. Certain criteria were established and placed in statute in 1997 that outlined requirements for use of COP, CIP-II and COP-W funding in an out-of-home residential setting such as a CBRF. These conditions were created to ensure that limited home-care funds are used in a manner that is consistent with the purpose of the program. These conditions included:

1. A pre-admission assessment or consultation has been completed prior to the person's admission to the CBRF, regardless of the individual's ability to pay;
2. The option of in-home services has been thoroughly explored and determined infeasible;
3. The CBRF is the individual's preferred residence;
4. The CBRF provides a quality environment and quality care services;
5. The CBRF is cost-effective compared to other options.

Note: The 2007-2009 state budget bill contained language repealing the requirement for the first condition listed above, the pre-admission assessment/consultation. The legislation replaced this

preadmission condition with new notification requirements for CBRF operators and a requirement that county/waiver agencies or ADRCs, as applicable, provide *options counseling* to prospective CBRF residents. The remaining four conditions were left in place. This memo will focus on describing the new variance requirements for use of CIP II/COP-W and COP funds for CBRFs larger than twenty beds and those facilities that are structurally connected to nursing homes. The legislated changes to the pre-admission placement requirements will be discussed in a future numbered memo.

B. Variance Requirements

Department approval is required in order to use COP or CIP-II/COP-W funds in CBRFs that are larger than 20 beds and in CBRFs that are structurally connected to a nursing home.

COP/COP-W/CIP-II & Participants with Disabilities: DSL memo series 2002-25 and the Medicaid Waiver manual outline a variance process for use of CBRFs that are larger than 20 beds. The process requires county/waiver agencies to request a facility-specific variance from the Bureau of Long Term Support. The required content of the variance includes information on how the facility design and programming are such that the facility is non-institutional as well as a description of the CBRFs efforts to provide services in a manner that enhances resident dignity, independence, privacy and choice. The request requires local long-term support planning committee approval. Again, the variance approval is facility specific.

This memo makes no change to the current variance process for persons under age 65 with a physical or developmental disability who are served by CIP II/COP-W to reside in a CBRF that is larger than 20 beds. However, this memo clarifies that CBRFs that are structurally connected to a nursing home **are not waiver allowable settings** for people under age 65 with physical or developmental disabilities. No variance for these populations to live in a CBRF structurally connected to a nursing home will be granted. Please refer to Chapter 5 of the Medicaid Waiver Manual for further instruction on requesting a variance.

Use of COP, CIP-II /COP-W for Frail Elderly: This memo outlines a new variance process for the utilization of COP, CIP-II/COP-W funds to serve elderly participants in CBRFs that are structurally attached to nursing homes. Further, this memo repeals the current variance process that requires counties to submit facility-specific information in order for individuals who are elderly to reside in CBRFs that are larger than 20 beds. Effective with the release of this memo, the variance approval process for elders becomes part of the service plan development and approval process for both of these CBRF settings.

Variances under this section will be **person specific** and approved in accordance with this section:

1. Introduction: Community Options and the Medicaid home and community based waivers are home-care programs, created to provide an alternative to institutional care. The Department recognizes that increasingly, large CBRFs and those connected to nursing homes have designed their facilities and programming to be consumer focused, provide a home-like atmosphere, offer privacy and autonomy and meet resident needs individually or in small familiar groups. At the same time DHFS has encouraged nursing homes to consider diversifying their offerings in long-term care and reduce the number of nursing home beds in the state as demand has declined.

Therefore, if the county/waiver agency can document that a large CBRF facility or one that is structurally attached to a nursing home has compensated for the effects of large scale congregate living **and** that the facility is the preferred residence of the participant, the Department will grant an individual, person specific variance to allow participants that are elderly the ability to reside in these settings.

2. Variance Approval Process: The following outlines the approval process for granting a variance for an individual who is **elderly**:

- a. The new or current participant expresses an interest in receiving his/her long-term care services in a CBRF that is larger than 20 beds or a facility that is structurally connected to a nursing home;
- b. The county/waiver agency must attest that the facility design, environment, and programming are such that the effects of living in a large congregate setting are mitigated **and** that the CBRF is the individual's preferred residence. To do so, county agencies shall replace page 3 (the standard ISP signature page) of the individual service plan (DDE-445) with a completed and signed page 3B (see Attachment links to the form, below.)

As currently required as a part of the placement process, in order to use CIP II/COP-W funds the county/waiver agency must ensure that the conditions outlined in Section A of this memo are met for program participants living in or wishing to move to a CBRF. To meet the condition related to participant preference, the county must verify that the participant was offered the choice of one or more waiver allowable residential settings that are smaller than 20 beds and not connected to a nursing home.

Note: The standard ISP signature page should only be replaced by page 3B when an elderly COP, CIP-II/COP-W funded participant is interested in residing in a CBRF that is either larger than 20 beds or is structurally connected to a nursing home. Page 3B is not required when an elderly person chooses a facility with 20 or fewer beds or one that is not connected to a nursing home. Remember, Page 3B is not used for variance requests for persons under age 65 with a disability.

To seek this type of variance approval the agency submits the following documentation to The Management Group (TMG):

1. The complete waiver application packet for new applicants or an individual service plan (ISP) update for current participants moving to a facility that is larger than 20 beds or that is structurally connected to a nursing home. The application or update packet must include the new signature page (page 3B) of the ISP; and
 2. Any other applicable documents (i.e. worksheets required for Community Relocation or Nursing Home Diversion funding) that may be required for the individual.
- c. TMG will review the waiver application packet or service plan update and supporting documents and follow typical approval/denial processes. Plan approval constitutes variance approval.

Additional Variance Request Considerations

- a. **County Contract Discretion:** As described in the COP Guidelines under Chapter II, section 2.04(M) 6, agencies have discretion as to whether to contract with or seek a variance to purchase services from any CBRF for which a variance is required.
- b. **COP/COP-W/CIP-II for People with Physical or Developmental Disabilities:** Persons with physical or developmental disabilities who are under age 65 and who are funded with COP/COP-W/CIP-II funds are not affected by this policy change. Program funds cannot be used to serve these participants in CBRFs that are structurally attached to nursing homes.
- c. **CIP 1A/CIP 1B, BIW Waivers:** Individuals with developmental disabilities or a brain injury who are funded with CIP 1A/1B, BIW Medicaid home and community based waiver funding

are not affected by this policy change. CIP 1A/1B, BIW funding cannot be used in CBRFs with more than eight beds or in CBRFs connected to nursing homes or other institutions.

- d. **Medicaid Personal Care:** Please note that Medicaid does not allow personal care (MAPC) in CBRFs with more than 20 beds (HFS 107.112 (4)) even if the COP/COP-W/CIP-II funding variance is granted to the facility.
- e. **Supplemental Security Income (SSI):** In accordance with State policy, State SSI-E is not available to SSI recipients who reside in **privately owned** CBRFs with more than 20 beds, unless the facility is certified as an "independent apartment" CBRF. By policy, State SSI-E is also not available to SSI recipients who reside in any CBRF that is adjacent to, a part of, or on the grounds of an institution, even when a variance to receive COP, CIP II/COP-W funding has been approved.

In addition, the Social Security Administration does not allow SSI in **publicly operated** CBRFs larger than 16 beds or in publicly operated CBRFs that are dependent on a parent institution for meals or services, no matter how close the to the institution the CBRF is. Therefore the State SSI-E supplement is also not available to persons who reside in these types of CBRFs.

- f. **Person Specific Approval:** This policy changes the need for counties to submit information to the Bureau of Long Term Support requesting facility specific variances (as required under DSL memo series 2002-25) for **elderly individuals**. Variances granted will now be **person specific** and will be approved as a part of the initial waiver application or service plan update, as applicable. If an elderly individual subsequently moves into a different facility that is either larger than 20 beds or structurally connected to a nursing home, a new variance must be sought.

C. Manual Update

Final policies and procedures found in this memo and its attachments will be incorporated into the COP Guidelines and the Medicaid-Waivers Manual in 2008. See Chapter 5 of the waiver manual for further instructions as to the requirements related to use of funds in substitute care settings.

REGIONAL OFFICE CONTACT: Human Service Area Coordinators-Adult Services

CENTRAL OFFICE CONTACT: Kevin Lafky
Bureau of Long-Term Support
P.O. Box 7851
Madison, WI 53707-7851
608-266-7754
lafkyke@dhfs.state.wi.us

MEMO WEB SITE: http://dhfs.wisconsin.gov/dsl_info/

Attachments:

ISP (DDE-445) at <http://dhfs.wisconsin.gov/forms1/dde/DDE0445.pdf>
or <http://dhfs.wisconsin.gov/forms1/DDES/dde0445.doc>

cc: Area Agencies on Aging
Board on Aging and Long Term Care
COP/LTS Statewide Advisory Committee
County/Tribal Aging Units
DLTC Bureau Directors
DLTC Section Chiefs
DQA AL Section Chief
DQA Administrator
DQA Regional Field Operations Supervisors
Disability Rights Wisconsin (DRW)
Independent Living Centers (ILCs)
Residential Services Association of Wisconsin (RSA-WI)
The Management Group (TMG)
Tribal Chairpersons/Human Services Facilitators
Wisconsin Assisted Living Association (WALA)
Wisconsin Association of Homes and Services for the Aging
Wisconsin Health Care Association