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Date: February 5, 2007

OQA-07-002

Supersedes DSL-BQA-01-015

To: Community Mental Health and AODA Programs

From: Otis Woods, Director
Office of Quality Assurance

Via: Joyce Allen, Director
Bureau of Mental Health & Substance Abuse Services

Certification of Waivers and Variances Submitted to the Program Certification Unit

This memorandum supersedes DSL-BQA-01-015, issued March 22, 2001, which was developed due to the promulgation and implementation of [Chapter DHS 75, the Wisconsin Administrative Code](#) that governs community substance abuse services.

The purpose of this memorandum is to provide clarification concerning the requests for waivers and variances submitted to the Office of Quality Assurance (OQA).

Periodically, individuals with certified programs request exceptions from certain program standards. A *waiver*, if granted, allows the provider an exemption from the specified requirement(s). A "*variance*" requests permission to meet a regulation in a manner different than that stipulated by the regulations. For example, the most common request has been for a waiver of Chapter HFS 61.97(5), WI Administrative Code, for physician referrals to certified outpatient mental health programs. To meet this requirement, certified entities request that they be allowed to use the services of a licensed clinical psychologist in place of a physician. The variance will permit them to meet the rule in a manner different from what is required by the code.

Before issuing an exception, OQA will examine each request individually and issue a decision based on certain factors, including need and compliance history. The fact that exceptions may have been approved for other providers does not constitute evidence of need. OQA may consult with the Bureau of Mental Health and Substance Abuse Services regarding any request for an exception.

The following provisions of the Wisconsin Administrative Code permit exceptions (waivers and variances) to the mental health and substance abuse standards that are enforced by the OQA's Program Certification Unit. Staff of the Bureau of Mental Health and Substance Abuse Services can be contacted to answer questions regarding the interpretation of administrative rules.

Code	Description	Contact persons for rule interpretation below.
HFS 34.04	Emergency Mental Health Service Program.	George Hulick (608) 266-0907
HFS 36.065	Comprehensive Community Services Program.	Jeff Hinz (608) 266-2861
HFS 40.05	Mental Health Day Treatment Services for Children.	George Hulick (608) 266-0907
HFS 61.20 (3)	Community Mental Health, Developmental Disabilities, and Alcohol and Other Drug Abuse Services, or proposed HFS 35 Outpatient Mental Health Clinic rules.	Daniel Zimmerman (608) 266-7072
HFS 63.05	Community Support Programs for Chronically Mentally Ill Persons.	Alice Mirk (888) 888-8888
HFS 75	No specific waiver or variance language. The allowance for an exception is covered under HFS 61.20(3).	Daniel Zimmerman (608) 266-7072
HFS 92	Confidentiality of Treatment Records. No waivers or variances of these standards are permitted.	Daniel Zimmerman (608) 266-7072
HFS 94	Patient Rights and Resolution of Patient Grievances. No waiver or variances of these standards are permitted.	Daniel Zimmerman (608) 266-7072

Elements of a Variance/Waiver Request

The Department may grant an exception to program requirements, except Chapter HFS 92 or Chapter HFS 94, when the Department determines that the granting of the exception would not diminish the effectiveness of the services provided by the program, or does not adversely affect the health and safety of the patients served by the program. The following must be included for each exception requested by certified entities:

1. The code under which an exception is requested;
2. Justification for the request;
3. Expected duration of the request, not to extend beyond the program's certification period;
4. If a variance, how the program will meet the regulation under which the exception is requested; and,
5. General statement concerning the impact of the exception on the delivery of services.

The Department has up to 60 calendar days to approve or deny the request for exception under Chapter HFS 61 and HFS 75. The Department will notify the requesting agency if an extension is necessary beyond 60 days. Although a timeframe for a response is not specified in HFS 34, HFS 40, or HFS 63, the Department will use the HFS 61 guidelines as a timeframe to respond to individual requests. Further, the Department may impose conditions on granting the exception. If the Department fails to act on the request within 60 calendar days, the exception shall be automatically approved for the period not to extend beyond the current certification period of the program. Again, the Department will not consider requests for a variance or waiver of HFS 92 or HFS 94, because these rules are based upon specific requirements in sections 51.30 and 51.61 of the Wisconsin Statutes.

Please submit all requests for exceptions to the **Division of Quality Assurance, Mark Hale, Chief, Behavioral Health Certification Section, P.O. Box 2969, Madison, WI 53701-2969.**