

SURVEY GUIDE

FACILITIES SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES



**STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES**

**DIVISION OF QUALITY ASSURANCE
BUREAU OF NURSING HOME RESIDENT CARE**

P-63051 (Rev. 05/2012)

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INTRODUCTION

This guide is a general reference for informational purposes. If information in this guide conflicts with the applicable legal requirements for facilities serving people with developmental disabilities (FDDs) and intermediate care facilities for persons with intellectual disability (ICFs/ID), the applicable legal requirements take precedence.

The Division of Quality Assurance conducts unannounced surveys in FDDs in Wisconsin to ensure that state licensure and Medicaid certification requirements are met.

I. OVERVIEW OF SURVEY PROCESS

The survey is conducted by a multidisciplinary team comprised of a Health Services Specialist Qualified Mental Retardation Professional (QMRP), a Registered Nurse QMRP, and a professional engineer (PE). A dietitian or pharmacist may participate in selected surveys.

The survey is based on the requirements of chapter DHS 134 of the Wisconsin Administrative Code and the federal survey protocol for ICFs/ID in the State Operations Manual--Transmittal 278 (SOM). The SOM specifies three stages of surveys. A **fundamental survey** focuses primarily on client outcomes, with particular attention to review of client protections, client rights and the provision of active treatment and health services. An **extended survey** expands the fundamental review when there are concerns that warrant added investigation in any of these areas. A **full survey** reviews all FDD requirements. The survey team will inform the facility of the type of survey that is being conducted.

The standard survey consists of the following steps:

1. Off-site survey preparation

Surveyors review files to determine a facility's compliance status and to identify personnel changes that have occurred since the last survey.

2. Entrance Conference

The purpose is to inform the administrator or the administrator's designee of the FDD licensure and ICF/ID certification survey process. The survey coordinator:

- introduces the team members;
- describes the care level determination process and the survey process;
- explains that the principal focus of the survey is on individual resident outcomes and the facility's implementation of the FDD and ICF/ID requirements;
- requests information to be utilized during the survey;
- encourages the facility to maintain a dialogue with survey staff throughout the survey, and to supply additional or clarifying information as findings are communicated.

3. Review of Facility Systems to Prevent Abuse, Neglect, and Mistreatment and to Resolve Complaints

The purpose of the systems review is to ensure that a reproducible and responsive mechanism is in place to protect individuals residing in the facility, and that the system is prompt and reliable.

4. Sample Selection

The surveyors select a sample of individuals that reflects the proportion of functional levels (mild, moderate, severe, or profound mental retardation) of the facility's residents. The selection process is designed to provide a random sample.

5. Individual Observations

The surveyors observe individuals to determine if the staff members know the individuals' needs and preferences and whether that knowledge is reflected by staff treatment of individuals. Observations are made in formal and informal settings throughout the day.

6. Required Interviews with Individuals, Families, Advocates, and Support Staff

The surveyors conduct interviews to determine how the individual perceives the services delivered by the facility and to clarify information gathered during the observations. The surveyors interview a specific number of individuals in the sample. They use the following hierarchy of sources: (a) individual; (b) families, legal guardian, or advocate.

7. Record Verification

The surveyors verify, as needed, information obtained from observations and interviews. The surveyors review the individual program plan (IPP) and its appropriateness for the client. They also review other parts of the record to assure that client protection, health services and safety supports are in place.

8. Drug Pass Observation

Surveyors observe the actual preparation and administration of medications to determine if medications are administered correctly.

9. Funds Assessment

This review examines the facility's handling of finances for individuals living in the facility. The surveyor looks at authorizations to hold funds, make expenditures, and verify spending limits, and to rule out co-mingling of funds, possible misappropriation of property, etc.

10. Dietary Services Evaluation

Surveyors observe food storage, food preparation, and food service to assess facility performance in preventing food borne illness.

11. Visit To Each Area of the Facility

Surveyors observe each area of the facility to assess whether all areas (including those areas not used by individuals in the sample) are providing services as required by the regulations. Survey staff also assesses the physical safety of the environment and whether it promotes or impedes active treatment.

12. Verification of Nurse Aide Employment and Eligibility Status

The surveyors verify whether nurse aide staff is eligible for employment in the facility.

13. Caregiver Background Check and Reporting and Investigating Caregiver Misconduct

The surveyors verify the facility's compliance with the caregiver background check requirements in accordance with Section 50.065 of the Wisconsin State Statutes and Chapters DHS 12 and 13 of the Wisconsin Administrative Code.

RESOURCE:

<http://www.dhs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm>

14. Life Safety Code Review

The PE conducts the Life Safety Code portion of the survey.

15. Team Assessment of Compliance

The team analyzes all survey findings in order to determine whether the facility is in compliance with applicable state and federal requirements.

A “**deficiency**” exists when a facility fails to comply with a federal regulation. A **violation** exists when a facility fails to comply with a state statute or administrative rule. In either case, a decision to cite is made on the basis of whether a deficient practice violates a “structural requirement” or has occurred with sufficient severity or frequency, or both, to constitute noncompliance.

“**Frequency**” refers to how often a deficient practice occurs.

“**Severity**” means the seriousness of the identified problem, i.e., the degree to which the problem compromises the individual's health, safety, or level of functioning.

A “**structural requirement**” refers to a requirement the facility must adhere to without any latitude.

16. Exit Conference

The exit conference provides the facility with a summary of the survey team's conclusions and the information on which findings of noncompliance are based. The exit conference provides an additional opportunity for the facility staff to discuss and supply additional information. Because of the ongoing dialogue between surveyors and facility staff during the survey, there should be few instances where the facility is not aware of surveyors' concerns prior to the exit conference.

The administrator can determine which staff, board members, etc., may attend the exit conference. The facility may have an attorney present, but the facility must give advance notice of this to the survey coordinator. A court reporter may not attend the exit conference. Facilities may make an audio or video tape recording of the exit conference, but an identical copy of the recording must be given to the survey team.

II. EXPLANATION OF CITATIONS

All citations are documented on form F-2567, Statement of Deficiencies (SOD). The Statement of Deficiency will be mailed to the facility within ten working days of the date of exit.

State and federal citations are written on separate SODs and are assigned a state classification or a federal category as follows:

A. Classification of Violations of Chapter DHS 134, Wisconsin Administrative Code or Chapter 50, Wis. Stats.

1. **Class "A"**: A violation that creates a condition or occurrence relating to the operation and maintenance of a nursing home that creates a substantial probability for death or serious mental or physical harm to a resident. Class "A" violations must be corrected immediately unless a fixed period of time is set by the Office as part of the imposed plan of correction. Class "A" violations are subject to a forfeiture of up to \$10,000 per day of violation. Sections 50.04(4)(b)1. and (5)(a)1., Wis. Stats.
2. **Class "B"**: A violation that creates a condition or occurrence relating to the operation and maintenance of a nursing home that directly threatens the health, safety or welfare of a resident. Class "B" violations are subject to a forfeiture of up to \$5,000 per day of violation. Sections 50.04(4)(b)2. and (5)(a)2., Wis. Stats.
3. **Class "C"**. A violation that creates a condition or occurrence relating to the operation and maintenance of a nursing home that does not directly threaten the health, safety, or welfare of a resident. Sections 50.04(4)(b)3., Wis. Stats.

A Class "C" violation may be issued as a:

- **Class C**, when the licensee violated the same statute or rule during the previous two years or failed to correct a correction order by the date specified. Class C violations are subject to a forfeiture of up to \$500 per day of violation. Sec. 50.04(5)(a)3., Wis. Stats.
- **Correction Order**, when the licensee has not violated the same state statute or administrative rule in the previous two years; or
- **Notation**, when the same state statute or administrative rule was not violated by the current licensee in the previous two years, and the current violation is corrected before the end of the survey.

B. Categories of Federal Deficiencies

"Conditions of Participation" are the major health and safety sections of the regulations. A facility's Medicaid Provider Agreement is subject to cancellation or termination if a Condition of Participation is not met.

"Standard" is the term for each requirement under each of the Conditions of Participation. A facility's provider agreement is subject to cancellation or termination if any standard is cited in two consecutive certification surveys.

Failure to comply with certain standards will result in a determination of condition level noncompliance, immediate jeopardy, or failing to conform to the definition of an ICF/ID. These standards include:

- Abuse cited at 42 CFR 483.420(a)(5) [W127], **or** 42 CFR 483.420(d)(1)(i), [W150]. The Condition of Client Protection 42 CFR 483.420 [W122] will be cited **and** Immediate Jeopardy will be called.
- Active treatment cited at 42 CFR 483.440(a)(1) (W196) **or** 42 CFR 483.440(a)(2)(W197). The Condition of Active Treatment 42 CFR 483.440 [W195] will be cited **and** failing to conform to the definition of an ICF/ID 42 CFR 440.150(c) [W100] will be cited.

III. PLANS OF CORRECTION

A. Requirements for Submitting a Plan of Correction

Facilities must submit a plan of correction for each federal deficiency and each state violation, except correction orders and notations.

Plans of correction must be completed and mailed to the appropriate DQA regional office within ten calendar days following receipt of the Statement of Deficiencies.

The Division may extend the time frame for submitting plans of correction for state violations up to 30 calendar days if the plans involve substantial capital improvements. A facility must submit a written request for an extension to the appropriate DQA Regional Office / Bureau of Nursing Home Resident Care prior to the 10th day. The facility will receive written notice of approval or denial of the extension.

B. Content of the Plan of Correction

Each plan of correction must include the following core elements:

1. How the corrective action will be accomplished for individuals found to have been affected by deficient practice;
2. How the facility will identify other individuals who have the potential to be affected by the same deficient practice and how the facility will act to protect individuals in similar situations;
3. What measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
4. How the facility will monitor for corrective actions/performance to ensure that the deficient practice is being corrected and will not recur; e.g., provide the program to be put into place to monitor the continued effectiveness of the systemic change to ensure that solutions are permanent; and
5. When corrective action will be accomplished.

In most cases, correction should be accomplished within 60 calendar days or less; however, serious situations require a correction date of 45 calendar days or less. If the completion date extends beyond 60 calendar days, benchmark dates, detailing when partial correction will be accomplished, must also be included.

Plans of correction must not malign the survey team or an individual surveyor, and they must be signed and dated by a representative of the facility. A facility that wishes to comment on the professionalism or demeanor of the survey team or a team member is encouraged to complete a DQA Post Survey Questionnaire as described in DQA memo 03-015 or to contact the Regional Field Operations Supervisor/Director.

RESOURCES:

DQA Memo: http://www.dhs.wisconsin.gov/rl_dsl/Publications/03-015.htm

Online Survey: <http://4.selectsurvey.net/DHS/TakeSurvey.aspx?SurveyID=ml00584>

Plans of correction that do not meet these standards will not be approved.

In such cases, the Division will identify why the plans of correction were not acceptable, return them to the facility, and request that an acceptable plan be submitted within five calendar days. A facility that fails to submit an acceptable plan of correction is subject to the action described in subsection D., below.

If you have questions while drafting plans of correction, you may contact the surveyor or the Regional Field Operations Supervisor/Director.

C. Report of Correction

A facility that corrects a state violation prior to submitting a plan of correction may submit a notarized statement attesting to correction.

D. Failure to Submit an Acceptable Plan of Correction

If an acceptable plan of correction is not submitted, the Division may initiate termination of a facility's provider agreement or revocation of the facility's license.

E. Extended Time Period for Correction

A facility that cannot correct a state violation by the established completion date may request an extension by writing to the Division's Licensing and Regulatory Support Services Section at least five calendar days prior to the correction date. The Division will determine whether the extended correction time is reasonable and will notify the facility of its decision.

F. Verification of Correction

The Division will verify correction of all citations after the established completion dates have passed.

G. Failure to Correct Violations

Failure to correct a violation by the date specified may result in the following adverse actions:

1. A finding of an additional violation and a forfeiture or an increased forfeiture on Class “A”, “B,” and “C” violations;
2. Suspension or revocation of the facility's license or issuance of a conditional license;
3. Injunction for uncorrected class “A” violations;
4. Appointment of a state monitor or receiver, if the Department determines that the facility cannot protect the health, safety, and welfare of residents; or
5. Suspension of admissions, if a class “A” or “B” violation is not corrected within 90 days after receiving notice of the violation. This applies to facilities that received one class “A” or three class “B” violations in the previous 15 months (time period 1) **and** one class “A” violation or three Class “B” violations within any 15-month period during the three years preceding time period 1.

IV. INFORMAL DISPUTE RESOLUTION

Facilities that disagree with all or part of a federal or state SOD may request informal dispute resolution (IDR) with the following exception. IDR does not apply to a re-cited citation where (1) the re-cited facts are identical to the facts on the original citation and (b) where the original citation has already gone through IDR.

The Michigan Peer Review Organization (MPRO), through contact with DQA, conducts all facility IDR cases.

The procedures, forms, and timelines for requesting informal dispute resolution are provided in DQA Memo 08-008, which is available on the internet at:

http://dhs.wisconsin.gov/rl_dsl/Publications/08-008.htm

Case Conference

Pursuant to section 50.053, Wis. Stats., a facility may request an informal case conference to discuss and attempt to resolve, prior to hearing, any contested action initiated under subchapter I of Chapter 50, Wis. Stats. (e.g., state violations and forfeitures). However, in order to preserve your rights to a hearing, an appeal must be filed within sixty (60) days of receipt of your SOD or forfeiture invoice. Scheduling IDR or a case conference does not constitute an appeal of the Department action.

V. APPEALS

The following information is for general purposes only. A facility should refer to the applicable legal requirements in effect at the time it receives notice of a Department or federal action that may be subject to appeal.

In addition to requesting informal dispute resolution on disputed citations, a facility may also appeal certain Department or federal actions.

A. Appeals of State Citations, Imposed Plans of Correction, Forfeitures, and Suspensions of Admissions

If a facility desires to contest state violations, imposed plans of correction, forfeitures, or a suspension of admissions under state law, it must send a written request for a hearing, including a copy of the notice of action that is being contested, to:

Division of Hearings and Appeals
5005 University Avenue, Suite 201
P.O. Box 7875
Madison, WI 53705-5400
dha.mail@dha.state.wi.us

The hearing request must be submitted within ten calendar days of receipt of notice of the Department action.

A facility that does not contest a notice of violation **and** does not contest an assessment of forfeiture for a Class “A” or Class “B” violation **and** pays the forfeiture within ten days after receipt of the notice of assessment will have the amount of the assessment reduced by 35%.

B. Medicaid Termination and Informal Reconsideration

Facilities wishing to contest a finding of noncompliance, which has resulted in denial, non-renewal, or termination of Medicaid certification by the Department, must send a written request, including a copy of the notice of action being contested, to:

Division of Hearings and Appeals
5005 University Avenue, Suite 201
P.O. Box 7875
Madison, WI 53705-5400
dha.mail@dha.state.wi.us

The request for a hearing must be sent within 60 days of the facility's receipt of the notice of denial, non-renewal, or termination of its provider agreement as provided in 42 CFR 431.

In addition to filing an appeal of the termination or non-renewal of its provider agreement by the Department, a Medicaid-certified facility may request informal reconsideration of the action. To do so, it must submit a written request for informal reconsideration. The request may include any information that refutes the findings on which the termination is based. The request must be postmarked within ten calendar days of receipt of a termination notice and be submitted to:

Administrator
Division of Quality Assurance
P.O. Box 2969
Madison, WI 53701-2969

Facilities wishing to contest the termination or non-renewal of Medicaid certification by CMS may request a hearing before an Administrative Law Judge of the federal Department of Health and Human Services, as provided in 42 CFR 498. The request must be sent within 60 days of receipt of the notice.

C. License Revocation or Suspension or Denial of a Regular License

A request for a hearing on the revocation or suspension of a license or denial of a regular license must be sent to the following address within ten calendar days of receipt of the notice:

Division of Hearings and Appeals
5005 University Avenue, Suite 201
P.O. Box 7875
Madison, WI 53705-5400
dha.mail@dha.state.wi.us

D. Denial of State Waiver or Variance Request

Denial of a request for a state waiver or variance may be appealed as provided in Chapter 227, Wis. Stats., by writing to:

Division of Hearings and Appeals
5005 University Avenue, Suite 201
P.O. Box 7875
Madison, WI 53705-5400
dha.mail@dha.state.wi.us

The licensee sustains the burden of proving that the denial of a waiver or variance was unreasonable.

E. Care Level Determination

A resident may appeal a care level determination within 45 calendar days of the date of the notice. The appeals must be filed with:

Division of Hearings and Appeals
5005 University Avenue, Suite 201
P.O. Box 7875
Madison, WI 53705-5400
dha.mail@dha.state.wi.us

An administrative law judge will hold a hearing within 90 calendar days from the date of the request for a hearing per 42 CFR 431.244(f). Reimbursement for care and services will continue, pending the decision, if a resident appeals a change in the care level determination prior to the effective date of the care level change. The Department may

recoup the cost of excess payments made on the resident's behalf if the care level determination is upheld per 42 CFR 231.230(b).

F. Informal Conference

Pursuant to Section 50.053, Wis. Stats., a facility may request an informal case conference to discuss and attempt to resolve, prior to a hearing, any contested action initiated under Chapter 50, Wis. Stats.

VI. WAIVERS AND VARIANCES

The Division may grant waivers or variances for rules in Chapter DHS 134, Wisconsin Administrative Code. All waivers and variances are reviewed annually.

A. State Code Waiver or Variance

A "**waiver**" grants an exemption from a requirement of Chapter DHS 134, Wisconsin Administrative Code.

A "**variance**" grants an alternate requirement in lieu of a requirement of Chapter DHS 134, Wisconsin Administrative Code.

1. Submitting a Waiver or Variance Request

- a. Waiver or variance requests may be submitted at any time by writing to the Division's Chief of the Licensing and Regulatory Support Services Section. The request must include:
 - The rule for which the waiver or variance is requested.
 - The time period for which the waiver or variance is requested.
 - The reason for the request.
 - The alternate actions proposed if a variance is requested, or the specific residents or rooms affected if a variance or waiver is requested.
 - Documentation of assurance that resident health, safety, or welfare will not be adversely affected.
- b. The Department may grant a waiver or variance request, if there would be no adverse effect on resident health, safety, or welfare, and if either strict enforcement of the rule would result in unreasonable hardship or an alternative to the rule is in the interest of better resident care.
- c. The Department will grant or deny a request, in writing, within 60 calendar days of receipt of a complete request. Notice of denials shall contain the reason for denial. If a notice of denial is not issued within 60 calendar days, the waiver or variance is automatically granted.
- d. The Department may impose conditions on a waiver or variance, limit the duration of any waiver or variance and, in consultation with the facility, modify the terms of a variance.

- e. The process for filing an appeal of a denial of a state waiver or variance was described in section VI, D.

2. Revoking a Waiver or Variance

The Department may revoke a waiver or variance if:

- a. It determines that continuance of the waiver or variance adversely affects the health, safety, or welfare of the residents;
- b. The facility fails to comply with the conditions imposed in the variance;
- c. Revocation is required by a change in law; or
- d. The licensee notifies the Department, in writing, that it wishes to discontinue the waiver or variance.

3. Approval for Admission of a Minor

To admit an individual under the age of 18, a facility must follow the process in Section DHS 134.51(1)(e), Wisconsin Administrative Code. A facility should send a request in writing with:

- a. A statement from the referring physician stating the medical, nursing, rehabilitation, and special services required by the minor;
- b. A statement from the administrator certifying that the required services can be provided;
- c. A statement from the attending physician certifying that the physician will be providing medical care; and
- d. A statement from the persons or agencies assuming financial responsibility for the minor.

This may be sent by mail or FAX to the Division's Licensing and Regulatory Support Services Section.

B. Federal Regulation Waivers

1. Waivers of federal code requirements may be granted only for:
 - Life Safety Code (LSC), 42 CFR 483.470(j), or
 - Patient Room Occupancy, 42 CFR 483.470(b)(3).

All waiver requests must be sent in writing to the Division's Chief of the Licensing and Regulatory Support Services Section or included as part of a plan of correction. LSC waiver requests are forwarded to CMS for approval.

2. A federal waiver can be granted only if:
 - A facility demonstrates that approval of the waiver will not adversely affect resident health, safety, or welfare; or
 - Denying the waiver creates an unreasonable hardship.
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VII. CONCLUSION

The Division of Quality Assurance is committed to the fair, consistent, and professional application of state and federal requirements. If you have a concern that you would like to express outside of the processes outlined in this guide, you are welcome to call or write the DQA Administrator or the Director of the Bureau of Nursing Home Resident Care.

DQA also welcomes your feed back on the Post-Survey Questionnaire, which can be accessed at: <http://4.selectsurvey.net/DHS/TakeSurvey.aspx?SurveyID=ml00584>

DQA CONTACT INFORMATION	
Regional Offices	Central Office
<p>Southeastern Regional Office - Milwaukee 819 N. 6th Street, Room 609B Milwaukee WI 53203-1606 Telephone: (414) 227-5000 FAX: (414) 227-4139</p>	<p>Director, Bureau of Nursing Home Resident Care Division of Quality Assurance P.O. Box 2969 Madison, WI 53701-2969 Telephone: (608) 267-0351 FAX: (608) 267-0352</p>
<p>Southern Regional Office - Madison P.O. Box 7940 Madison, WI 53707-7940 Telephone: (608) 266-7474 FAX: (608) 243-2389</p> <p><i>Fed Ex or UPS Deliveries</i> 2135 Rimrock Rd. Madison, WI 53707</p>	<p><i>Fed Ex or UPS Deliveries</i> 1 W. Wilson St., Rm. 1150 Madison, WI 53703</p>
<p>Northeastern Regional Office – De Pere P.O. Box 5965 De Pere, WI 54115-5965 Telephone: (920) 983-3200 FAX: (920) 983-3201</p> <p><i>Fed Ex or UPS Deliveries</i> 1325 South Broadway De Pere, WI 54115</p>	<p>Administrator Division of Quality Assurance P.O. Box 2969 Madison, Wisconsin 53701-2969 Telephone: (608) 267-7185 FAX: (608) 267-0352</p>
<p>Northern Regional Office - Rhinelander 2187 Stevens, Suite C Rhinelander, WI 54501 Telephone: (715) 365-2800 FAX: (715) 365-2815</p>	<p><i>Fed Ex or UPS Deliveries</i> 1 W. Wilson St., Rm. 1150 Madison, WI 53703</p>
<p>Western Regional Office – Eau Claire 610 Gibson St., Suite 1 Eau Claire WI 54701 Telephone: (715) 836-4752 FAX: (715) 836-2535</p>	