

SURVEY GUIDE

BEHAVIORAL HEALTH CERTIFICATION FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES



**STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES
Division of Quality Assurance
Bureau of Assisted Living**

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BEHAVIORAL HEALTH CERTIFICATION SECTION (BHCS) CONTACT INFORMATION

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Internet Address for this Publication: <https://www.dhs.wisconsin.gov/publications/p6/p63174.pdf>

SURVEYOR INFORMATION

Surveyor: _____

Surveyor's Telephone Number(s): _____

Surveyor's Email Address: _____

Surveyor's Supervisor: _____

Supervisor's Telephone Number: _____

Supervisor's Email Address: _____

SURVEYOR INFORMATION

Agency: _____ **Certification Number:** _____

Location: _____

Entrance Date: _____ **Exit Date:** _____

I. INTRODUCTION

The Division of Quality Assurance (DQA) is responsible for conducting surveys in Wisconsin agencies certified to provide treatment for alcohol and other drug abuse (AODA) or to provide mental health treatment. DQA also conducts surveys of out-of-state AODA/mental health agencies that are seeking certification to provide services for Wisconsin residents. The purpose of a survey is to ensure that state certification requirements are met and maintained. The following information has been prepared to serve as a guide to the certification survey process for AODA/mental health agencies.

Wis. Stat. §§ 51.42(7)(b) and 51.61(5) are the basis for the Wisconsin Administrative Code Provisions applicable to AODA and mental health agency surveys.

This guide is a general reference for informational purposes. In the event of a conflict between information provided in this guide and the applicable legal requirements for an AODA/mental health agency, an agency should rely on the applicable legal requirements.

II. OVERVIEW OF THE SURVEY PROCESS

The purpose of the survey is to determine whether the AODA/mental health agency is in compliance with the applicable uniform licensure and state certification statutes, Wis. Stat. chs. 50 and 51 and Wis. Admin. Code chs. DHS 12, 13, 34, 35, 36, 40, 61, 63, 75, 92, and 94. Surveys are completed by Health Services Specialists (surveyors) employed by the Department's Division of Quality Assurance, Bureau of Assisted Living, Behavioral Health Certification Section. The surveyors conduct a survey using review instruments developed or approved by the Division. Behavioral Health Certification Section surveyors may consult and coordinate with other DQA surveyors when programs are also licensed under chs. DHS 124 (hospitals) or DHS 83 (Community-based Residential Facilities).

A. Standard Survey

The standard survey addresses compliance with Chapters 50 and 51 of the Wisconsin Statutes and the following Wisconsin Administrative Code requirements:

- Chapter DHS 12 Caregiver Background Checks
- Chapter DHS 13 Reporting and Investigation of Caregiver Misconduct
- Chapter DHS 34 Emergency Mental Health Service Programs
- Chapter DHS 35 Outpatient Mental Health Clinics
- Chapter DHS 36 Comprehensive Community Services for Persons with Mental Disorders and Substance-Use Disorders
- Chapter DHS 40 Mental Health Day Treatment Services for Children
- Chapter DHS 61 Community Mental Health and Developmental Disabilities
- Chapter DHS 63 Community Support Programs for Chronically Mentally Ill Persons
- Chapter DHS 75 Community Substance Abuse Service Standards
- Chapter DHS 92 Confidentiality of Treatment Records
- Chapter DHS 94 Patient Rights and Resolution of Patient Grievances

B. Off-Site Survey Preparation

The surveyor reviews the historical file of the AODA/mental health agency kept in each of the Division's regional offices and reviews applications received for changes of treatment staff and confirms current credentials.

C. Entrance Conference (All Visits)

1. **Staff Introductions.** Upon entering the agency, the surveyor will introduce him/herself and ask to meet with the director of the program or a designee. The surveyor will obtain the name of the staff member who will act as a liaison or contact person for the survey.
2. **Explanation of Visit.** The surveyor will outline time frames, inform the agency staff about the survey process, and respond to the agency's questions or concerns. The director or select staff may accompany the surveyor during the tour and should be available during the record review process. The surveyor will explain and answer questions about the certification process.
3. **Request for Information.** The surveyor will request information needed to conduct the survey. The surveyor will ask the agency to provide information including:
 - List of personnel, with dates of hire (including contracted employees and other volunteers or student interns)
 - Current staff roster including credentials for clinical staff
 - Policy and procedure manual
 - Training/orientation records, if maintained separately from personnel records
 - Clinical supervision log
 - Clinical staffing or consultation log
 - Client/patient satisfaction surveys
 - Annual report/evaluation (for Wis. Admin. Code chs. DHS 40, 63, and 75)
 - Documents related to caregiver background checks for determining whether an offense is substantially related to client care. (See Wis. Admin. Code § DHS 12.06)
 - Staffing minutes
 - Quality assurance work group minutes
 - List of current and discharged clients/patients for selecting the client/patient random sample
 - Service agreements
 - Evidence or documentation from previous plans of correction
 - Caregiver background check files and personnel files, as requested
 - Proof of malpractice and liability insurance for the clinic and each staff member who provides psychotherapy or who is a prescriber
 - Other information, as applicable

D. Information Gathering

1. **Record Review.** The surveyor will select a random sample of client/patient clinical records for review. The Department's access to records is authorized by Wis. Stats. §§ 51.30(4)(b)1 and 51.42(7)(b) and by Wis. Admin. Code chs. DHS 12, 13, 34, 35, 36, 40, 61, 63, 75, 92, and 94. The surveyor shall have access to electronic records through a process developed by the program. The surveyor's personal information will not be provided to set up access to electronic records.

2. **Personnel Records.** The surveyor will review a representative sample of agency personnel records for all individuals who are directly employed by or under contract with the agency and who provide care to clients/patients or supervise agency treatment staff. This review is to verify staff credentials and assure compliance with the requirements for caregiver background checks in Wis. Admin. Code ch. DHS 12. The review will focus on staffing requirements, background checks, and any applicable requirements for professional and character references. The surveyor may require additional personnel records to complete a survey. The Department's access to personnel records is authorized by Wis. Stats. §§ 50.065(2)(d), (4m), (5m); 51.03(lr); and 632.89.
3. **Branch Office/Multiple Location Visits.** The surveyor may conduct visits to branch offices, as appropriate to ensure that the quality of treatment and necessary supervision are being provided. More than one surveyor may be involved for review of distant branch office locations.
4. **Review of Client/Patient Complaints, Grievances, and Conflict Resolution.** This process verifies compliance with the applicable rights, grievance, complaint, and conflict resolution requirements of Wis. Admin. Code §§ DHS 34.25, 36.19, 40.14, 61.11, 63.13, and ch. DHS 94, and Wis. Stat. § 51.61.
5. **Interviews.** The surveyor may interview clients, patients, and/or staff.

E. Information Analysis and Compliance Decision Making

The surveyor reviews and analyzes all collected information to determine whether the agency has complied with the applicable requirements. Decision-making is an ongoing process throughout the survey, and the surveyor will maintain ongoing communication with the agency's liaison/contact person during multiple-day surveys. This occurs informally as questions arise.

F. Exit Conference

During the exit conference, the surveyor will summarize the survey findings regarding violations of requirements, as well as the facts or examples on which the findings are based. Surveyors may discuss areas for improvement where it did not arise to the level of violations. The agency has the opportunity to discuss and supply additional information. Due to the ongoing dialogue between the surveyor and the agency staff during the survey, there should be few instances where the agency is not aware of surveyor concerns prior to the exit conference.

A deficiency statement will be sent by email within 10 business days from the date of the exit. If there is a delay, the surveyor will notify the agency in writing of the reason for the delay and when a final report will be issued.

The agency director or designee determines which staff, board members, etc., may attend the exit conference and should accommodate clients/patients if they wish to attend the exit conference. The exit conference is an informal process, and attorneys do not usually attend. The agency may have an attorney present, but the agency director or designee should give advance notice of this to the surveyor. (Surveyors have been instructed not to answer questions from the agency's attorney.) If a corporate officer also functions as the corporate counsel, the agency must notify the surveyor of the individual's dual role. The purpose of the exit conference is to provide the agency information concerning the survey, but not to debate the issues identified by the surveyor. A court reporter may not attend the exit conference.

If the agency wishes to record or videotape the exit conference, it must first obtain the permission and consent of the surveyor. An identical recording or videotape must be given to the surveyor on the same day the surveyor conducts the exit conference. Any eavesdropping and any recording or videotaping without the express knowledge and permission of the surveyor is considered impeding the survey process. This may result in termination of the exit conference or survey.

G. Focused Surveys/Complaint Investigations

A focused survey may be conducted when there are areas of concern outside of the standard survey components or when areas of a standard survey require a more comprehensive review. These surveys may be announced or unannounced. Surveys of this type include complaint investigations and surveys conducted following the report of a death as required under Wis. Stat. § 51.64. If a surveyor is investigating a complaint there may be limited information the surveyor can provide the agency until the investigation is complete.

III. EXPLANATION OF SURVEY FINDINGS

- A. The surveyor will summarize the survey findings in the Statement of Deficiency (SOD). A violation exists when an agency fails to comply with a state administrative code requirement or a statutory requirement. The surveyor will document the survey findings to provide a basis for the agency to analyze its deficient practices or system failures and to develop plans of correction. Survey findings of noncompliance are documented on the Statement of Deficiencies (SOD) form.
- B. If agency staff have questions regarding the survey findings after receiving a Statement of Deficiencies, they may consult with the Behavioral Health Certification Section Manager informally concerning compliance and noncompliance with the rules and statutes.
- C. Effective 07/24/2012, DQA served electronic Statement of Deficiencies (e-SOD) to all regulated agencies and requested participating agencies to return the electronic Plan of Correction (e-POC) using email. Participating agencies will be asked to sign the Provider Agreement to provide the authorized representative's name and email address to receive the e-SOD and related documents. Provider information related to the e-SOD/e-POC process is available at: <https://www.dhs.wisconsin.gov/regulations/e-sod.htm>
- D. Agencies who elect not to participate in the e-SOD process will receive a paper copy of the SOD via First Class Mail and return the correction plan using the form provided by BHCS surveyors. All SODs and acceptable POCs – electronic and paper versions – received after 07/01/2012 will be posted electronically on the DQA Provider Search Application available at: <https://www.dhs.wisconsin.gov/guide/provider-search.htm>

IV. PLAN OF CORRECTION

State certification requires that agencies submit a Plan of Correction (POC) to the DQA Behavioral Health Certification Section following the issuance of the SOD. An acceptable POC will be submitted on DQA form F-00344 or in the POC column of the SOD. The agency should submit the POC to dhsdqamentalhealthaoda@dhs.wisconsin.gov. The due date is indicated on the SOD cover letter and email message.

A. Content of the Plan of Correction

Each POC must explain:

- What the agency will do to correct the violation and ensure continued future compliance
- How the correction will be accomplished and monitored
- Who will implement the plan and monitor for future compliance
- When the correction will be completed

Correction should be accomplished within 60 calendar days or less; however, more serious violations require correction within 30 calendar days or less. If extenuating circumstances or the nature of the violation require a completion date of more than 60 calendar days, the POC must include benchmark dates detailing when partial correction will be accomplished. (As an example, a completion date of more than 60 days might be appropriate to correct a violation relating to the 90-day review requirement in certain certified services.)

POCs that do not meet these standards will not be approved. In such cases, DQA will identify why the POC was not acceptable, return the original POC, and request that an acceptable plan be submitted within 10 working days.

B. Failure to Submit an Acceptable Plan of Correction

If DQA did not receive a correction plan by the due date 30 days after the SOD was served, DQA will issue the first written notice requiring corrections to be returned within 10 working days. After the first notice, if DQA does not receive an acceptable POC, a second notice will be served. If corrections continue to be unacceptable after the second written notice, DQA may impose a plan with which the agency must comply. DQA may also initiate termination of the AODA/mental health agency's certification.

C. Extended Time Period for Correction

An agency that cannot correct a deficiency by the established completion date may request an extension by writing to the Manager of the Behavioral Health Certification Section at least five calendar days prior to the correction date. DQA will determine if the extended correction time is reasonable and will notify the agency of its decision.

D. Verification of Correction

DQA will verify correction of non-compliance after the established completion dates have passed. Verification of correction of violations may be accomplished if the content of the violation can be meaningfully assessed by desk review. Surveyors may consult with the Behavioral Health Certification Section Manager to determine if the nature of the violation requires a revisit.

E. Failure to Correct Violations

Failure to correct a violation by the date specified from the final correction plan or imposed plan may result in certification non-renewal, certification revocation, or the issuance of a provisional certificate.

V. WAIVERS AND VARIANCES

Waivers or variances may be granted for state administrative rules.

- **Waiver** means the granting of an exemption from an applicable requirement of Wis. Admin. Code chs. DHS 34, 35, 36, 40, 61, 63, or 75.
- **Variance** means the granting of an alternate requirement in place of a requirement of Wis. Admin. Code chs. DHS 34, 35, 36, 40, 61, 63, or 75.

Waivers and variances may be requested at any time. A request should be made using the Waiver or Variance Request form. <https://www.dhs.wisconsin.gov/publications/p02328.pdf> The request must include the following:

- Identification of the rule provision from which the waiver or variance is requested
- Time period for which the waiver or variance is requested (not to extend beyond the program's certification period)
- If the request is for a variance, the specific alternative action that the program proposes
- Reason for the request
- Supporting justification
- General statement concerning the impact of the exception on the delivery of services and assurance that it will not adversely affect patient or client health, safety, or well-being
- Any other information request by the department

Requests for waivers or variances should be submitted to the Behavioral Health Certification Section:

DHS / DQA / Bureau of Assisted Living
dhsdqamentalhealthandsubstanceusecertification@dhs.wisconsin.gov

The Behavioral Health Certification Section Manager will consult with surveyors about the appropriateness of the waiver or variance.

If a SOD and a POC form are issued during a survey, a written waiver or variance request may be submitted as part of a plan of correction. If a waiver or variance is no longer needed, the agency must notify the Behavioral Health Certification Section Manager before the expiration date of the waiver or variance.

NOTE: A waiver or variance request for a provision of Wis. Admin. Code § DHS 63.05 may be submitted directly to:

dhsdqamentalhealthandsubstanceusecertification@dhs.wisconsin.gov

A. Granting or Denying a Waiver or Variance Request

- The Department will grant or deny each waiver or variance request, in writing, within 60 calendar days of receipt of a completed request. Notice of denials will contain the reason for denial.
- The terms of a requested variance may be modified upon agreement between the Department and the AODA/mental health agency.
- The Department may limit the duration of a waiver or variance.

B. Waiver or Variance Revocation

The Department may revoke a waiver or variance if:

- The continuance of the waiver or variance is adversely affecting the health, safety, or welfare of the clients or patients served by the AODA/mental health agency;
- The agency notifies the Department in writing that it wishes to relinquish the waiver or variance and be subject to the rule to which the waiver or variance applied;
- Revocation is required by a change in law.

VI. APPEALS

If the Department denies, refuses to renew, suspends, or revokes a certification, the AODA/mental health agency may request an administrative hearing under Wis. Stat. ch. 227. To contest the Department's certification action, the AODA/mental health agency should follow the appeal provisions and time frames of the applicable chapter of the Wisconsin Administrative Code under which it operates. A request for hearing should be sent to:

Division of Hearings and Appeals
5005 University Avenue, Suite 201
P.O. Box 7875
Madison, WI 53705-5400

Email: dha.mail@wisconsin.gov
Fax: 608-264-9885

If a timely request for hearing is made, the suspension, revocation, or non-renewal action is stayed pending the decision on the appeal, unless the Department determines that the health, safety, or welfare of clients or patients requires that the action take effect immediately.

NOTE: The filing of an appeal does not alter the time frame for the submission of an acceptable plan of correction.

VII. GRIEVANCES AND COMPLAINTS**A. Client/Patient Grievance**

A client or patient (or someone acting on behalf of a client or patient) may file a grievance with the administrator or staff member of an agency without fear of reprisal and may communicate, subject to Wis. Stat. § 51.61(1)(p), with any public official or other person without fear of reprisal.

Under Wis. Admin. Code § DHS 94.29, failure of a treatment facility to comply with any provision of rights under Wis. Stat. § 51.61 or with Wis. Admin. Code ch. DHS 94, may be processed as a grievance under Wis. Stat. § 51.61(5) and under Wis. Admin. Code ch. DHS 94, Subchapter III.

All programs providing services or residential care to persons who need the services or residential care because of mental illness, a developmental disability, alcoholism, or drug dependency, as defined in Wis. Stat. § 51.01 are required to have a grievance resolution system which complies with Wis. Admin. Code ch. DHS 94, Subchapter III.

B. Agency Complaints

The DQA Bureau of Assisted Living responds to two types of complaints – agency practices and caregiver misconduct. The Behavioral Health Certification Section of the Bureau of Assisted Living receives complaints and conducts complaint surveys for agency practice concerns.

Access DQA online complaint resources at: <https://www.dhs.wisconsin.gov/guide/complaints.htm>

Hospitals licensed under Chapter DHS 124 or residential care settings under DHS 83 are required to provide clients/patients with the written address of the DQA Bureau of Assisted Living to allow clients/patients to submit complaints directly to the Bureau. Complaints may be submitted in writing to:

DHS / DQA / Bureau of Assisted Living
Acute Care Compliance Section
P.O. Box 2969
Madison, WI 53701-2969

C. Caregiver Misconduct

Complaints about caregiver misconduct relate to specific incidents between a caregiver and a patient or client, including but not limited to:

- Abuse — hitting, slapping, verbal, or sexual actions
- Neglect — intentional carelessness or disregard of policy or care plan
- Misappropriation — theft, using property without consent (such as telephone or credit cards)

All entities regulated by the Division of Quality Assurance (DQA) must:

- Immediately protect clients from subsequent incidents of caregiver misconduct.
- Investigate all allegations of caregiver misconduct.
- Document the results of their investigation.
- Report allegations/incidents to DQA as appropriate.

Refer to DQA publication P-00907, *Reporting Requirements for All Entities Regulated by the Division of Quality Assurance (Except Nursing Homes)*, at: <https://www.dhs.wisconsin.gov/publications/p02007.pdf>

- Use DQA form F-00161A, Flowchart of Entity Investigation and Reporting Requirements, and/or F-00161, Caregiver Misconduct Reporting Requirements Worksheet, to assist in making the reporting determination.
- Use DQA form F-62447, *Misconduct Incident Report*, to report misconduct allegations.

A numerical listing of DQA forms can be accessed at: <https://www.dhs.wisconsin.gov/forms/index.htm>

For allegations involving all staff (non-credentialed and credentialed), submit DQA form F-62447, *Misconduct Incident Report*, to DQA at:

DHS / DQA / Office of Caregiver Quality
dhsofficeofcaregiverquality@dhs.wisconsin.gov.

P.O. Box 2969
Madison, WI 53701-2969

NOTE: In the past, you were required to submit the report either to DQA or to the Department of Safety and Professional Services (DSPS). This process has been streamlined to eliminate reporting to two different agencies. All caregiver misconduct reports are submitted to DQA, where the reports involving credentialed staff (doctors, RNs, LPNs, social workers, etc.) are forwarded to DSPS for review.

For more information, please see the Department's website at:

<https://www.dhs.wisconsin.gov/caregiver/complaints.htm>

If you have questions, contact the Office of Caregiver Quality at:

Email: dhsofficeofcaregiverquality@dhs.wisconsin.gov

Telephone: 608-261-8319

D. Adult at Risk Incidents

Wis. Stat. §§ 46.90(4)(ab)1 and 55.043(1m)(a) require that **any employee of any entity** report allegations of abuse, neglect, or exploitation if the adult-at-risk is seen in the course of the person's professional duties and one of the following conditions is true:

- The adult-at-risk has requested the person to make the report.
- There is reasonable cause to believe that the adult-at-risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk.
- Other adults-at-risk are at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator.

Refer to DQA Memo 06-028, *Adult-at-Risk, including Elder Adult-at-Risk, Reporting Requirements for Entities Regulated by the Office of Quality Assurance*.

For **allegations involving all perpetrators** (family member, friend, visitor, resident, stranger, etc.), submit DQA form F-62447, *Misconduct Incident Report*, to:

DHS / DQA / Office of Caregiver Quality
dhsofficeofcaregiverquality@dhs.wisconsin.gov.

P.O. Box 2969
Madison, WI 53701-2969

DQA form F-62447, *Misconduct Incident Report*, is available online and listed numerically at:

<https://www.dhs.wisconsin.gov/forms/index.htm>

This new reporting process is streamlined to eliminate reporting to different agencies. All incident reports are submitted to DQA staff who will forward reports to other agencies such as the county department, the elder/adult-at-risk agency, state or local law enforcement agency, or the Board on Aging and Long-term Care, as appropriate. Reports may also be submitted directly to one of these agencies.

Again, if you have any questions, contact the Office of Caregiver Quality.

Email: dhsofficeofcaregiverquality@dhs.wisconsin.gov

Telephone: 608-261-8319

VIII. NOTIFICATION OF PROGRAM CHANGES

The program shall notify the DQA Bureau of Assisted Living, Behavioral Health Certification Section of any changes in administration, ownership or control, location, and program name and other program changes, such as services offered and policies and practices that may affect compliance with applicable Wisconsin Administrative Code requirements by no later than the effective date of the change. Send notifications to:

dhsdgmentalhealthandsubstanceusecertification@dhs.wisconsin.gov

DHS / DQA / Bureau of Assisted Living
Behavioral Health Certification Section
1 West Wilson St.
P.O. Box 2969
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