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DQA Numbered Memo 15-006
Replaces DQA Memo 07-002

To: [Community Mental Health](#) and [Substance Abuse Treatment Services](#)

From: Crenear Mims, Director
Bureau of Health Services

Via: Otis Woods, Administrator
Division of Quality Assurance

Patrick Cork, Administrator
Division of Mental Health and Substance Abuse Services

Certification of Waivers and Variances

Submitted to the DQA Behavioral Health Certification Section

The purpose of this memorandum is to provide clarification concerning the requests for waivers and variances submitted to the Division of Quality Assurance (DQA) Behavioral Health Certification Section (BHCS) and to update contact information for questions regarding the interpretation of administrative rules specific to mental health and substance abuse programs/services.

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, in the past, the most common request had been for a variance of Chapter DHS 61.97(5), Wisconsin Administrative Code, for physician referrals to certified outpatient mental health programs.

To meet this requirement, certified entities requested that they be allowed to use the services of a licensed clinical psychologist in place of a physician. The variance permitted them to meet the rule in a manner different from what was required by the code.

Before issuing a waiver or variance, DQA will examine each request individually and issue a decision based on certain factors, including need, compliance history and public safety. The fact that exceptions may have been approved for other providers does not constitute evidence of need. DQA may consult with the Bureau of Prevention, Treatment and Recovery 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 DQA's Behavioral Health Certification Section:

Code	Description
DHS 34.04	Emergency Mental Health Service Program.
DHS 35.12	Outpatient Mental Health Clinics
DHS 36.065	Comprehensive Community Services Program.
DHS 40.05	Mental Health Day Treatment Services for Children.
DHS 61.20 (3)	Community Mental Health, Developmental Disabilities, and Alcohol and Other Drug Abuse Services, or proposed DHS 35 Outpatient Mental Health Clinic rules.
DHS 63.05	Community Support Programs for Chronically Mentally Ill Persons.
DHS 75	No specific waiver or variance language. The allowance for an exception is covered under DHS 61.20(3).
DHS 92	Confidentiality of Treatment Records. No waivers or variances of these standards are permitted.
DHS 94	Patient Rights and Resolution of Patient Grievances. No waiver or variances of these standards are permitted.

Questions:

Staff of the Division of Mental Health and Substance Abuse Services (DMHSAS) Bureau of Prevention, Treatment, and Recovery can be contacted at (608) 266-2717 to answer questions regarding the interpretation of these administrative rules.

Elements of a Variance/Waiver Request

The Department may grant an exception to program requirements, except Chapter DHS 92 or Chapter DHS 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 patients served by the program. The following must be included for each exception requested by certified entities:

1. Identify the rule provision from which the waiver or variance is requested.
2. The time period for which the waiver or variance is requested, not to extend beyond the program/service certification period.
3. If the request is for a variance, the specific alternative action that the program/service proposes.
4. The reason for the request.
5. Supporting justification concerning the impact of the exception on the delivery of services.
6. Any other information requested by the Department.

Please submit all requests for exceptions to the:

Division of Quality Assurance
Behavioral Health Certification Section
P.O. Box 2969
1 West Wilson Street
Madison, WI 53701-2969
DHSWebmailDQA@dhs.wisconsin.gov

The Department has up to 60 calendar days to approve or deny the request for exception under Chapter DHS 35 and DHS 61. 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 DHS 34, DHS 40, DHS 63 or DHS 75, the Department will use the Chapter DHS 61.20 (3) guidelines as a timeframe to respond to individual requests. If a waiver or variance is approved, the program/service must reapply prior to certification renewal to determine if an extension is warranted.

If the Department fails to act on the request within 60 calendar days or notify the provider of the need for an extension, the exception shall be automatically approved for the period not to extend beyond the current certification period of the program. The Department will not consider requests for a variance or waiver of DHS 92 or DHS 94, because these rules are based upon specific requirements in sections 51.30 and 51.61 of the Wisconsin Statutes.