STATE OF WISCONSIN
Department of Health Services
Division of Long Term Care
Division of Mental Health and Substance Abuse Services

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Memo Series
DLTC Numbered Memo 2011-06
DMHSAS Numbered Memo 2011-09

Index Title: **Policy and Procedure for Assignment of Responsibility with Regard to Residency for People Participating in Adult Long Term Care Programs in Wisconsin**

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To: Listserv

For: Aging and Disability Resource Center Directors
Area Administrators/Human Service Area Coordinators
County Aging Units/Directors
County COP Contacts
County DD Coordinators
County Department of Developmental Disabilities Services Directors
County Department of Human Services Directors
County Department Income Maintenance Unit Directors
County Department of Social Services Directors
County Departments of Community Program Directors
County Elder Adults-at-Risk (Elder Abuse) Agency Contacts
County Waiver Contacts
DLTC Bureau Directors
DLTC Section Chiefs
Family Care Managed Care Organizations
IRIS Contract Agencies
Long Term Support Planning Committee Chairs
Tribal Chairpersons

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Subject: Policy and Procedure for Assignment of Responsibility with Regard to Residency for People Participating in Adult Long Term Care Programs in Wisconsin.

Document Summary

This document establishes the policy and procedures for determining county of residence when a person participating in a long term care program in Wisconsin moves among counties within the state, including the role and responsibility of long term care program entities (Managed Care Organizations, Waiver Agencies, Independent Consultant Agency, Aging and Disability Resource Centers) regarding the provision of services and funding. It is the intention of the Division of Long Term Care (DLTC) that any person who receives long term care services funded through any of its long term care programs be able to experience continuity of care and freedom of choice when legally acceptable. The attached instructions are applicable for all adult long term care programs in all Wisconsin counties (i.e., Brain Injury Waiver, CIP Waivers, COP Waiver, Family Care, Partnership, PACE and IRIS, as well as Aging and Disability Resource Centers).

Background

The Department has previously provided direction to counties regarding residency determination and the responsibility of long term care programs when a person moves between counties in Wisconsin as it relates to long term care programs and Family Care expansion in the following documents: OSF Memo May 23, 2002, DDES Memorandum January 2, 2007, and Managed Long Term Care Expansion Planning Information #6 February 26, 2008. The release of this memo rescinds all previous memos and information referenced above.

The Department of Health Services provides policy guidance on residency determinations in DDES Memo 2007-01. The Residency Manual (available at: http://www.dhs.wisconsin.gov/dsl_info/NumberedMemos/DDES/CY2007/NMemo2007-01.htm) is statutorily based and is the basis for decision and guidance of the policy and procedures defined in this memo, and as such will remain in force after the effective date of this memo.

Definitions

Aging & Disability Resource Centers (ADRC): Aging and Disability Resource Centers (ADRC's) under contract with the State and in agreement with county and tribal governments provide accurate, unbiased information on all programs related to aging or living with a disability.

Arrange or Make Placement: "Arranges for" means to perform any action beyond providing basic information concerning the availability of services, facilities, or programs in a county to an individual or the individual's family.

County of Responsibility: The county responsible for the provision of services under Chapter 46, 48, 51, 54, or 55 to an individual. The State contracts require the ADRC, MCO, IRIS consultant agency (ICA), and county waiver agencies to provide services to the residents of the counties in which they operate as provided in State Statute.

Emergency/Emergent Services: Services determined necessary under Chapter 51 and 55.

Income Maintenance Definition of Residency: The county in which the person is physically located except when a person is placed by the county or long term care agency. If the person is placed by the county or long term care agency, the IM case remains with the county of residence and responsibility.

IRIS Consultant Agency (ICA): The IRIS Consultant Agency helps IRIS participants with planning for goods, services, and supports.

Legal Residence/Residency: The voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. This is explained in further detail in DDES Numbered Memo 2007-01 http://www.dhs.wisconsin.gov/dsl_info/NumberedMemos/DDES/CY2007/NMemo2007-01.htm . Confusion has arisen in the use of the terms "move" and "change in residency". Change in responsibility will occur when residency changes not necessarily when a person moves. Change in residency does not always occur when a person moves to another county or when the care plan requires the person move to another county for specific services.

Long Term Care Program: All of the long term care programs administered by DLTC including: Brain Injury Waiver, CIP Waivers, COP Waiver, CLTS Waivers, Family Care, Partnership, PACE, and IRIS.

Managed Care Organization (MCO): An entity that the Department has contracted with to provide the services within the benefit package to members. These entities include Family Care, Partnership or PACE programs.

Natural Residential Setting: for the purposes of this policy, a person living with others must:

- be paying a proportionate share of the household expenses, including food, rent or mortgage, property taxes and utilities other than telephone; or
- have an ownership interest in or pay rent for his or her housing; or

- buy food separately or pay his or her share of food costs. (This requirement does not apply to children under 18 residing with a parent or people residing with a spouse.)

A residence is not qualified as a natural residential setting if it requires certification as an Adult Family Home or licensure under Wisconsin Statutes Chapters 48 or 50.

Permanent: Established by the person's stated intent to remain voluntarily in a place of fixed habitation, with no stated conditions, as further defined in the Residency Manual http://www.dhs.wisconsin.gov/dsl_info/NumberedMemos/DDES/CY2007/NMemo2007-01.htm

Person: Any member of an MCO, a customer of an ADRC, a participant of the CIP/COP/BI/IRIS Waiver Program; this also includes guardian of the person.

Placed: Except for the provision of emergency services, if a county or long term care program agency places or makes arrangements for placement of an individual into a facility or residential setting; the originating county is the person's county of residence. Placement of an individual in a facility or residential setting outside the jurisdiction of the originating county does not transfer the individual's legal residence to the county in which the facility or residential setting is located.

Placed under Legal Authority: Admitted to a facility or living arrangement by virtue of a protective placement, mental health commitment, or consent of a court appointed guardian.

Plan of Care: The document established by the program or agency responsible for an individual's care and treatment, for example the Individual Service Plan, Member Centered Plan, or IRIS Support and Service Plan to which the person or guardian has agreed and signed.

Temporary: Anything other than permanent; short term.

Voluntary: According to the person's free choice, if competent, or by choice of a guardian if incompetent (the guardian's right to change residency is limited by Chapter 51.40 (2) (f)).

Venue: The legally proper or most convenient place where a particular case should be handled. Venue is not synonymous with either residency or responsibility. Venue is retained by the court in which it has been established unless a change of venue has been enacted. The court has its own rules about requesting and approving a change of venue.

Policy Statements

1. A Wisconsin resident who is eligible for long term care programs may enroll in the long term care programs available in his or her county of residence.

2. If a Wisconsin resident establishes residency permanently outside of Wisconsin, he or she will not be eligible to continue in Wisconsin long term care programs until he or she returns to Wisconsin and once again establishes residency according to the State's definition. If a long term care agency arranges for and makes placement for a person under an approved plan of care in a living arrangement outside the State of Wisconsin to best meet his or her needs, the county of residence does not change; the long term care agency remains responsible for the care, oversight, and funding of services. When a state or state-contracted agency makes the placement, the state making the placement is the person's Medicaid residence.

3. If a Wisconsin resident moves to a long term care facility or living situation in another county in Wisconsin under a plan of care approved and funded by the long term care agency, he or she remains a resident of the county of which he or she was a resident prior to the placement; the long term care agency retains responsibility to find and fund the delivery of all necessary long term care services. The long term care agency continues to provide care management and oversight of the services delivered to the person.

4. When residency changes, or when a competent individual or a court-appointed guardian of an individual in a natural residential setting states voluntary intent to change residency, staff working

to support people in long-term care should work collaboratively and creatively to assure the best possible continuity of care for the person. It is expected there will be no lapse in coverage and all parties will act in good faith to transfer responsibility in a timely manner. If services in the new county of residence cannot start as soon as the person moves, the long-term care program currently serving the individual should offer to extend enrollment and funding temporarily after the move so there is no lapse in services to the individual.

5. If a Wisconsin resident is enrolled in a long term care program and voluntarily establishes residency in another county, the person has a right to receive long term care program services that may be available in the new county dependent on program eligibility.

6. If a Wisconsin resident is temporarily out of the county or state in which he is she is a resident (i.e., spends the winter in a warmer climate, attends college, is in a hospital for treatment, is in a skilled nursing facility for rehabilitation, is in a crisis bed waiting for a home or apartment, is in a half-way house or homeless shelter), the person remains the responsibility of the county in which he or she is a resident, not the county where he or she is temporarily staying, except for emergency services under Chapter 51 or 55 (i.e., mental health or adult protective services).

Guiding Principles and Best Practices

1. Good care management practice means being aware of and discussing with individuals their outcomes, desires, and intentions. This includes interest in resources and opportunities outside the service area and potential changes in residency. Therefore, agencies that provide good care management should never be surprised by an individual making such a request. A long term care agency should neither feel they can not enlist resources outside of the service area nor be required to contract with services outside the service area. The essence of care management is meeting outcomes in the most effective and cost effective way.

2. These policies and procedures are intended to support and facilitate open communication and collaboration between all long term care agencies and county agencies including, Aging & Disability Resource Centers (ADRC), Managed Care Organizations (MCO), IRIS Consultant Agency (ICA), county waiver agencies, Adult Protective Services (APS), Mental Health/Substance Abuse program agencies, and Income Maintenance (IM).

3. It is understood that a person's long term care agency may arrange and make placement under an approved plan of care in an out of county treatment facility or living situation in order to meet the persons specialized needs for care. Such placement does not constitute change of residency, nor does it shift primary responsibility for care to the county where such a placed person now lives or to long term care programs operating in this county.

   Persons living in natural residential settings are generally not "placed" by an agency when they move, unless the move was initiated by an agency to access particular community resource or service. Voluntary moves, with respect to residency determination, are governed by statute; which states:

   > 49.001(8) "Voluntary" means according to a person's free choice, if competent, or by choice of a guardian if incompetent.

   Therefore, a guardian who has consulted with a long term care agency about moving his/her ward for good cause, and who has made it clear that it is the guardian's intent to simultaneously change location from a natural residential setting to a natural residential setting and establish residency, the guardian essentially provides consent to a voluntary move. Thus, residency changes as if the person independently made the move per the above definition.

   When the guardian's intent is to relocate their ward from any setting to a facility setting in another county, this involves the commitment of funds the guardian does not completely control. Consultation with the current long-term care agency, and perhaps other agencies, is necessary. Such a move will generally constitute "placement by an agency. Residency and responsibility

would, therefore remain unchanged in a facility to facility move unless some other process was used to alter it (i.e. 51.40(2)(f), or a SNF relocation with intended residency change discussed with the respective counties and care organizations, etc.)

4. The State contracts require the ADRC, MCO, ICA, and county waiver agencies to provide services to the residents of the counties in the service area in which they operate as stipulated in State Statute.

5. When residency changes or a competent individual states voluntary intent to change residency, staff working to support people in long term care should work collaboratively and creatively to assure the best possible continuity of care for the person. It is expected that, if a person informs the long term care agency from which he or she is currently receiving services of the intent to move with sufficient lead time prior to the move, there will be no lapse in coverage of long term care services and all parties will act in good faith to transfer responsibility of support and services to another program in a timely manner. If services in the new county of residence cannot start as soon as the person moves, the long term care agency should offer to extend enrollment and funding temporarily after the move so there is no lapse in services to the individual. It is the responsibility of the person and/or their guardian to notify the long term care agency of intent to change residency.

General Procedures

These are general procedures that apply to all instances when residency may change or there is a question regarding long term care agency responsibility. Specific programmatic procedures follow in the attachments.

1. The long term care agency currently providing services shall notify the person or guardian via handbook or manual that any person who is planning to establish permanent residency in another county is responsible to provide advance notice to the long term care agency so the care manager and/or ADRC can meet with the person to discuss the consequences of the change in residency and the possibilities for services in the new county. The person's care manager shall periodically remind people of this responsibility, such as at the time of care plan review.

2. A person who participates in a long term care program is responsible to inform the agency currently providing long term care services well in advance of an intent to move so that agencies involved will have the opportunity to attempt to ensure continuity of care. If the person fails to provide appropriate advanced notification, the identified policies and procedures should be followed as soon as becoming aware of the situation.

3. A person who participates in the long term care program may have emergency/crisis needs. In keeping with Wisconsin Statute 51.15, and unless covered by an inter-county agreement, the county where the emergency need occurs will be responsible for the immediate protection of the person. The long term care agency and crisis response agencies shall coordinate care to assure development of response plans to appropriately address emergent needs. Once the emergency is resolved, the agencies with responsibility for the person's care will provide any necessary follow up care and treatment.

4. The long term care agency currently responsible for the person's services and supports is expected to contact the county to which a person may move or be placed to assure notification of appropriate county agencies occurs, as well as the sharing of any existing behavior or crisis support plans.

5. Any discussion of a potential move from one county to another must at a timely point involve the Income Maintenance agency. It is the responsibility of the long term care agency to ensure that Income Maintenance staff is informed so that necessary transfers can occur and Medicaid eligibility is not interrupted.

6. The Long Term Care Functional Screen (LTC FS) may be transferred between long term care agencies with signed consent from the long term care program participant or guardian.

7. In transferring care to new agencies with appropriate release of information, the totality of the person's care plan should be shared and coordinated. In addition, any medical needs and primary care coordination should be addressed.

Determining Residency
The following summary will be used as guiding principles in residency determinations under s. 51.40 and s. 49.001 (6) and (8). Detailed Information can be found at:
http://www.dhs.wisconsin.gov/dsl_info/NumberedMemos/DDES/CY2007/NMemo2007-01.htm

1. ***Court ordered commitment, protective placement or protective services***.
   If a person is under a court ordered commitment under Chapter 51 or a protective placement or protective services under Chapter 55, the person remains a resident of the county where he or she resided at the time the initial commitment or initial order is made, even if treatment needs require relocation to a service or facility in another county.

2. ***Placement by a County Department***
   A county department placing or making arrangements for placement of the person outside of the county of residence does not transfer the person's legal residence to the county in which the placement occurs.

3. ***Placement by a Long Term Care Program Agency***
   A long term care agency placing or making arrangements for placement of the person outside of the county of residence under an approved plan of care does not transfer the person's legal residence to the county in which the placement occurs.

4. ***Persons in State Facilities (State Mental Health Institute, Center for the Developmentally Disabled, Prison, or Facility Operated by DHS)***
   A person who is in a state facility is a resident of the county in which he or she was a resident at the time of admission to the state facility.

5. ***Persons in Nursing Facilities***
   a. A person admitted to a nursing home prior to December 1, 2006, is a resident of the county in which they are physically present, i.e., the county in which the nursing home is located, unless another county accepts the person as a resident or the person has established residence in another county prior to entering the nursing home with the intent to return to that county.

   b. A person who is voluntarily admitted to a nursing home after December 1, 2006, is a resident of the county in which they are physically present, unless the person has established residence in another county prior to entering the nursing home with the intent to return to that county. A person admitted to a nursing home under Wisconsin Statute 50.04(2r) is a resident of the county that recommended the admission via signature on the F-20822 form.

   c. A person admitted under Wisconsin Statue 50.04(2r) after December 1, 2006, is a resident of the county which approved the admission. This applies to a nursing home that is not certified as a provider of medical assistance or that is an ICF-MR or an institution for mental disease. These facilities may not admit a resident who has a developmental disability or who is both under age 65 and has mental illness unless the county department of the person's county of residency has recommended the admission.

6. ***Clarification of Guardian role in Residency Changes***
   The guardian may declare county of residence under the conditions identified in State Statute and the residency manual.

- Persons living in natural residential settings are generally not “placed” by an agency when they move, unless the move was initiated by an agency to access particular community resource or service. Voluntary moves, with respect to residency determination, are governed by statute; which states:

  > 49.001(8) "Voluntary" means according to a person's free choice, if competent, or by choice of a guardian if incompetent.

- Therefore, a guardian who has consulted with a long term care agency about moving his/her ward for good cause, and who has made it clear that it is the guardian’s intent to simultaneously change location from a natural residential setting to a natural residential setting and residency, the guardian essentially provides consent to a voluntary move. Thus, residency changes as if the person independently made the move per the above definition.
- When the guardian’s intent is to relocate their ward from any setting to a facility setting in another county, this involves the commitment of funds the guardian does not completely control. Consultation with the current long-term care agency, and perhaps other agencies, is necessary. Such a move would generally constitute “placement by an agency”. Residency and responsibility would, therefore remain unchanged in a facility to facility move unless some other process was used to alter it (i.e. 51.40(2)(f), or a SNF relocation with intended residency change discussed with the respective counties and care organizations, etc.)

Process for Requesting a Change in Residency

Vital to any seamless transfer of care is good communication practices with persons and their guardians as well as partner agencies. The following process is available to guide agencies on the legal aspects of a transfer, assuming the policies, guiding principals, and best practices outlined in this memo have been followed. Good information, informed consent, and collaboration between agencies are critical. Significant conversation with the individual and between responsible agencies should occur to explore the viability of a change in residency before any process is initiated. Any request for a change in residency or venue must be initiated by the person and/or guardian; the convenience or costs to a long term care agency should never be motivation for such a request.

Voluntary moves initiated by guardians of wards in natural residential settings (see guiding principals and #6 above) do not necessitate an order to change venue. While it may be more convenient to change venue to the new county of residence, a guardian’s authority is not compromised by retaining venue in the original court. Guardians should be encouraged to discuss these matters with the court of jurisdiction to maximize efficiency and convenience in their future communications and reporting.

1. ***Guardians request to declare county of residence***
   a. As required under Wisconsin Statute 51.40(2)(f), the guardian must submit to the current court of venue a written statement indicating the desire to establish residency in a new county and requesting that the ward’s residency and court of venue be transferred to the court in that county.

   b. The court may approve or deny the guardian’s request based upon their own rules for evaluating the merits of cases.

   c. For the purpose of this policy, a court-approved request to change venue and declare county of residence will change the county of residence and responsibility, as well as eligibility for long term care program agencies operating in the new county of residence.

2. ***For persons placed under legal authority***
   a. A request for change of venue should be directed to the court that currently has venue.

   b. When a request for change in venue is submitted, the county to which venue is being requested must be notified and may object.

c. For the purpose of this policy, a change of venue approved by the court will change the county of residence and responsibility for long term care program agencies. Counties should be aware of these requests and carefully consider these decisions with the court.

3. ***For persons who are "placed by a county or long term care program agency" (see definition above)***
   a. Once placed by a county or long term care program agency under an approved plan of care, a person may not independently change residency. To change residency requires agreement between the current county of residence and the county in which the person wants to establish residency.

   b. An individual wishing to make such a change should contact the ADRC or local county agency in the county of residence. The ADRC or county agency will assist in connecting the person with the appropriate county staff. The counties will jointly discuss the request and reach an agreement.

   c. If the agreement is to accept the transfer, a date should be established and communicated with all parties so a simultaneous transfer can occur for all programs involved.

Requesting a Residency Determination

1. Counties or long term support agencies may first attempt to resolve residency disputes informally.

2. Counties, long term care agencies, or ADRCs may contact their regional or assigned quality specialist with questions, concerns, or issues regarding residency as specified below:
   - MCO staff should contact the contract coordinator or member care quality specialist
   - IRIS Consultant Agency should contact the IRIS Program Manager
   - ADRC staff should contact the regional quality specialist
   - Waiver agencies should contact the assigned quality specialist or DHS waiver manager
   - Area Administration

3. When a regional or assigned quality staff receives a question or request regarding residency Area Administration or the Designated Department Residency contact will be consulted as needed.

4. The person or an interested person on behalf of the person, or any county agency or long term care program agency may make a request to the Department for a formal residency determination.

5. The county should indicate whether the request is for s. 51.40 or an administrative residency determination, if known. The Department decision is considered final. Should a person be dissatisfied with the decision they may appeal to the circuit court. Directions on how to make this formal request can be found at:

http://www.dhs.wisconsin.gov/dsl_info/NumberedMemos/DDES/CY2007/NMemo2007-01.htm

REGIONAL OFFICE CONTACT:
County Waiver Agencies: Area Administration Regional Coordinator
Aging and Disability Resource Centers: Regional Quality Specialist
Managed Care Organizations: Contract Specialist

CENTRAL OFFICE CONTACT: DHS Residency Coordinator – 608-267-4867

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

ATTACHMENTS:
Attachment 1
Attachment 2
Attachment 3