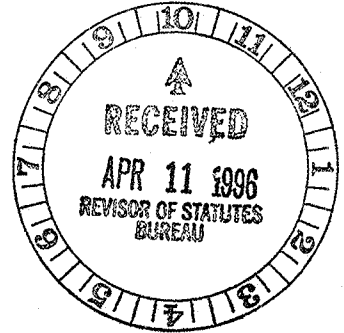


Clearinghouse Rule 95-208

CERTIFICATE



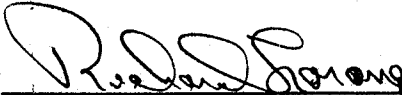
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Joseph Leean, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to conditions of hardship for granting an exception to limits on use of community long-term support funds to pay for services for residents of community-based residential facilities (CBRFs) were duly approved and adopted by this Department on April 11, 1996.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 11th day of April, 1996.

SEAL:



Joseph Leean, Secretary
Department of Health and Social Services

95-208
6-1-96

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING AND CREATING RULES

To amend HSS 73.01 and to create HSS 73.03(3m) and (8m) and 73.10, relating to conditions of hardship for granting an exception to a limitation on funding for CBRF care in the case of a person initially applying for long-term community support services under the Community Options Program (COP) or a Medical Assistance home and community-based waiver (COP-waiver or CIP-II).

Analysis Prepared by the Department of Health and Social Services

The 1995-97 Budget Act, 1995 Wisconsin Act 27, created ss.46.27(3)(f) and 46.277(3)(c), Stats., to require counties, beginning January 1, 1996, to limit the amount of spending for services received by persons who reside in community-based residential facilities (CBRFs) from the annual allocations received for the provision of long-term community support services to no more than 25% of each allocation for the calendar year. Act 27 also added provisions in ss.46.27 and 46.277, Stats., that prohibit counties from using funds from an allocation that exceed the maximum allowable to pay for services for a person who resides in a CBRF or intends to reside in a CBRF and is initially applying for services unless the Department grants an exception for the person on hardship grounds under conditions specified by rule.

Through this rulemaking order the Department is establishing conditions of hardship on the basis of which it will make exceptions to the limitations on spending for services for persons who reside in CBRFs from the annual allocations for community long-term support services.

The Department's authority to amend and create these rules is found in ss.46.27(2)(h)2 and 46.277(5r), Stats. The rules interpret ss.46.27(6r)(c) and 46.277(5)(d)3, Stats.

SECTION 1. HSS 73.01 is amended to read:

HSS 73.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss.46.27(2)(h)2 and (12), 46.277(5r) and 277.11(2)(a), Stats., to establish certain standards and procedures related to assessments, case plans, service agreements, participant payment of service providers and verification that services have been received for county administration of the community options program (COP) under s. 46.27, Stats., and county administration of home and community-based services waivers from medical assistance requirements that the department receives from the secretary of the U.S. department of health and human services under 42 USC 1396n (c), and to establish conditions of hardship under which the department may grant exceptions in individual cases to limits on spending by counties for care provided in CBRFs.

SECTION 2. HSS 73.03(3m) and (8m) are created to read:

HSS 73.03(3m) "CBRF" or "community-based residential facility" has the meaning specified in s. 50.01(1g), Stats.

(8m) "Initially applies for services" means applies for the first time for services in addition to an assessment or care plan under COP, the COP-waiver under s.46.27(11), Stats., or the community integration program under s.46.277, Stats., and has not previously received the services.

(17m) "Terminally ill" means a medical prognosis that an individual's life expectancy is less than 12 months.

SECTION 3. HSS 73.10 is created to read:

HSS 73.10 INDIVIDUAL HARDSHIP EXCEPTIONS TO LIMITS ON FUNDING FOR CBRF CARE. (1) **LIMITATION ON FUNDING.** Each county shall annually establish limits, not to exceed 25%, on spending for services for persons who reside in CBRFs from the allocations received under ss.46.27(7) and (11) and 46.277(5), Stats., for community long-term support services. A county department shall include those limits in the county plan for participation in COP under s.46.27(4)(c), Stats.

(2) **LIMITATION ON ELIGIBILITY.** If the projected cost of the services for an individual who is residing or intending to reside in a CBRF and initially applies for services to a county department would cause the county department to exceed a limit on spending for services provided to persons who reside in CBRFs under sub. (1), the individual is not eligible for those services using funds allocated under s. 46.27 or 46.277(5), Stats., unless the department grants a hardship exception under sub. (3) for the individual.

(3) **HARDSHIP EXCEPTION.** The department may grant an exception to a limitation under sub. (1) for funding of services to persons who reside in CBRFs if all of the following are met:

(a) **Application.** The county department files a request for an exception in accordance with instructions included in the community options program guidelines and procedures, following approval by the county long-term support planning committee under s.46.27(4), Stats.

(b) **Documentation of applicant preference.** The request is accompanied by documentation that the proposed living arrangement is the one preferred by the applicant for services after options have been fully discussed with that person.

(c) Hardship condition. The applicant for services has been diagnosed as terminally ill by a physician and hospice services can be provided to the applicant for services in the CBRF in which that person resides or intends to reside.

(d) Facility criteria. The CBRF in which the applicant for services resides or intends to reside meets all of the following criteria:

1. The CBRF is properly licensed to serve the applicant for services and either has a contract for services with the county requesting the exception or is willing to negotiate a contract for services with the county.

2. The CBRF is any of the following:

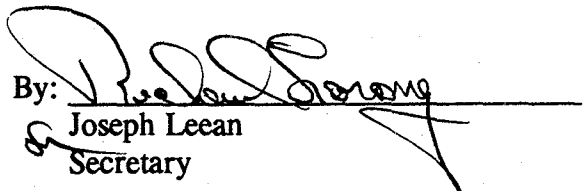
a. Licensed for 8 beds or less.

b. Licensed for more than 8 beds and approved by the department under s.46.27(7)(cm)1, Stats., for use of COP funds for the applicant for services.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: April 11, 1996

By: 
Joseph Leca
Secretary

SEAL: