

Highlights – Proposed changes CMS (HCBS) waivers under section 1915(c)

1. Target Groups

Provides States the option to combine the existing three waiver targeting groups into one waiver. (Aged or disabled, or both; mentally retarded or developmentally disabled, or both; and mentally ill.)

2. HCBS Settings

Defines home and community-based settings where waiver participants may receive services.

Propose that HCBS settings: must be integrated in the community; must not be located in a building that is also a publicly or privately operated facility that provides institutional treatment or custodial care; must not be located in a building on the grounds of, or immediately adjacent to, a public institution; or, must not be a housing complex designed expressly around an individual's diagnosis or disability, as determined by the Secretary.

In addition, we propose that the settings must not have qualities of an institution, as determined by the Secretary. Such qualities may include regimented meal and sleep times, limitations on visitors, lack of privacy and other attributes that limit individual's ability to engage freely in the community.

This proposed rule change does not exclude from home and community-based settings culturally appropriate settings on tribal lands when the individual is an Indian or resides on tribal lands where culturally acceptable group living arrangements are an integral aspect of the tribal community.

This proposed rule recognizes that persons who are older with and without disabilities may choose to live together in assisted living facilities and urged CMS to allow them to exercise this preference and receive waiver services. Similarly, some persons who are older may desire to live in retirement communities, such as continuing care retirement communities. As a result, in accordance with a person centered plan, we will allow such settings to be permissible under the section 1915(c) HCBS program for older persons under certain circumstances, which are noted below. For the purposes of this regulation, we note that Assisted Living Settings (ALS) for persons, who are older, without regard to disability, would not be excluded from home and community-based settings when the following conditions are met:

- Individual has a lease.
- Setting is an apartment with individual living, sleeping, bathing and cooking areas, and individuals can choose whether to share a living arrangement and with whom.
- Individuals have lockable access to and egress from their own apartments.
- Individuals are free to receive visitors and leave the setting at times and for durations of their own choosing.
- Aging in place, or allowing individuals to remain where they live as they age and/or support needs change, must be a common practice of the ALS.
- Leases may not reserve the right to assign apartments or change apartment assignments.

- Access to the greater community is easily facilitated based on the individual's needs and preferences.
- An individual's compliance with their person centered plan (in the event that the individual has shared his/her plan or the landlord is also the provider of services) is not in and of itself a condition of the lease.

Such settings are not segregated based on disability, either physically or because of setting characteristics, from the larger community.

3. Person-Centered Planning

Underpinning all aspects of successful HCBS is the importance of a complete and inclusive person-centered planning process that addresses health and long-term services and support needs in a manner that reflects individual preferences. To fully meet individual needs and ensure meaningful access to their surrounding community, systems that deliver HCBS must be based upon a strong foundation of person-centered planning and approaches to service delivery. The plan resulting from this process should reflect the individual strengths and preferences, as well as clinical and support needs (as identified through a person centered functional assessment). The plan should include individually identified goals, which may include goals and preferences related to relationships, community participation, employment, income and savings, health care and wellness, education, and others.

So what does this mean for Wisconsin Assisted Living Communities related to eligibility for waiver funds?

1. An RCAC, AFH or a CBRF could not be located on a campus, or on the grounds of, or attached to, or adjacent an entity providing institutional care (i.e. nursing home or hospital) unless it only serves elders, has all apartments and meets the bulleted requirements.
2. Depending on how "custodial care is defined, an RCAC, AFH or a CBRF could not be located on a campus, or on the grounds of, or attached to, or adjacent an entity providing custodial care (i.e. another AFH- licensed or certified, a CBRF, an RCAC) unless it only serves elders, has all apartments and meets the bulleted requirements.
3. Depending on how "segregated based on disability" is defined by CMS, a CBRF or an AFH may not be able to serve only certain client groups. This requirement may be in conflict with current DHS 83 and 88 administrative codes.
4. RCAC – DHS 89 meets most but not all the bulleted requirements.
5. Communities may need to go further than the administrative codes in care planning to bring in all the requirements of person-centered planning.