



Wisconsin Department of Health Services
Statewide Transition Plan
for Compliance with the Medicaid Home and Community-Based Setting
Requirements
of the Medicaid Home and Community-Based Services Final Regulation
(CMS 2249-F/2296-F)

Applicability: The Statewide Transition Plan laid out in this document applies to the Medicaid Home and Community-Based Services (HCBS) waivers under s. 1915(c) of the Social Security Act that provide the authority for the Community Options Program (COP) Waiver, the Community Integration Program (CIP), the Children’s Long Term Support (CLTS) waiver programs, the IRIS (Include, Respect, I Self-Direct) program, the Family Care program, and the Family Care Partnership program. Waiver-specific plans were submitted to the Centers for Medicare and Medicaid Services (CMS) for the COP Waiver, IRIS, and Family Care/Family Care Partnership. The CIP and CLTS programs will follow the statewide transition plan.

The Department of Health Services (DHS) intends to transition the Community Recovery Services (CRS) program currently operating under the 1915(i) authority to a 1905(a) State Plan authority effective January 1, 2015, pending CMS approval. The DHS has issued a public notice regarding this transition under the Wisconsin State Register published November 15, 2014. If CMS does not approve the transition of the CRS program from a 1915(i) to a 1905(a) State Plan service, then DHS agrees to follow the statewide transition plan for Medicaid HCBS as outlined in this plan.

Assessment of Compliance: Wisconsin will use a multi-phase process to assess compliance with the HCBS settings requirements. This approach includes:

- an assessment of all waiver settings for compliance with the rule;
- an assessment of the regulatory and policy framework for residential settings with regard to compliance with the rule;
- provider self-assessment;
- validation of the self-assessment response; and
- on-going monitoring and re-evaluation of settings.

Wisconsin DHS will use a comparable process for non-residential settings based upon the additional guidance provided by CMS.

Preliminary assessment of settings. The Wisconsin DHS conducted a preliminary assessment of existing HCBS settings for compliance with HCBS characteristics. Settings assessments were classified as:

- Yes - meets requirements,
- No - does not meet requirements, or
- Needs Provider Self-Assessment and Validation by the DHS.

The DHS considers any services provided in the waiver participant's own home, or family home, are home and community-based. Per the HCBS final rule, services provided in the following settings **are not** considered home and community-based:

- Nursing facility
- Institution for mental diseases
- Intermediate care facility for individuals with intellectual disabilities
- Hospital

All other settings will be assessed by the DHS through a multi-level process, using state staff and delegated entities as needed. The initial assessment of compliance with the HCBS settings requirements is focused on residential settings using the HCBS regulation and additional guidance provided to states by CMS. A similar assessment of non-residential HCBS settings will be implemented as a second phase of the process.

Assessment of regulations for residential settings. Wisconsin's initial review of residential settings is based on a cross-walk of current state regulations, standards and policies to the requirements articulated in the final federal rule. The DHS conducted a preliminary analysis of the current regulatory requirements and identified those that align with and meet specific requirements of the HCBS regulations and guidelines for residential settings. The analysis indicates that many of the requirements included in the federal rule are already incorporated in Wisconsin's policies that govern certain licensed or certified residential settings.

However, Wisconsin regulations do not specifically address every federal standard. Therefore, provider assessments are needed to determine whether requirements of the federal rule, that are not addressed through state regulations and policies, are met by individual providers.

Some of the standards, such as choice of setting, choice of roommate, and access to activities in the community are the responsibility of the entity providing care management or consultation, not the residential provider. This is true across all HCBS programs in Wisconsin. Monitoring of the quality of person-centered planning is an on-going process in all of these programs. The provider assessment does not cover the requirements that are the responsibility of the care management entity. The methods for ensuring person-centered planning are reflected in each of Wisconsin's approved HCBS waivers.

Provider self-assessment. Wisconsin will use a single standardized tool to conduct a provider self-assessment of all residential settings. Residential providers will need to respond to the

assessment for each location when the provider operates multiple sites. Providers will be required to provide documentation of the accuracy of their responses upon request of the DHS or the Waiver Agency¹.

The provider self-assessment tool drafted by DHS staff was based on the review of the requirements of the rule, model tools provided by CMS, and assessment tools developed by other states. The DHS released the draft tool using a public notice process and invited stakeholders to provide comments. Stakeholder comments will be compiled, reviewed and incorporated into the tool as determined necessary by the DHS.

The DHS will release the self-assessment tool to providers in both an on-line format and as a paper document. The DHS will use several methods to ensure that all covered providers have an opportunity to respond to the self-assessment. These include outreach using:

- Provider information from claims and encounter systems;
- Licensure records;
- Waiver Agency provider lists (managed care organizations, counties, IRIS Agencies); and
- Through notice on the DHS website.

Entities that do not currently provide waiver services may complete the self-assessment should the provider anticipate providing HCBS waiver services in the future. Providers must complete the self-assessment for each site that they operate, but will only need to complete the self-assessment once for a given site, even when they serve participants in more than one program in the setting. Provider responses will be compiled and evaluated by DHS staff, or other assessment entities.

Validation of self-assessment. Waiver Agencies and the DHS will validate compliance through a site visit with a stratified representative sample of the settings that respond to the provider self-assessment. Any current waiver provider that fails to submit a self-assessment will receive a site visit as part of the validation process, unless the provider indicates that it does not intend to continue to provide services to HCBS waiver program participants.

The DHS will develop a structured protocol for validation of the provider self-assessment that includes the review of supporting documents provided by the provider and interviews with people residing in the setting being assessed. Personnel from Waiver Agencies will validate self-assessment data for a stratified representative sample of settings. The DHS will validate a stratified representative sample of settings validated by Waiver Agencies. A site will only be subject to validation by one Waiver Agency even if they serve people from more than one

¹ Waiver Agencies are the entities that operate waiver programs locally. These vary by waiver program and include county agencies, managed care organizations and other contracted agencies.

program. The DHS will compile a list of providers that document, through self-assessment and/or validation by the Waiver Agency and/or State, that they comply with the regulations for HCBS settings and share the information with Waiver Agencies.

On-going assessment of settings. Licensed and certified settings are subject to periodic compliance site-visits by the state licensing authority, or by the entity that certified the provider. Licensing and certification standards are enforced during those visits. Sites found to have deficiencies are required to implement corrective actions and can lose their license or certification when non-compliance continues or is egregious.

Waiver Agencies operating Wisconsin's HCBS waiver programs are charged with the continuous evaluation of settings as they fulfill their care management responsibilities. New providers and settings will be subject to an assessment of compliance with the HCBS waiver settings requirements.

Remedial Actions: For settings that do not currently meet the HCBS waiver settings standards, Wisconsin DHS will conduct remediation activities at the state and provider level. The DHS does not anticipate a change in standards for licensed settings and the standards for the certification of Adult Family Homes serving one or two people since these providers also serve people who do not receive Medicaid HCBS. All HCBS waivers and accompanying program guidance will be reviewed and revised to reflect the new standards in the service descriptions and provider standards. The DHS will review all program authorities such as statutes and administrative code for compliance, as well as contracts and other guidance provided to Waiver Agencies. Participant handbooks and other materials will also be reviewed and revised as needed.

At the individual setting level, the DHS and Waiver Agencies will provide information on the HCBS waiver settings requirements to all providers and guidance, as feasible, to entities that want to revise their practices to comply with the regulation. Assistance may also be available to providers from provider associations and advocacy organizations. Compliance will be re-assessed upon request of the provider and validated through a site visit.

Description of heightened scrutiny process: The DHS anticipates that some settings that are presumed not to be home and community-based per the regulation, may be able to document to the DHS that they meet the requirements of the regulation. These include:

- Settings in a publicly or privately-owned facility providing inpatient treatment;
- Settings on grounds of, or adjacent to, a public institution; and
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS waiver services.

Determinations on such settings will be made on a case-by-case basis. Any setting that meets the above definition will be invited to complete the provider self-assessment to begin the process to justify that the provider's setting does not have the characteristics of an institution and therefore meets the HCBS waiver setting requirements. The DHS will conduct a site visit for each such setting using the same protocols that will be used for other providers. The determination of the DHS will be provided to CMS along with evidence supporting the determination. Settings will be subject to periodic reviews of continuing compliance.

Plan to relocate participants: The DHS will only relocate HCBS waiver program participants after all attempts to assist providers to become compliant with the settings requirement have been exhausted, or the provider has declined to make changes to come into compliance. The DHS anticipates completing its assessment and remediation activities in a timely manner to allow people sufficient opportunity to choose a new setting and relocate before the CMS deadline for full statewide compliance. Care managers and inter-disciplinary teams will work with each person affected to provide a choice of compliant settings.

People who will be affected will receive a notice that they will need to select a new setting. The notice will be provided as soon as the Waiver Agency is aware that the setting has not successfully met the HCBS waiver requirements. The notice will indicate that the setting does not comply with the rule and will describe the person's right to due process. The Waiver Agency will begin the person-centered planning process to identify other options in compliant settings.

The DHS does not currently have an estimate of the number of people who will be impacted by compliance with the HCBS waiver rule and will make every effort to minimize the impact.

Timeframe and Milestones: The DHS established timeframes with the following priorities:

- to minimize avoidable member transitions;
- maximize the amount of time for providers to come into compliance;
- provide enough time for the DHS and Waiver Agencies to diligently carry out on-site provider assessments; and
- provide enough time for any necessary participant transitions so the changes happen in a planned, person-centered manner allowing for due process for each affected participant.

The Family Care, IRIS and COP Waiver programs have submitted detailed waiver specific transition plans to CMS. The plans differ on some interim steps and timelines. The following timeline encompasses that program variation. All HCBS settings must be compliant by March 17, 2019.

Milestone	Target Start Date	Target End Date
Preliminary Assessment of Services and Residential Settings - includes time for public comment		March 31, 2015
Development of Residential Provider Assessment Tool		January 30, 2015
Development of Non-Residential Provider Assessment tool		April 1, 2015
Residential Provider Self Assessment	February 2015	December 31, 2015
Non-Residential Provider Self Assessment	May 2015	November 2015
Provider Self Assessment Validation	May 2015	June 2016
Release results of Provider Self Assessment Process		July 15, 2016
Provider Remediation Plans Submitted	June 2016	August 2016
Validation of Provider Remediation	As providers implement plans - no later than June 2017	December 31, 2017
Participant Transition	As soon as Waiver Agencies are aware that provider will not comply - no later than September 30, 2018	September 30 2018
Full Compliance Achieved		March 17, 2019

Public Comment: DHS posted the Statewide Transition Plan on its public internet site on November 26, 2014. A review and comment period was open from that date through December 29, 2014. Notification of the posting was sent by e-mail to an extensive list of stakeholders on November 26, 2014. A notice regarding the plan posting and comment period was published in sixteen major state newspapers between November 28 and December 2, 2014 and again on December 12, 2014. Interested parties could submit comments in writing via e-mail or regular mail.

DHS received 227 responses to the request for comments on the Statewide Transition Plan. The majority of the comments came by mail (almost 72%). The remainder were received by e-mail. Public comments and the DHS response follow.

Comment: Maintain a full array of employment and services options.

DHS Response: The Statewide Transition Plan proposes an assessment process that evaluates each setting consistent with the federal regulations and CMS guidance.

Comment: Ensure continued access to and choice of community-based services and supports.

DHS Response: All of Wisconsin home and community-based waivers include person-centered planning processes that provide for choice of waiver-covered services and supports.

Comment: Do not implement the Transition Plan until CMS guidance on non-residential settings is received.

DHS Response: The CMS guidance was published on December 15, 2014. The DHS will use that guidance as it develops the provider self-assessment tool for non-residential settings.

Comment: Hold town hall meetings to discuss the transition plan.

DHS Response: The DHS provided multiple opportunities for stakeholder input, including the Long Term Care Advisory Council and provided opportunities for public comment on the HCBS waiver-specific transition plans and the Statewide Transition Plan. The DHS transition plan includes continued stakeholder input on the preliminary assessment of HCBS waiver service settings and the preliminary provider self-assessment tool.

Comment: The SMA should hire an independent quality reviewer to assess settings and conduct ongoing monitoring and enforcement processes.

DHS Response: The Statewide Transition Plan lays out a three-step process that includes provider self-assessment, Waiver Agency validation and State Medicaid Agency (SMA)/centralized validation. The DHS, as the SMA, is responsible for ensuring that the Medicaid HCBS waivers are compliant with all federal regulations. As such, the SMA retains direct responsibility for HCBS waiver operations and implementing assessments to comply with the HCBS settings rule.

Comment: The Department should consider an independent reviewer to validate compliance with the rule.

DHS Response: The Statewide Transition Plan lays out a three-step process that includes provider self-assessment, Waiver Agency validation and SMA/centralized validation. The SMA is responsible for ensuring that the Medicaid HCBS waivers are compliant with all federal regulations. As such, the SMA retains direct responsibility for HCBS waiver operations and implementing assessments to comply with the HCBS settings rule.

Comment: Create a Stakeholder Implementation Taskforce to oversee and advise on the transition process.

DHS Response: The DHS provided multiple opportunities for stakeholder input, including the Long Term Care Advisory Council and provided opportunities for public comment on the HCBS waiver-specific transition plans and the Statewide Transition Plan. The DHS transition plan includes continued stakeholder input on the preliminary assessment of HCBS waiver service settings and the preliminary provider self-assessment tool.

Comment: Involve people with disabilities in the plan and in the development of materials related to the plan.

DHS Response: The DHS provided multiple opportunities for stakeholder input, including the Long Term Care Advisory Council and provided opportunities for public comment on the HCBS waiver-specific transition plans and the Statewide Transition Plan. The DHS transition plan includes continued stakeholder input on the preliminary assessment of HCBS waiver service settings and the preliminary provider self-assessment tool.

Comment: The SMA should lead a public education campaign on the HCBS rule and transition process for participants, stakeholders, providers, and others.

DHS Response: As the transition process is implemented, the DHS will have opportunities to provide information and education to various stakeholders.

Comment: The draft plan should be updated to reflect the CMS guidance on non-residential settings that was not available when the plan was posted for review and comment. DHS should have a process for sharing amended plans with the public.

DHS Response: The draft plan does not address the specific factors that will be considered in the self-assessment and validation process for residential or non-residential HCBS settings. The overall process of provider self-assessment and validation will apply in both types of HCBS settings. The CMS guidance will be taken into account during the development of the non-residential self-assessment tool as it was done for the residential assessment tool.