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| **DEPARTMENT OF HEALTH SERVICES**  Division of Medicaid Services  F-02383A (05/2024) | |  | | | **STATE OF WISCONSIN** | | |
| **EVIDENTIARY ASSESSMENT AND SUMMARY**  **Home and Community-Based Services (HCBS) Settings Rule**  **Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)** | | | | | | | |
| Facility Name | | |  | | | | |
| Facility Name | | |  | | | | |
| License/Certification Number | | | Facility Type | | | | |
|  | | | Choose an item. | | | | |
| Facility Address | | City | | | County | ZIP Code | |
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| **Reason for Institutional Presumption** | | | | | | | |
| Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Click or tap here to enter text.  Settings on the grounds of, or adjacent to, a public institution. Name of institution: Click or tap here to enter text.  Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services. | | | | | | | |

The Centers for Medicare and Medicaid Services’ (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If a Wisconsin assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Medicaid Services (DMS) conducts a heightened scrutiny review.

DMS believes that Facility Name has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below.

To reinforce the extent to which Wisconsin’s licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

**Facility Summary**Enter Facility Summary

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| **The setting is integrated in and supports full access to the greater community** [42 CFR § 441.301(c)(4)(i)]. | |
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| Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting. | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| Person-Centered Planning: The plan must be based on an assessment that addresses the person’s “capacity for self-direction, including the ability to make decisions, to act independently and to make wants or needs known” and “social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts and vocational needs” (summarized from [Wis. Admin. Code § DHS 83.35](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83/VII/35/5)).  Program Services: Community activities. The CBRF shall provide information and assistance to facilitate participation in personal and community activities. The CBRF shall develop, update and make available to all residents, monthly schedules and notices of community activities, including costs ([Wis. Admin. Code § DHS 83.38(1)(d))](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83/VII/38/).  Family and social contacts: The CBRF shall encourage and assist residents in maintaining family and social contacts (Wis. Admin. Code § DHS 83.38(1)(e)). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Activities are individualized or include more than just setting-based group activities. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| The setting supports access to community activities through its own transportation or coordination of transportation options. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| **Compliance within Wisconsin State Standards and Regulations** | |
| Person-Centered Planning:  The plan must be based on an assessment that addresses the person’s “capacity for self-direction, including the ability to make decisions, to act independently and to make wants or needs known” and “social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts and vocational needs,” ([WI Statewide Transition Plan](https://www.dhs.wisconsin.gov/publications/p01839.pdf); summarized from [Wis. Admin. Code § DHS 83.35](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83)).  From contract between DHS and specific MCOs:  V. Care Management:  C. Assessment and Member-Centered Planning Process  C.1. Comprehensive Assessment  C.1.(c) Documentation: The comprehensive assessment will include documentation by the IDT staff of:  C.1.(c)(viii) An exploration with the member of the member’s preferences and opportunities for community integration including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community.  C.3. Member-Centered Planning  C.3.(c)(iv)(g) The setting in which the member resides supports integration into the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community.  VII. Services  A. General Provisions  1. Comprehensive Service Delivery System  c. Serve to maintain community connections, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, and that are cost effective.  Addendum I  It is the DHS’s “expectation under this contract that benefits will be fully integrated and will afford options that foster opportunities for interaction and integration into the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community while supporting each member’s individual outcomes and recognizing each member’s preferences.” | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individuals are able to control their personal resources. | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| Every resident in a community-based residential facility has the right to “manage the resident’s own financial affairs, unless the resident delegates, in writing, such responsibility to the facility and the facility accepts the responsibility or unless the resident delegates to someone else of the resident’s choosing and that person accepts the responsibility,” (Statewide Transition Plan; [Wis. Stat. § 50.09](https://docs.legis.wisconsin.gov/statutes/statutes/50/i/09)). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential facility. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and resources available for room and board [42 CFR § 441.301(c)(4)(ii)]. | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| Wisconsin has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are responsible for discussing choice of service settings with the waiver participant and family/guardian to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. In practice, the waiver agencies are complying with this requirement, and documenting and monitoring the choice of settings in the member-centered plan or IRIS support and service plan, as applicable.  In Wisconsin, the choice of setting requirement is not the initial responsibility of the provider setting. Rather the choice of setting takes place through the person-centered planning process at the waiver agency level. Waiver agencies are certified by DHS and work within the requirements of contracts with DHS. Through ongoing monitoring, Wisconsin will ensure that individuals maintain the right to choose where they reside.  Additionally, Wisconsin has protections in place through *Pre-Admission Consultation (PAC)*: <https://www.dhs.wisconsin.gov/adrc/pros/pac.htm>.  “Pre-admission consultation is a service provided by Aging and Disability Resource Centers (ADRCs) to individuals who are in the process of considering or making a decision about the need to move out of his or her home in order to receive the help they need to remain independent and safe. Sometimes people are unaware that there are services and supports that can be provided right in their own home, often making a move unnecessary. Those who want to move into a nursing home or assisted living facility (such as a community based residential facility or residential care apartment complex), can find it difficult to know which facility would be the best for them or a loved one.” | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
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| The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS [42 CFR § 441.301(c)(4)(v)]. | |
| **Compliance Within State Standards** | |
| Before or at the time of admission, the CBRF shall provide written information regarding services available and the charges for those services to each resident or the resident’s legal representative. This information shall include any charges for services not covered by the daily or monthly rate (Statewide Transition Plan; summarized from [Wis. Admin. Code § DHS 83.29](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83/v/29)).  **Person-Centered Planning**   * “Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs,”   (WI Statewide Transition Plan; summarized from Wis. HCBS waivers, waiver-specific contracts, and policy documents).   * Residents have the right to “use the licensed, certified or registered provider of health care and pharmacist of the resident’s choice,” ([Wis. Stat. § 50.09](https://docs.legis.wisconsin.gov/statutes/statutes/50/i/09)). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Thesetting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact [42 CFR § 441.301(c)(4)(iv)]. | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| Rights: Licensees must protect the civil rights of residents. Residents have the right to make decision relating to care, activities, daily routines, and other aspects of life that enhance the resident’s self-reliance and support the resident’s autonomy and decision-making. (Statewide Transition Plan; summarized from [Wis. Admin. Code § DHS 83.32](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83/VI/32)).  Person-Centered Planning: The plan must be based on an assessment that addresses the person’s capacity for self-direction, including the ability to make decisions, to act independently and to make wants or needs known, and social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts, and vocational needs. (Statewide Transition Plan; summarized from [Wis. Admin. Code § DHS 83.35](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83/VII/35/5)).  “The CBRF shall teach residents the necessary skills to achieve and maintain the resident’s highest level of functioning.” The CBRF shall provide or arrange services adequate to meet the needs of the residents including providing leisure time activities, facilitating participation in community activities, and encouraging and assisting residents in maintaining family and social contacts. (Statewide Transition Plan; summarized from [Wis. Admin. Code § DHS 83.38](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83/vii/38)).  Rights: Residents have the right to make decisions relating to care, activities, daily routines, and other aspects of life that enhance the resident’s self-reliance and support the resident’s autonomy and decision making, and have the least restrictive conditions necessary to achieve the purposes of the resident’s admission. The CBRF may not impose a curfew, rule, or other restriction on a resident’s freedom of choice. (Statewide Transition Plan; summarized from Wis. Admin. Code § DHS 83.32). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)] | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| Person-Centered Planning**:** The plan must be based on an assessment that addresses the person’s “capacity for self-direction, including the ability to make decisions, to act independently and to make wants or needs known” and “social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts and vocational needs,” (Statewide Transition Plan, pg. 72; summarized from Wis. Admin. Code § DHS 83.35) Rights: Licensees must protect the civil rights of residents. Residents have the right to make decision relating to care, activities, daily routines, and other aspects of life that enhance the resident’s self-reliance and support the resident’s autonomy and decision-making (summarized from Wis. Admin. Code § DHS 83.32). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| The setting ensures an individual’s rights of privacy, dignity and respect, and freedom form coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]. | |
| **Compliance within State Standards** | |
| Rights: Residents have the right to be “treated with courtesy, respect and dignity by all employees of the facility and other providers of health care and pharmacists with whom the resident comes in contact” ([Statewide Transition Plan](https://www.dhs.wisconsin.gov/publications/p01839.pdf), pg. 72; summarized from [Wis. Stat. § 50.09](https://docs.legis.wisconsin.gov/statutes/statutes/50/I/09)).  Residents must be provided with “physical and emotional privacy in treatment, living arrangements, and in caring for personal needs” including, privacy for visits by spouse or domestic partner, or to share a room with a spouse or domestic partner if both are residents for the same facility; privacy concerning health care; confidentiality of health and personal records; and the right to approve or refuse their release to any individual outside the facility (Statewide Transition Plan, pg. 72; summarized from Wis. Stat. § 50.09).  “Any form of coercion to discourage or prevent a resident or the resident’s legal representative from exercising any of the rights under this subchapter is prohibited. Any form of retaliation against a resident or the resident’s legal representative for exercising any of the rights in this subchapter, or against an employee or any other person who assists a resident or the resident’s legal representative in the exercise of any of the resident rights in this subchapter, is prohibited,” (Statewide Transition Plan, pg. 72; Wis. [Admin. Code § DHS 83.32](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83.pdf)).  In addition, each resident shall have all of the following rights: freedom from mistreatment; freedom from seclusion; freedom from chemical restraint; and freedom from physical restraints, except upon prior review and approval by DHS upon written authorization from the resident’s primary physician or advanced practice nurse prescriber. DHS may place conditions on the use of a restraint to protect the health, safety, welfare, and rights of the resident (Statewide Transition Plan; summarized from Wis. Admin. Code § DHS 83.32). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)] | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| Rights:Residents have the right to private and unrestricted communications with their family, physician or other medical provider, attorney, and any other person, unless documented as medically contraindicated. The right to private and unrestricted communications includes the right to reasonable access to a telephone for private communications; and the opportunity for private visits (WI Statewide Transition Plan; summarized from Wis. Stat. § 50.09). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individuals have access to food at any time. | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| The CBRF must provide each resident with palatable food that meets the recommended dietary allowance based on current guidelines, including at least three meals a day and a snack in the evening, or more often based on the resident’s dietary needs. If a resident is away during meal time, the CBRF shall offer food to the resident on the resident’s return. The CBRF shall make reasonable adjustments to the menu for individual resident likes, habits, customs, condition, and appetites (summarized from Wis. Admin. Code § DHS 83.41). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services:   * The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. * The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law [42 CFR § 441.301(c)(4)(vi)(A)]. | |
| **Compliance within Wisconsin State Standards and Regulations** | |
| “Each resident shall have a written agreement that is signed by and provided to each party. The agreement includes a description of the space to be provided to the resident, the agreed upon rate, a statement of the resident’s rights and the terms of termination, including timeframes. The agreement is updated annually.” ([WI Statewide Transition Plan](https://www.dhs.wisconsin.gov/publications/p01839.pdf), pg. 77; [Wis. Admin. Code § DHS 83.29](https://docs.legis.wisconsin.gov/code/register/2008/635b/insert/dhs83)).  The agreement must include terms for resident notification to the CBRF of voluntary discharge, and reasons and notice requirements for involuntary discharge or transfer, including transfers within the CBRF (summarized from [Wis. Admin. Code § DHS 83.31](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83/v/31)). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| **Overcoming Institutional Presumption** | |
| The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Each individual has privacy in their sleeping or living unit. [42 CFR § 441.301(c)(4)(vi)(B)] | |
| **Compliance within Wisconsin State Standards and Regulations** | |
| Residents must be provided with “physical and emotional privacy in treatment, living arrangements, and in caring for personal needs” including, privacy for visits by spouse or domestic partner, or to share a room with a spouse or domestic partner if both are residents for the same facility; privacy concerning health care; confidentiality of health and personal records; and the right to approve or refuse their release to any individual outside the facility. (Statewide Transition Plan; summarized from Wis. Stat. § 50.09).  Requirements of initial and ongoing licensure in Wisconsin includes verification by DHS Division of Quality Assurance surveyors that the setting (DQA, [F-02138](https://www.dhs.wisconsin.gov/forms/f02138.pdf), HCBS Compliance Review):   * Provides lockable key entry doors on all resident rooms, and individual keys to all residents. * Has a policy ensuring that staff uses facility keys to enter a resident’s room only under circumstances agreed upon with the resident. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. [42 CFR § 441.301(c)(4)(vi)(B)(1)] | |
| **Compliance Within Wisconsin State Standards** | |
| Locks on living unit doors allow the resident to exercise his or her right to privacy and personal choice. Staff in each residential setting should always knock and receive permission prior to entering a resident’s living space. DHS expects the residential setting to have a policy ion place to ensure that staff always knock and receive permission prior to entering a resident’s room or personal living space to respect residents’ rights to privacy. Please refer to DHS’ [Frequently Asked Questions (FAQs) about Door Locks in Adult Long-Term Care Residential Settings](https://www.dhs.wisconsin.gov/publications/p01817.pdf) for additional lock-related information. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individuals sharing units have a choice of roommates in that setting [42 CFR § 441.301(c)(4)(vi)(B)(2)]. | |
| **Compliance Within Wisconsin State Standards and Regulations** | |
| Requirements of initial and ongoing licensure in Wisconsin includes verification by DHS Division of Quality Assurance surveyors that residents have choice of roommates (DQA, [F-02138](https://www.dhs.wisconsin.gov/forms/f02138.pdf), HCBS Compliance Review):  **Person-Centered Planning:** Family Care Provider Network, I. Access to Providers: “For residential care facilities, evidence of adequate capacity shall include identification of the availability of residential providers offering private rooms, and a process for moving an individual to a private room when one becomes available that is consistent with the member’s preferences,” ([DHS-MCO Contract, Article VIII, I(6)d](https://www.dhs.wisconsin.gov/familycare/mcos/2018-generic-final.pdf)). | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement [42 CFR § 441.301(c)(4)(vi)(B)(3)]. | |
| **Compliance Within State Standards** | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |

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| The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)] |
| **Compliance Within State Standards** |
| Met  Unmet  Not Applicable  Enter Evidence Here |

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| [HCBS Settings Rule Modifications] must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: [42 CFR § 441.301(c)(4)(vi)(F)]  (1) Identify a specific and individualized assessed need.  (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.  (3) Document less intrusive methods of meeting the need that have been tried but did not work.  (4) Include a clear description of the condition that is directly proportionate to the specific assessed need.  (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.  (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.  (7) Include the informed consent of the individual.  (8) Include an assurance that interventions and supports will cause no harm to the individual | |
| **Wisconsin Benchmark:**  Individuals requiring a HCBS Setting Rule Modification have the required documentation criteria in their Member Centered Plan  If a resident needs an HCBS Settings Rule Modification (i.e., individualized change in the requirement):   * the setting must work with the Medicaid Managed Care Organization (MCO) before implementing the modification, * the modification must be documented in the resident’s Medicaid Member Centered Plan in accordance with 1-8 above, and * the modification must be based on the resident’s individualized, assessed need.     The only HCBS Settings Rule Requirements that may have an individualized HCBS Settings Rule Modification are:   * Each individual has privacy in their sleeping or living unit. * Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. * Individuals sharing units have a choice of roommates in that setting. * Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. * Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. * Individuals are able to have visitors of their choosing at any time. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| **Operational Distinction** | |
| There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning. | |
| Met  Unmet  Not Applicable  Enter Evidence Here | |
| **DHS Recommendation** | | |
| DHS finds that Facility Name possesses the required home and community–based characteristics and overcomes the presumption of having institutional qualities. | | |
| Enter text | | |

Please note that these findings are preliminary only and must receive final approval from CMS.