|  |  |  |
| --- | --- | --- |
| **DEPARTMENT OF HEALTH SERVICES**Division of Medicaid ServicesF-02383B (05/2024) |  | **STATE OF WISCONSIN** |
| **EVIDENTIARY ASSESSMENT AND SUMMARY****Home and Community-Based Services (HCBS) Settings Rule****Heightened Scrutiny Review – Residential Care Apartment Complex (RCAC)** |
| Facility Name |  |
|  |
| License/Certification Number  | Facility TypeChoose an item. |
| Facility Address  | City | County | ZIP Code |
|  |  |  |  |
| **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 Enter 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

|  |
| --- |
| **The setting is integrated in and supports full access to the greater community** [42 CFR § 441.301(c)(4)(i)]. |
| 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** |
| **From** [contract between SMA and specific MCO](https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2020-generic-final.pdf)s:**ADDENDUM VI.** **Personal Experience Outcomes in Long-Term Care:**Assisting people to achieve their desired individual quality-of-life outcomes is one of the primary goals of managed long-term care. The following personal experience outcome domains are the areas of life that people in long-term care programs have identified as being important to their quality of life. They provide a framework for learning about and understanding the individual’s needs, values, preferences, and priorities in the assessment and care planning process and in monitoring the quality of our long-term care programs. It is expected that each of these domains will be assessed during the member-centered planning process.Choice – choosing:* Where and with whom to live
* Supports and services
* Daily routines

Personal Experience – having:* Interaction with family and friends
* Work or other meaningful activities
* Community involvement
* Stability
* Respect and fairness
* Privacy

Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any conditions that are to be applied to the conditions defined in the HCBS settings rule, (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents). |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Activities are individualized or include more than just setting-based group activities. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The setting supports access to community activities through its own transportation or coordination of transportation options. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
|  |
| **Compliance Within Wisconsin State Standards and Regulations** |
| Person-Centered Planning:Each tenant will have a service agreement based on an assessment conducted with the active participation of the tenant. The service agreement includes the type, amount, and frequency of any services to be provided to the tenant, any additional services that are available, and the activities and social connections the tenant will be assisted with maintaining, summarized from [Wis. Admin. Code § DHS 89.27(2)(a)](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/ii/27).From contract between DHS and specific MCOs:V. Care Management:C. Assessment and Member-Centered Planning ProcessC.1. Comprehensive AssessmentC.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 ApplicableEnter Evidence Here |
| Individuals are able to control their personal resources. |
| **Compliance Within Wisconsin State Standards and Regulations** |
| Each tenant has the right to manage his or her own financial affairs, unless the tenant delegates responsibility to another person or the tenant has a guardian, summarized from [Wis. Admin. Code § DHS 89.34](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/iii/34)) From [contract between SMA and specific MCO](https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2020-generic-final.pdf):V. Care Management: C. Assessment and Member-Centered Planning Process C.1. Comprehensive Assessment C.1.(c) The comprehensive assessment will include documentation by the interdisciplinary (IDT) staff of all of the following:(ix) An exploration with the member of the member’s preferences and opportunities for community integration including opportunities to control personal resources.  C.3. Member-Centered Plan (MCP) C.3.(c)(iv) The MCP shall document at least the following:(g) The setting in which the member resides supports integration into the greater community, including opportunities to control personal resources.  |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| **Choice, Independence, and Person-Centered Planning** |
| 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 setting. 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.”From [contract between SMA and specific MCO](https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2020-generic-final.pdf)s**:**V. Care Management: A. Member Participation: A.2. Members shall receive clear explanations of:  d. The full range of residential options, including in-home care, residential care and nursing home care when applicable.  e. The benefits, drawbacks and likelihood of success of each option. C.1. Comprehensive Assessment  C.1. (ix) – An exploration with the member of the member’s preferred living situation and a risk assessment for the stability of housing and finances to sustain housing as indicated. C.3. Member-Centered Plan (MCP) C.3.(c)(iv) The MCP shall document at least the following: (f) – The home and community-based residential setting option chosen by the member and other options presented to the member unless the member declines to consider other options.ADDENDUM VI. Personal Experience Outcomes in Long-Term Care:Assisting people to achieve their desired individual quality-of-life outcomes is one of the primary goals of managed long-term care. The following personal experience outcome domains are the areas of life that people in long-term care programs have identified as being important to their quality of life. They provide a framework for learning about and understanding the individual’s needs, values, preferences, and priorities in the assessment and care planning process and in monitoring the quality of our long-term care programs. It is expected that each of these domains will be assessed during the member-centered planning process.Choice – choosing: * Where and with whom to live
* Supports and services

[50.034](http://docs.legis.wisconsin.gov/document/statutes/50.034), **Stats****WI State Statue 50.034 Residential care apartment complexes.**5n) Required referral. Subject to sub. [(5p)](http://docs.legis.wisconsin.gov/document/statutes/50.034%285p%29), when a residential care apartment complex first provides written material regarding the residential care apartment complex to a prospective resident who is at least 65 years of age or has developmental disability or a physical disability and whose disability or condition is expected to last at least 90 days, the residential care apartment complex shall refer the prospective resident to a resource center under s. [46.283](http://docs.legis.wisconsin.gov/document/statutes/46.283), unless any of the following applies:* [50.034(5n)(c)](http://docs.legis.wisconsin.gov/document/statutes/50.034%285n%29%28c%29)The person is an enrollee of a care management organization.

**Person-Centered Planning**: Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs ([Statewide Transition Plan](https://www.dhs.wisconsin.gov/publications/p01839.pdf), pg. 85; Wisconsin HCBS waivers, waiver-specific contracts, and policy documents).  |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| 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** |
| **From Contract Between SMA and Each MCO:**VIII. Provider Network, A. Member Choice1. Information to Members: The MCO shall inform members about the full range of provider choice available to them, including free choice of medical and other providers that remain fee-for-service for Family Care members, as applicable.

From [IRIS Policy Manual](https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf) 1.1C Philosophy Self-direction means people have more choice, control, flexibility, freedom, and responsibility. Within the context of IRIS, self-direction means participants decide upon the following:* The goods, supports, and services needed to help live the life he or she wants while meeting his or her long-term care outcomes.
* The amount and location that goods, supports, and services are provided, as well as decisions on the provider of these services.

Person-Centered Planning: * Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs, (Statewide Transition Plan, pg. 87; Summarized from Wis. HCBS waivers, waiver-specific contracts, and policy documents).
* Residents have the right to “receive adequate and appropriate care within the capacity of the facility” and 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/1999/statutes/statutes/50/I/09)).

Rights: * The tenant has the right to choose services and the right to refuse services (WI Statewide Transition Plan, pg. 84; Summarized from Wis. Admin. Code § DHS 89.34).
* Each tenant has the right to: have choice of his or her physician and other medical providers; and a choice of providers of supportive, personal, and nursing services from providers other than the residential care apartment complex, subject to the requirements of [Wis. Admin. Code § DHS 89.24(2)(b](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89.pdf)), (WI Statewide Transition Plan, pg. 85; Summarized from Wis. Admin. Code § [DHS 89.34](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/III/34)).
 |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter 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** |
| Wisconsin Admin. Code ch. DHS 89 is intended “to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities. This chapter is intended to ensure that all residential care apartment complexes provide each tenant with an independent apartment in a setting that is home-like and residential in character; make available personal, supportive and nursing services that are appropriate to the needs, abilities and preferences of individual tenants; and operate in a manner that protects tenants' rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making including the right to accept risk,” ([Wis. Admin. Code § DHS 89.11](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/i/11)).Each tenant will have a service agreement based on an assessment conducted with the active participation of the tenant. The service agreement includes the type, amount, and frequency of any services to be provided to the tenant, any additional services that are available, and the activities and social connections the tenant will be assisted in maintaining, (summarized from [Wis. Admin. Code §§ DHS 89.26 and 89.27](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/II/27)).The tenant has the right to choose services and the right to refuse services. The tenant has the right to receive visitors, meet with groups or participate in activities of the tenant’s choice, to receive and send sealed mail, and to have a private phone installed in his or her independent apartment, (summarized from [Wis. Admin. Code § DHS 89.34](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/iii/34)) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter 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** |
| Wisconsin Admin. Code ch. DHS 89 is intended “to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities. This chapter is intended to ensure that all residential care apartment complexes provide each tenant with an independent apartment in a setting that is home-like and residential in character; make available personal, supportive and nursing services that are appropriate to the needs, abilities and preferences of individual tenants; and operate in a manner that protects tenants' rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making including the right to accept risk,” ([Wis. Admin. Code § DHS 89.11](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/i/11)). |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter 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** |
| Enter Facility Name is a residential care apartment complex (RCAC). RCACs are independent apartments that offer additional services, if needed. The services provided to tenants are based on the tenant’s selection from a menu of services and supports, both in the setting and in the community. A tenant may choose to do most activities independently or have more comprehensive assistance.State-regulated settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits. In addition, when HCBS participants are resident in the setting, waiver program care managers are required to have ongoing contact, including face-to-face visits, at which time any member rights issues would be identified and addressed.Rights:A tenant has the right “to have privacy in his or her independent apartment and when receiving supportive, personal or nursing services.” The tenant has the right “to be free from physical, sexual or emotional abuse, neglect or financial exploitation or misappropriation of property by the facility, its staff or any service provider under contract with the facility” and has the right to be free from coercion, (Statewide Transition Plan, pgs. 85-86; Summarized from Wis. Admin. Code §§ DHS [89.34 and 89.36](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89.pdf)).DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at: [www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf](http://www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf) and [www.dhs.wisconsin.gov/dqa/memos/15-003.pdf](http://www.dhs.wisconsin.gov/dqa/memos/15-003.pdf) (WI Statewide Transition Plan) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter 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** |
| “Each independent apartment shall be of adequate size and configuration to permit tenants to carry out, with or without assistance, all the functions necessary for independent living, including… entertaining visitors.” (WI Statewide Transition Plan; [Wis. Admin. Code § DHS 89.22](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/II/22))The tenant has the right to receive visitors, meet with groups, or participate in activities of the tenant’s choice, to receive and send sealed mail, and to have a private phone installed in his or her independent apartment, (WI Statewide Transition Plan; Summarized from [Wis. Admin. Code § DHS 89.34](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/III/34)). |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals have access to food at any time. |
| **Compliance Within Wisconsin State Standards and Regulations** |
| A “’Residential care apartment complex’ consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas” ([Wis. Admin. Code § DHS 89.13](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/I/13/1))Each independent apartment shall have a kitchen that is “a visually and functionally distinct area within the apartment. The refrigerator shall have a freezer compartment. The sink shall have hot and cold running water.” (Wis. Admin. Code § DHS 89.22) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter 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 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 laws. [42 CFR § 441.301(c)(4)(vi)(A)]. |
| **Compliance Within Wisconsin State Standards and Regulations** |
| A residential care apartment complex shall enter into a mutually agreed-upon written service agreement with each of its tenants. The agreement shall include the services and the charges for any services in the service agreement and any additional services that are available for purchase. The agreement must also include the grounds for any termination of the agreement, (WI Statewide Transition Plan, pg. 88; Summarized from Wis. Admin. Code § [DHS 89.27](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/II/27)). |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter 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 ApplicableEnter 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** |
| A “residential care apartment ‘complex’ or ‘facility’… consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas…” ([Wis. Admin. Code § DHS 89.13](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/I/13/1))A tenant has the right “to have privacy in his or her independent apartment and when receiving supportive, personal or nursing services.” The tenant has the right “to be free from physical, sexual or emotional abuse, neglect or financial exploitation or misappropriation of property by the facility, its staff or any service provider under contract with the facility” and has the right to be free from coercion, (summarized from Wis. Admin. Code §§ DHS 89.34 and 89.36).Requirements of initial and ongoing licensure in Wisconsin includes verification by DHS Division of Quality Assurance (DQA) 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 ApplicableEnter 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** |
| Each independent apartment shall have “an individual lockable entrance and exit. A single door may serve as both entrance and exit. Keys to the door to the independent apartment and to the residential care apartment complex shall be supplied to the tenant.” ([Wis. Admin. Code § DHS 89.22](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/II/22))“‘Individual lockable entrance and exit’ means a door that provides access to an independent apartment and is equipped with an individually keyed lock which is operable from both inside and outside the unit and which the tenant can open, close and lock to ensure privacy.” ([Wis. Admin. Code § DHS 89.13](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/I/13/1))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 ApplicableEnter 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** |
| “Multiple occupancy of an independent apartment shall be limited to a spouse or a roommate chosen at the initiative of the tenant.” ([Wis. Admin. Code § DHS 89.22](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/II/22)) 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 ApplicableEnter 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** |
| A tenant has the right “to furnish his or her independent apartment and to maintain personal possessions as space permits as long as the tenant does not unreasonably interfere with the other tenants' choices or endanger the health or safety of the other tenants.” (WI Statewide Transition Plan; [Wis. Admin. Code § DHS 89.34](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/iii/34)) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)] |
| **Compliance Within State Standards** |
| “Each independent apartment shall be of adequate size and configuration to permit tenants to carry out, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storing clothing and other personal possessions; doing personal correspondence and paperwork; and entertaining visitors.” ([Wis. Admin. Code § DHS 89.22](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/II/22)) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
|  |
| [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 ApplicableEnter 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 ApplicableEnter Evidence Here |
| **DHS Recommendation** |
| DHS finds that Enter Facility Name possesses the required home and community–based characteristics and overcomes the presumption of having institutional qualities. |
| *Please note these findings are preliminary only and must receive final approval from CMS.* |