

Home and Community-Based Services (HCBS) Settings Rule

Heightened Scrutiny Review Evidentiary Summaries

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EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Alexian Village Square

License/Certification Number

8627

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

9301 N 776th St

City

Milwaukee

County

Milwaukee

ZIP Code

53223

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Ascension Living Alexian Village
- ☐ 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 Alexian Village Square 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

Alexian Village Square is a 64 bed Community Based Residential Facility (CBRF) that is located on the same campus as Ascension Living Alexian Village Milwaukee, a 108 bed Skilled Nursing Facility (SNF). Alexian Village Square is on 60 acres in Milwaukee and offers a variety of activities that help residents to enjoy a healthy lifestyle, a variety of recreational, educational, and wellness activities both on campus and off.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of person-centered plans and activity calendars showing community activities during the ISP review and review of submitted materials. ISPs note resident preferences regarding things like food likes and dislikes, preferences, and supports. During onsite review, the Assisted Living Manager provided copies of an activity assessment that is updated every 6 months. The activity assessment goes in depth with residents as to where the residents' interests lie and what activities they find enjoyable. The Assisted Living Manager stated that they use this information when planning activities.

Reviewer observed additional evidence of activities that take place outside of the setting during review of the activity schedules. The schedules included a variety of activities, including those in the community. During the on-site visit, one resident interviewed stated that they have the option to go into the community with staff. The Assisted Living Manager reported that if a resident wants to go somewhere they could add it as an activity (inviting all residents) or they could schedule a time to take that person out individually or in a smaller group.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed further evidence of individualized activities during onsite review. Reviewer saw a variety of activities around the setting to keep residents engaged including books, puzzles, movies, crafts, etc. Staff reported that residents are allowed to do whatever they choose. Residents also reported that they have a variety of activities to choose from on a daily basis. Reviewer did observe a resident who was participating in the group activity and decided part way through to stop and they began reading a newspaper in the activity room. Staff allowed the resident to stop the group activity and begin their desired activity.

During the interview with the Assisted Living Manager, the Assisted Living Manager reported that if residents have requests for activities, staff are encouraged to do those activities with staff, provided they are not providing other cares at that time. They also reported that if a resident wants to go somewhere they could add it as an activity (inviting all residents) or they could schedule a time to take that person out individually or in a smaller group.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of access to the community through transportation during review of the Ascension Living Handbook. Page 12 of the Ascension Living Handbook says, "Alexian Village offers private transportation to you if family or a significant other is not available. ... If Alexian Village's transportation does not accommodate your needs, please see your Assisted Living Manager to arrange for outside transportation."

Reviewer observed additional evidence of access to transportation during onsite review by talking with residents and staff. One resident reported that if their daughter is not able to take them somewhere then the Assisted Living Manager will help them get a ride. The Assisted Living Manager stated that they do the majority of scheduling transportation but have a backup if they are busy/unavailable. The Ascension Living Handbook states that transportation must be arranged 3 days in advance. During the interview with the Assisted Living Manager, they stated that they prefer to have advance notice so they have time to coordinate among all residents; however, if someone has a last minute appointment or needs to go somewhere, they will accommodate if they are able to. If they are not able to accommodate that need, they would connect with the Family Care care manager to coordinate other transportation.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to competitive integrated employment during the review of the submitted documents. One document that was submitted was a Pre-Admission Assessment for Employment Preferences that is completed prior to admission and reviewed every six months at ISP reviews.

Reviewer observed additional evidence of a resident's opportunity to seek employment and work in a competitive integrated setting during onsite visit. Staff reported that no current residents work; however, if a resident expressed interest in work, they would be referred to the Assisted Living Manager. The Assisted Living Manager stated that they would work the MCO to help explore options and facilitate any recommendations from the Managed Care Organization (MCO).

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of the submitted ISPs. A review of a sample of ISPs shows ISPs that include the following information: food preferences, independence in the community, social and activity interests, vocational needs, family relationships and support, transportation needs, decision making skills and needs, communication strengths and needs and support to access the community. The Reviewer also observed a MCPs that correlated to the ISPs for Medicaid residents.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residents right to control their personal resources during review of the Ascension Living Handbook. Page 26 of the handbook says "Finances: right to manage their own financial affairs, unless the resident delegates that responsibility in writing to another person and they accept that responsibility." There is further evidence on page 11 of the handbook that says "Use of Money/Credit Cards: We do not recommend that residents keep or carry large amounts of cash or carry credit cards. Residents can charge many services at Alexian Village of Milwaukee, including charges at the Beauty Shop and at the Village Market. When field trips are taken, residents are charged for the cost on their monthly service fee bills. We do not accept liability for money, checkbooks, or credit cards."

Reviewer observed further evidence of residents right to manage their own funds during onsite review. Residents interviewed reported that they have the option to manage their own funds; although, both reported that their families handle their finances.

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

Reviewer observed evidence of residents right to choose their own setting during onsite review. Two residents interviewed stated that they were given a choice about where they wanted to live and both of them selected Alexian Village Square.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of Ascension Living's policy allowing residents to have a choice in their service providers during review of the Ascension Living Handbook. Page 27 says residents have the “right to use licensed, certified, or registered provider of health care and pharmacist of the resident's choice.”

Reviewer observed additional evidence of residents right to choose their own providers during onsite review. One resident interviewed stated that they have a choice in their medical providers. Another resident interviewed reported that they are able to choose where to have hair done. The Assisted Living Manager confirmed that residents frequently come and go for appointments and that they will help arrange transportation as necessary.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of Ascension Living's policy surrounding the optimization of individual initiative, autonomy, and residence during review of the Resident Handbook: "You have the right to choose activities, schedules (including sleeping and waking times), health care and providers of health care services consistent with your interests, assessments, and plan of care. You have the right to make choices about aspects of your life in the facility that are significant to you. You have the right to interact with members of the community and participate in community activities both inside and outside the facility."

Reviewer observed further evidence of residents right to control their own scheduling during onsite review. During the tour, the reviewer observed some residents finishing breakfast while others were just starting, and one resident's plate was set aside as they like to eat later and watch tv while they eat. Reviewer also observed that some residents went to activities while others declined and were in their rooms or walking around the setting. One resident interviewed reported that they do not have set times that they have to do things at the setting and that they are able to do what they want when they want. Staff affirmed this during interviews.

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

Reviewer observed evidence of residents rights to control their own schedule and activities during the review of submitted documents. Page 9 of the Ascension Living Handbook states, "Alexian Village's dietary department provides delicious and nutritious meals 7 days a week. Three meals a day are served in your

neighbored dining room. Meeting and dining with other residents makes meal time more enjoyable and appealing. Our Resident Assistant staff serve meals and are available to assist you in the dining room if you need help. If a room tray is requested, please notify your resident assistant.”

Reviewer observed further evidence of residents right to control their own scheduling during onsite review. During the tour, the reviewer observed some residents finishing breakfast while others were just starting, and one resident’s plate was set aside as they like to eat later and watch tv while they eat. Reviewer also observed that some residents went to activities while others declined and were in their rooms or walking around the setting. Additionally, food and mealtime preferences were observed in some of the ISPs that were reviewed.

The setting ensures an individual’s rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of residents’ rights during review of the Ascension Living Handbook. Page 26 of the Ascension Living Handbook states "Resident Rights Alexian Assisted Living: Respect: right to be treated with courtesy, respect, and full recognition of the resident's dignity and individuality... Freedom from seclusion... Physical and emotional privacy in treatment, living arrangements and caring for personal ... Right to be free from physical and mental abuse and free from chemical and physical.

Reviewer observed further evidence of residents right to dignity, respect, coercion, and restraint during onsite review. Reviewer observed staff interacting with residents in a respectful manner, calling residents by name, and asking residents what they wanted. Both residents interviewed reported that they find staff to be pleasant and respectful.

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

Reviewer observed evidence of Resident Right to Access and Visitation Policy that meets the requirements. The policy supports the residents' rights to receive visitors of their choosing, at the time of their choosing. The policy indicates the resident's right to deny a visitation. During the nighttime hours when the facilities doors are locked, there is a system in place to allow visitors approved by the resident.

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

Reviewer observed evidence of residents having access to food at any time during the onsite visit. The reviewer observed that some residents were eating breakfast, others were done, and one resident had a tray being saved because, staff reported, that resident likes to eat late and watch TV while they eat so they always save a plate for that resident when they wake up.

One resident interviewed reported that they have snacks in their room and that they able to get additional snacks upon request. The reviewer observed snack stations set up throughout the setting and staff confirmed that residents can get snacks upon request at any time.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of an admission agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Admission Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the

individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Admission Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed a meaningful physical distinction between the CBRF and the SNF during the onsite visit. When arriving on campus there were multiple entrances to the CBRF and signs in front of buildings designating what is in the buildings. The main entrance has a desk and clear signs pointing to the SNF and CBRF.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a Privacy in Living Unit policy that meets the HCBS requirements and Wisconsin Benchmark.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

The setting has updated their Resident Key Policy that meets the HCBS requirements and Wisconsin Benchmark. The policy outlines that all residents will be offered an individual key to their room upon admission unless there is an assessed need and the HCBS Settings Rule Modification process has been followed.

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](#), 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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents right to have a choice in roommate during onsite review. During the interview with the Assisted Living Manager, they reported that they currently do not have any residents sharing rooms. However, if residents request to share a room, they would assess to see if it would be a good match and have conversations with residents and their team to determine next steps.

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

Reviewer observed evidence of residents right to furnish and decorate their living units during review of the evidence submitted by the setting. Page 5 of the Ascension Living Handbook states “our apartments are unfurnished so that you or your loved one can have their own belongings with them to feel at home. We do provide a bed if you would like us to.”

Reviewer observed further evidence of residents right to furnish and decorate their living units during onsite review. During a tour of the setting, the reviewer observed varied décor. One resident showed the reviewer their room; the room was decorated by the resident and their family to show off their interests.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of the setting being physically accessible to residents during onsite review.

[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

Reviewer observed evidence of Alexian Village having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

Alexian Village Square reported that they do not have any current residents that require a HCBS Settings Rule Modification at this time. No restrictions were observed during the review of ISPs or during the on-site visit.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite review. One of the Direct Care Staff interviewed was able to explain the principles of person-centered planning and how it relates to the residents they care for.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Alexian Village Square possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Aria West Allis

License/Certification Number

18335

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

5301 W Lincoln Ave

City

West Allis

County

Milwaukee

ZIP Code

53219

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Aria at Michell Manor
- ☐ 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 Aria West Allis 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

Aria West Allis is a 70 bed Community Based Residential Facility (CBRF) that is connected to Aria at Michell Manor, a 50 bed Skilled Nursing Facility (SNF), and Euphoria of West Allis, a 101 bed Residential Care Apartment Complex (RCAC). Aria and Euphoria are located in West Allis, which is residential section of the greater Milwaukee area. DHS completed one review for both the CBRF and RCAC. These findings apply to both settings.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of residents' access to community life outside of the setting during the review of submitted documents. A review of the Activity Preference policy shows that residents meet with the Activities Director/Designee to be assessed for their activity preferences upon move in and every 90 days after that. The assessment collects information such as: does the resident prefer group or individual activities? Do they like outings in the community? Do they have any specific activities that they would like to see offered?

Further evidence was observed during the review of Activity Calendars. Activity calendars are posted at the setting and show activities scheduled both at the setting and in the community. Additionally, both residents interviewed reported that they are able to go out into the community as desired.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of individualized activities during the review of the submitted documents. The Activity Preference policy shows that residents meet with the Activities Director/Designee to be assessed for their activity preferences upon move in and every 90 days after that. The assessment collects information such as: does the resident prefer group or individual activities? Do they have any specific activities that they would like to see offered?

During an interview with The Executive Director, they reported that if a resident has interests that are unique, activities staff will do 1:1 activities with that resident. During the review of a sample of ISPs, it is noted for multiple residents that residents will "participate in...1:1 activities as desired."

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of access to transportation during the review of submitted materials. Attachment A- Basic Services Offered- states, "there is scheduled transportation to shopping and planned social events, as further described in the Resident Handbook. Other transportation arrangements may be made by contacting any leadership team member onsite. You also have the convenience of public transportation as we are located in a residential community."

Further evidence was observed during the onsite visit. One resident interviewed reported that they always get rides to medical appointments. They stated that they have never requested transportation anywhere other than to a medical appointment but have always gotten help with transportation when they have asked.

Staff advised that they have a driver who coordinates transportation; priority is given to medical appointments, but if there is time, other transportation requests are accommodated. If a transportation request is not able to be accommodated by their driver, the Executive Director helps facilitate rides via the city bus, a taxi or an uber.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to competitive integrated employment during the review of submitted documents. The setting utilizes a questionnaire that is completed with residents to gather information about their interest in competitive integrated employment. The evaluation states that “staff will assist with connecting residents to the proper agencies including but not limited to Managed Care Organizations (MCOs), the Department of Vocational Rehabilitation (DVR), or other entities that may be of further assistance in meeting this goal”. Staff reported that if a resident was interested in employment, they would talk to the MCO care manager and the Executive Director. The Executive Director reported that if a resident was interested working, they would connect with the MCO Care Manager and help provide resources upon request.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of submitted materials. Activity Preference Assessments will be completed at admission and every 90 days afterwards to ensure that residents are actively engaged in activities and are having their needs met. Aria submitted updated ISPs to demonstrate the level of detail surrounding their activity plans in the ISP. ISPs viewed included information on preferred community activities, community contacts, preferred leisure time activities at the setting and how best to engage the resident in those desired activities. Plans viewed also consistently contained information about interest in employment, ability to control personal resources, capacity for self-direction, communication skills and interest in the community. ISPs are updated when there is a change in condition, or annually.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident’s ability to control their own resources during review of submitted materials. Page 4 of the Resident Handbook states “we will not manage or hold any of your personal funds and will not provide you with any assistance in managing your personal funds during your residency at the Community. You will be responsible for holding and managing any funds you desire for personal expenditures during your residency at the Community.”

Further evidence as observed during the onsite visit. Both residents interviewed reported that they manage their own money.

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

Reviewer observed evidence of resident choice in setting during the onsite visit. One resident interviewed reported that they were given a choice of settings and that their POA selected this setting for them.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of choice in services during the review of the submitted documents. Attachment B of the Admission Agreement, Resident Rights, states, “each resident shall have the right to:…use the licensed, certified or registered provider of health care and pharmacist of resident's choice.”

Further evidence was observed during the onsite visit. One resident interviewed reported that they use go into the community for all of their appointments and that staff at Aria assist with transportation. One Direct Care Staff reported that many residents come and go for appointments and that residents are able to see whatever providers they choose. The staff member confirmed that residents can seek outside providers for any service they choose, including hair, nails, etc. and not just medical providers.

The setting 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](#)).

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](#)).

“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](#)).

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

Reviewer observed evidence of residents' right make choices about their own life during the review of the submitted documents. Attachment B of the Admission Agreement, Resident Rights, states, "each resident shall have the right to:... make decisions relating to care, activities, daily routines and other aspects of life which enhance the resident's self-reliance and support the resident's autonomy and decision making."

Further evidence was observed during the onsite visit. One resident interviewed report they are able to go to sleep when they choose, make daily choices regarding their activities and they can come and go throughout the day. Direct Care Staff interviewed confirmed this.

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

Reviewer observed evidence of residents' ability to control their own schedules during the onsite visit. One resident interviewed report they are able to go to sleep when they choose, make daily choices regarding their activities and they can come and go throughout the day. Direct Care Staff interviewed confirmed this.

Additionally, the setting completed remediation following the on-site visit to ensure residents can eat when and where they want to instead of requiring residents to eat in the dining room at set meal times. The CBRF Mealtime Procedure which is used for both the CBRF and RCAC states, "You are all welcome to join our dining services in the dining room for all meals, breakfast, lunch and dinner. If you would like to eat in your room, you may also do so. We do ask you to come to get your meals if you are able. In the event you do need room service, please make arrangements in advance with the kitchen so they can accommodate this service. Below we have detailed mealtimes for your convenience. If adjustments are needed to these mealtimes for any reason to better accommodate you, please let any staff member know so we can inform the kitchen staff to prepare meals for you as needed. This can be a 1-time thing, or something that we can coordinate to honor your preference."

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of Aria’s policy surrounding residents’ rights to be treated with courtesy and respect, to have privacy, and to be free from abuse during the review of submitted documents. Further evidence was observed during the on-site visit through interview with the Executive Director and review of ISPs and MCPs.

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

Reviewer observed evidence that residents are allowed to have visitors at any time during the review of the submitted documents. The visitation policy states that, “The facility will permit residents to receive visitors of their choosing at the time of their choosing, subject to the resident’s right to deny visitation when applicable, and in a manner that does not impose on another resident’s rights.”

Further evidence was observed during interviews with residents and staff; both residents interviewed, and the direct care staff interviewed, reported that visitors are allowed at any time.

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

Reviewer observed evidence of resident's access to food at any time during onsite visit. Staff and residents reported that if a resident is gone from the setting during a meal time, they will save food for them. Residents are able to keep food in their rooms (all residents interviewed had food in their rooms); the setting also has food available upon request. During the onsite tour, the reviewer observed food in multiple areas of the setting that were available to the residents at any time.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residency agreement that meets the requirements outlined in [42 CFR § 441.301(c)(4)(vi)(A)] during the review of the submitted documents. Reviewer observed signed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Residency Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a meaningful physical distinction between the SNF and the CBRF and RCAC during the onsite visit. The SNF has a separate entrance from both the RCAC and the CBRF. The SNF is on a separate floor and requires you to take an elevator or stairs to get to it. There are signs in multiple areas that designate which part of the facility you are in and signs with arrows showing which way to go to get to a different area of the setting.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. These settings submitted a Entering Residents Rooms RCAC/CBRF policy that meets the HCBS requirements and Wisconsin Benchmark.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence during the onsite visit that all RCAC residents have keys to their apartments. Additionally, the provider completed remediation to ensure that all CBRF residents also had keys. Reviewer observed evidence of acknowledgement of receiving a key to their apartment and revised admission process to ensure all future RCAC and CBRF residents receive a key when they move in.

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](#), 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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having a choice of roommates during the review of submitted documents. The Admissions Procedures Roommates and Share Room protocol gives an outline of the process that Aria will follow if there is a new admission who is looking for a shared room. This protocol also outlines the process if a resident is refusing a roommate or is unhappy with a roommate.

Further evidence as observed during the onsite visit. The Executive Director reported that have conversations with residents moving into shared rooms from the beginning reminding them that they may get a roommate and of the process to get a roommate. The Executive Director also reported that currently no rooms are shared.

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

Reviewer observed evidence of residents furnishing and decorating their own rooms at the onsite visit. One resident interviewed was very interested in birds and bird watching and had posters and information on birds throughout their room. The residents room also had a lot of furniture that was brought in by the resident. Another resident's room had furniture and pictures throughout the room that had provided by the residents daughter.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting was fully accessible to the residents during the onsite visit.

[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

Reviewer observed evidence of Aria West Allis and Euphoria of West Allis having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The Executive Director affirmed that they currently do not have any residents who require an HCBS Settings Rule Modification but that they will continue to assess residents at regularly scheduled care plan reviews and when there is a change in condition.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite review. The Executive Director advised that all staff received training on person-centered planning and staff are expected to have a basic understanding of it and use it in practice daily.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Aria West Allis possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name Bayview Assisted Living Center		Facility Type Community-Based Residential Facility (CBRF)		
Corporate Name (if applicable) Champion Care		License/Certification # 0019023	County Waukesha	
Facility Address S77 W18690 Janesville Rd	City Muskego	State WI	Zip Code 53150	

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. The Bay at Muskego Healthcare and Rehabilitation Center
- ☐ 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 Bayview Assisted Living Center 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

Bayview Assisted Living is a privately owned, 17 Bed CBRF operating within the same building as The Bay at Muskego Healthcare and Rehabilitation Center. Bayview Assisted Living is located on Little Muskego Lake in downtown Muskego. The CBRF consists of 12 rooms, with room for 18 beds. The CBRF has a small gathering area, dining/activity area, outside patio, and office. Reviewers completed three on-site visits to the setting and all visits including interviews with residents and staff.

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

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](#))

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\(1\)\(d\)](#))

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

Reviewer observed evidence in the Resident Handbook that "a monthly calendar for outside community events will also be posted the first day of each month". Reviewer observed this posted calendar in the community common area along with a resource for transportation to attend the events. Residents interviewed were aware of all activity calendars and stated that they can go out into the community with family or independently to do activities of their choice. The Resident Handbook also states that residents have the right "to participate in social, religious and community activities."

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a new Life Enrichment Assessment that is completed with each resident and used to update the Individual Services Plan (ISP). Review of completed assessments and ISPs detailed individualized information about resident interest and the support they need to engage in activities that match their interest. One reviewed indicated the individual likes bingo, crafts, and going into the community for sightseeing. The individual is not interested in going into the community for shopping trips or to restaurants.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence in the Resident Handbook that setting will "assist residents with scheduling transportation to medical appointments and other outings as requested." During on-site visit, reviewer observed posted phone number for Senior taxi where all residents could see it. Additionally, the resident's ISPs indicate the level of assistance they need with transportation.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence through review of multiple ISPs of individual's preferences regarding employment being clearly documented.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence in Individual Service Plans (ISPs), Intake Assessments, and Life Enrichment Assessment that setting addresses the capacity for self-direction, the ability to make decisions, to act independently, and make wants and needs known, social participation including interpersonal relationship and communication skills, leisure time activities, family and community contacts, vocational needs. Assessments and ISPs were individualized for each resident.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence in the Individual Service Plan that a resident reviewed can independently manage money. Additionally, the Resident Handbook also states that residents can manage personal finances or be kept informed of personal finances if they choose to allow someone else to manage for them. During interviews with residents, they stated that they can keep money on their person if they wish.

The setting is selected by the individual from among setting options including non-disability specific settings. 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

All residents interviewed stated that they were given the option to tour different types of living environments prior to choosing to move into this CBRF.

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 Wisconsin State Standards and Regulations

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](#)).

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence on in Resident Handbook that residents can choose healthcare providers including doctors and pharmacy. The Service Agreement also states, “Resident has the right to use the licensed, certified or registered health care provider of choice.” Interviews with staff and residents confirmed that residents can use different providers including community-based providers.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence in the Resident Handbook that staff encourage residents to live as independently as possible and to participate in community activities and entertainment including monthly Resident Council meetings. The Resident Handbook also includes that residents have a right to be offered choices and allowed to make decisions important to them." Residents interviewed stated that they feel that they can decide how they spend their day, and they can decide with whom they socialize with.

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

Reviewer observed evidence in Dignity Policy that residents shall be assisted in attending activities of their choice, including activities outside the facility. Reviewer observed evidence of posted in-house and community activities available to residents if they wish to participate. Residents interviewed stated that they felt they could make their own schedule and had the choice to attend activities or not. They also stated that they could attend activities offered by both the SNF and CBRF.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within Wisconsin State Standards and Regulations

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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence in the Resident Handbook that residents have the right to “freedom from chemical and physical restraint” and “will be treated with courtesy, respect and dignity”. The Resident Handbook states that each resident has the right to “privacy during personal care and treatment”. Residents interviewed stated that they felt they had privacy. Administrator stated that they do not have any residents that use restraints or restrictive measures. During on-site visit all areas of the CBRF were accessible and residents had the freedom to move within and outside of the facility if they signed out first.

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

Reviewer observed evidence in the resident handbook and visitor policy that residents can have 24-hour access to visitors. Additionally, residents interviewed on-site indicated that they have visitors visit them at the setting.

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

A drink and snack vending machine were added to the CBRF wing in an area with tables and chairs. The administrator indicated that resident preferences are considered when stocking the vending machine. Additionally, staff have received training on resident's access to food and know how to obtain snacks between

meal times. Residents can also keep food in their rooms. Snacks are also provided throughout the day. During the on-site visit, the reviewers observed a resident asking the staff member who brought snack options if this was lunch. The staff indicated it was only a snack, but that he/she could bring something else if the resident wanted lunch. The staff discussed options and the resident selected a sandwich from the snack tray. Interviews with residents confirmed that they can keep food in their rooms and can access food at any time.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

The reviewer observed evidence of signed admissions agreement for each Medicaid funded resident that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.

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

During the on-site visit, the reviewers entered and signed in at the Bayview Assisted Living Entrance on the lower level. This entrance was utilized throughout the day. Additionally, new signs were added in the CBRF wings that said, "Bayview Assisted Living." There was also clear signs within the building indicated the division between the SNF and CBRF.

Each individual has privacy in their sleeping or living unit.

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](#), 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

Reviewer observed evidence through updates to the settings policies and handbooks that each individual will have privacy in their sleeping and living unit. The setting updated their process and staff training to ensure that staff are only using a key to enter during circumstances agreed on by the resident following the HCBS Settings Rule Modification process when required.

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Wisconsin State Standards and Regulations

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence during the on-site visit of keyed entry for resident bedrooms. Additionally, the setting completed remediation to ensure all residents have a key to their rooms including developing an audit process to ensure residents have their room key and to ensure staff are only using a key to enter during circumstances agreed on by the resident following the HCBS Settings Rule Modification process when required.

Individuals sharing units have a choice of roommates in that setting.

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](#), 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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the resident handbook was updated to include information about choice of roommates. Residents that were interviewed during the on-site visit indicated that they liked their roommate. One resident indicated he was asked for his input regarding getting a new roommate.

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)(1-3)]

Compliance within Wisconsin State Standards and Regulations

Every resident in a community-based residential facility shall have the right to retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner. (Summarized from Wis. Stat. § 50.09)

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence in the Resident Handbook, in interviews with residents and during on-site visit to meet this benchmark. During the on-site visits, reviewers observed that rooms were personalized with pictures and other decorations of meaning to the individual residents.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within Wisconsin State Standards and Regulations

The bedroom and congregate dining and living area for any resident requiring a specified level of care and who is blind or not fully ambulatory shall be on the first floor. (Summarized from Wis. Admin. Code § DHS 83.50)

Bedrooms shall be designed and equipped to allow residents to achieve the highest level of independent functioning and shall be fully accessible to the resident. Within the bedroom, each resident shall have, or be provided with a closet or wardrobe with clothes hanging rods and shelves, and drawer space adequate to reasonably meet the needs of the resident. The bedroom shall have adequate accessible space for a resident's wheelchair or other adaptive or prosthetic equipment. (Summarized from Wis. Admin. Code § DHS 83.54)

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence during on-site visit that the bedroom, bathroom, dining and living areas were all physically accessible.

[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

Reviewer observed evidence of a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The setting is in the process of working with the Managed Care Organization to assess if HCBS Settings Rule Modifications are needed for their residents.

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

Reviewer observed evidence on staff training on person-centered planning through review of submitted training logs. Additionally, during an interview with a direct care staff, the staff member explained training on person-centered activities.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

Wisconsin can attest that Bayview Assisted Living Center possesses the required home and community-based characteristics, is not isolating in nature, and overcomes the presumption of having institutional qualities.

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

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DQA Provider Search webpage](#) and the provider directories available at the [Consumer Guide to Health Care – Finding and Choosing an Assisted Living Facility webpage](#).

Ongoing Compliance

Wisconsin's Division of Quality Assurance (DQA) will ensure through ongoing compliance reviews that continues to meet the requirements of the HCBS Settings Rule. The DMS Bureau of Assisted Living (BAL) has incorporated the HCBS settings rule into its current assisted living survey process and activities. ([DQA Implementation of Home and Community-Based Services Settings Rule in Residential Assisted Living Facilities](#))

Waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are certified by the Wisconsin Department of Health Services (DHS) and work within the requirements of contracts with DHS. State licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits, by the state licensing authority, or by the entity that certified the provider if not regulated by the state. As part of these periodic licensing or certification reviews, the credentialing entity will also review the setting for continued HCBS compliance. Providers will be required to address any HCBS rule deficiencies.

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 areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected

through the state's long-term care ombudsman program, which has regular access to the assisted living setting. [Wisconsin's Board on Aging & Long Term Care](#): The Board on Aging and Long Term Care advocates for the interests of Wisconsin's long-term care consumers, informs those consumers of their rights and educates the public about health care systems and long-term care. The Board also operates the [Long Term Care Ombudsman](#), and [Volunteer Ombudsman](#) services.

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Bethany Home, Inc.

License/Certification #

16965

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

1226 Berlin St

City

Waupaca

County

Waupaca

Zip Code

54981

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Bethany Home
- ☐ 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 Bethany Home, Inc. 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

Bethany Home, Inc, also referred to as Heartwood CBRF, is a 49 bed Community Based Residential Facility (CBRF) that is connected to Bethany home, which is a 100 bed Skilled Nursing Facility (SNF). Also on the property is a 40 bed Residential Care Apartment Complex (RCAC) that does not accept Medicaid funding. Bethany Home, Inc is in Waupaca Wisconsin, which is a small town with approximately 6,000 people.

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

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](#))

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\(1\)\(d\)](#))

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

Reviewer observed evidence of resident's having access to the community during the review of the submitted materials. Page 4 of the Welcome Book for the CBRF states "you have the right to participate in community activities both inside and outside of the facility." Additionally, the CBRF Comprehensive Assessment that Heartwood uses does assess for social and leisure needs/preference. During the review of the ISPs provided, multiple residents have noted that an intervention that will be implemented is "Bethany CBRF staff and/or family will accompany [resident] when out in the community to ensure safety."

One resident's ISP states that the resident "will remain supervised which will assist in maintaining her safety...Intervention: Family will assist [resident] at all times when going into the community." Another resident's ISP states that intervention for Social/Community Integration will be, "Bethany CBRF staff and/or family accompany [resident] when out in the community to ensure safety."

Further evidence was observed during the onsite visit. The Director of Heartwood CBRF showed calendars with a variety of activities listed and a bulletin board that shows activities at the local senior center and library as well as information about how to access transportation to get to those activities. One resident interviewed reported that they are new to the setting but have been invited to go out to events in the community and they are excited to go on their first outing soon.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☒ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to more than just settings-based group activities during the onsite visit. The Director of Heartwood CBRF reported that activities staff provide individualized activities with staff support upon request. Additionally, one resident interviewed reported that because she does not like doing group activities and prefers to stay in her room, activities staff visit her and provide her with crafting materials as that is what she has requested. Reviewer observed evidence of a newly developed activity preference questionnaire that will include questions about preference for group activities and identifies if a resident would benefit from individual activity support. The individual service plan will be updated with results of activity preference questionnaire including if individual activity support is needed.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of Heartwood CBRF supporting access to the community through providing transportation assistance was observed during the onsite visit. The Direct Care Staff interviewed reported that if a resident needed help with transportation, the Director of Heartwood would help arrange that. During the tour of the facility, the reviewer noted that there is information about transportation posted next to information about community activities.

One resident interviewed reported that they have family that regularly takes them out; however, they have been told that if they want to go out without family, Bethany Home, Inc staff will help arrange transportation.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's having the right to work during the review of the submitted documents. Each of the ISPs reviewed has a section where it assesses for the resident's interest in employment.

Further evidence was observed during the onsite visit. During an interview with the Director of Heartwood, they reported that if a resident was interested in employment, they would have a team meeting to discuss next steps and how to support that goal.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of Person-Centered Planning and the setting having copies of the Managed Care Organization's (MCO) Member Centered Plans (MCP) during the onsite visit. Heartwood has copies of the MCP's for their Medicaid residents. They also have extensive ISP's that include activities of interest, independent activities, family involvement, shopping needs, transportation needs and support, personal resources, and support with specific challenges that might impact a resident's ability to participate in social activities. Additionally, the new resident activity preference questionnaire will be completed with current residents and their individual service plan updated to include their preferences for community involvement or activities that take place outside of the setting. New residents will complete the new resident activity preference questionnaire during their new admission process.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's right to control their own resources during a review of the submitted materials. Page 4 of The Welcome Book for the CBRF states, "You have the right to manage your own money or choose someone you trust to do this for you. If you ask the facility to manage your personal funds, you must sign a written statement that allows the facility to do this for you. The facility must allow you to access your bank accounts, cash and other financial records. The facility must place your money over \$200 in an account that provides interest, and must give you a statement at least every 6 months. The facility must protect your funds from any loss by buying a bond or providing other similar protections."

Further evidence was observed during the onsite visit. Two residents interviewed reported that they have family that helps them manage money.

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

Reviewer observed evidence of resident’s right to select their setting during the onsite review. Two residents interviewed reported that they selected Heartwood with the assistance of family. Both reported that they did not feel that they had to select Heartwood and could have made a different choice if they wanted.

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](#)).

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident’s right to see the provider of their choice during the review of submitted materials. Page 5 of the Welcome Book for the CBRF states, “You have the right to choose and see your doctor.” Exhibit E of the Admission Agreement, Resident Rights, states, “The resident has the right to use the licensed, certified or registered provided of health care and pharmacist of the resident’s choice. In addition, a resident has the right to select a Medicare Part D plan of his or her choosing.”

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to see the same doctor they have seen for 20 years. Residents right to choose their own providers including community-based non-medical providers was also confirmed by the Direct Care Staff interviewed and the Director of the CBRF.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of resident's right to initiative, autonomy, and independence in making life choices during the review of submitted materials. Page 3 of the Welcome Book for the CBRF states, "You have the right to choose activities and schedules (including sleeping and waking times) ...to participate in community activities both inside and outside of the facility." Exhibit E of the Admission Agreement, Resident Rights, states, "A resident has the right to: choose activities, schedules, and health care consistent with his or her interest, assessments and plan of care. Interact with members of the community both inside and outside facility; and make choices about aspects of his or her life in Facility that are significant to the resident."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able choose their own schedule, select what activities they participate in, and who they interact with.

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

Reviewer observed evidence of resident's right to control their schedule during the review of submitted materials. Nothing in the submitted materials sets out meal times or sleeping or waking times. The Welcome Book for the CBRF advises that Heartwood has several options, but does not list any requirements. Page 3 of the Welcome Book states, "You have the right to choose activities and schedules (including sleeping and waking times.)"

Further evidence was observed during the onsite visit. One resident interviewed reported that they have choice in when and where they eat their meals. The Direct Care Staff interviewed reported that when food is hot and ready, they notify residents. However, residents can choose to come and eat when they are ready. Residents can also request a tray in their room, or to have food saved for later.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of resident's rights to privacy, dignity and respect, and freedom from coercion and restraint during the review of submitted materials. Page 3 of the Welcome Book states, "You have the right to be treated with dignity and respect...you have the right to be [free] from physical (except if you are at risk of hurting yourself or others) or chemical restraints...to be free from verbal, sexual physical, and mental abuse." The Home and Community-Based Services (HCBS) Compliance Policy states, "Heartwood CBRF supports...and individual's right of privacy, dignity, and respect are ensured. Individuals are free from coercion and restraint."

Further evidence was observed during the onsite visit. The Director of Heartwood reported that they do not have any residents who require any type of restraint and if they did they would follow the DQA process for getting approval to use restraints while looking into a more appropriate setting for a resident requiring a restraint.

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

Reviewer observed evidence of resident's right to have visitors at any time during the review of submitted materials. Bethany Home Inc Heartwood CBRF Visitation policy states, "Bethany Home Inc/Heartwood recognizes the needs for residents to maintain contact with the community in which they reside, therefore 24 hour access is provided to all individuals visiting with the consent of the resident."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are allowed to have visitors at any time, including overnight. Direct Care Staff confirmed that there are no set visiting hours and visitors are welcome at any time.

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

Reviewer observed evidence of resident's access to food at any time during the review of submitted materials. Bethany's Home and Community-Based Services (HCBS) Compliance policy states, "Individuals...have access to food at any time."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to get food any time they request it. Direct Care Staff confirmed that they provide snacks on demand 24 hours per day.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of an admission agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Admission Agreements for Medicaid residents that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Admission Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of physical distinction between the CBRF and SNF during the onsite visit. Reviewer also observed multiple signs, a separate entrance and differences in décor between the CBRF and SNF.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a privacy policy that meets the HCBS requirements and Wisconsin Benchmark.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's having privacy in their sleeping unit during the review of submitted materials. Bethany's Home and Community-Based Services (HCBS) Compliance policy states, "Resident rooms have lockable entrance doors with individual keys. Staff use facility keys to enter resident's room only under circumstances agreed upon with the resident."

Further evidence as observed during the onsite visit. The Direct Care Staff interviewed reported that many residents do have keys. The Director of Heartwood reported that residents have keys, unless they decline a key. One resident who was interviewed reported that they have a key to their room, although they don't typically use it.

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](#), 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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's choice in roommate during the review of the submitted materials. Bethany's Home and Community Based Services (HCBS) Compliance Policy States, "residents have a choice in roommates."

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

Reviewer observed evidence of residents freedom to furnish and decorate their sleeping units during the onsite visit. One resident interviewed showed the reviewer their room; it was full of completed craft projects that the resident had made, books, and family photos.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to all individuals during the onsite visit.

[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

Reviewer observed evidence of a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The setting is in the process of working with the Managed Care Organization to assess if HCBS Settings Rule Modifications are needed for their residents.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite review. The reviewer interviewed one Direct Care Staff who was able to explain the principles of person-centered planning and how it relates to the residents they care for.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Bethany Home, Inc. possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review

Facility Name

Chai Point RCAC

License / Certification #)

0010313

Facility Type

Residential Care Apartment Complex (RCAC)

Facility Address

1400 North Prospect Avenue

City

Milwaukee

State

WI

Zip Code

53202

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution: Chai Point RCAC
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☐ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Wisconsin State Standards and Regulations:

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 Chai Point RCAC 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:

Ovation Chai Point (hereafter, Chai Point) CBRF and RCAC were reviewed for compliance with the HCBS Settings Rule in 2019 and 2020. When this evidentiary summary was previously submitted for public, the RCAC was not named in the Facility Information or Facility Summary sections of the report in error. These findings are the same as the Evidentiary Summary posted in 2021 under the name Chai Point Assisted Living and apply to both the CBRF and to the Chai Point RCAC.

Chai Point offers gracious living for independent and assisted living residents in an elegant high-rise building overlooking Lake Michigan, at the center of one of Milwaukee's vibrant city neighborhoods. Chai Point is part of the Ovation Communities campus, which also includes short-term rehabilitation services, skilled nursing, and a residential apartment complex. The Ovation campus offers private rooms and resident apartments as well as a variety of services specifically designed to meet the needs of the residents. Chai Point CBRF has a capacity of 38 studio, one- and two-bedroom apartments. The RCAC is certified for 41 beds. As of October 2020, utilization of the CBRF was at 100%, with 17 out of 38 residents utilizing Family Care home and community-based services.

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c) (4) (I)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- Chai Point maintains a board of directors, which draws its membership from the greater Milwaukee community. In addition to the organizational structure, an active Volunteer Council plans activities and outreach support to the residents and families at Chai Point Assisted Living.
- Reviewed the "Guide Book for Ovation Chai"- a resident handbook that centers on resident life in the setting. The handbook reflects opportunities for the residents to access the community, such as recreational resources, activity calendars, transportation resources, visitor policies as well as "in-house activities.
- Chai Point offers opportunities for residents to stay engaged in their community. Through its person-centered planning process, each resident has an active plan that incorporates their interests, involvement in their communities, volunteer opportunities, outings and activities.
- Chai Point is an integral component of a campus that offers the greater Milwaukee community access to dining cafes, health club resources and wellness programs. The Ovation campus offers an occupational therapy program that is open to the greater Milwaukee community by appointment.
- Testimonials and letters of support from community volunteers and local businesses illustrate that Chai Point and the Ovation campus are not seen as institutional settings. A sampling of four (4) person-centered plans demonstrate that the resident participates regularly in typical community life activities outside of the setting to the extent that the individual desires. In the case of one resident, she continues to volunteer and attend activities at the local senior center in the Milwaukee neighborhood where she lived for many years.

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](#))

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\(1\)\(d\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered planning for the residents at Chai Point encourages involvement, where possible, with the family members of every resident. Residents are free to come and go to attend outings in the community; vacation opportunities with family, dining out with friends and family. Resident's families and friends are encouraged to participate in Chai Point activities both in-house and in the greater community.
- "Chai Happenings" is an active activities calendar that publishes a daily list of events, such as bingo, cards, sewing club.
- "Chai Milwaukee Goings On" is a monthly calendar that highlights events in the community and information on how to participate: art museum trips, new exhibits, dining out, and special events.
- Chai Point Assisted Living provides a wide variety of options for transportation, including two (2) facility vans for residents to attend events, visit friends and family, dine out, etc.
- A review of five (5) person-centered plans indicate that each resident has control over their own schedules, and that participation in community activities, outings, etc. are consistent with the preferences and interests expressed in their individual plans. Examples include Attending Shul services on Friday evening; one resident still volunteers at the Senior Center in Milwaukee.
- Interviews with four (4) residents were conducted during the onsite review of this facility. Each resident responded that the setting supports their access to the greater Milwaukee community and that a concerted effort was made by the facility to work with each resident with transportation, etc. Residents were assured that their comments would be confidential and would not be shared with the setting's management.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

Based on the individual interviews with residents, discussions with staff and volunteers, there is sufficient evidence to support that Chai Point Assisted Living offers a comprehensive activity and resource community program both internal and external to each resident and that the planning and availability of activities and opportunities are individually supported for each resident. Each of the interviewees person centered plans supported additional confirmation of choice in activities and involvement. Of particular note was the interview with the recreational therapist at Chai Point verifying her involvement in person centered planning of each resident's preferences for activities, etc.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

A review of the *Resident Handbook* at Chai Point indicates that the setting has two vans available for group activities in the community, as well as access to public transportation through Milwaukee transit services. Staff provide training and support for residents seeking transportation and guidance. Individual residents have access to the broader community that supports preferences and desires outlined in their person-centered plans. During the onsite resident interviews, one resident shared that she attends Friday night Shul services at her synagogue and takes either public transportation or taxi service to the service.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#))

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

Residents at Chai Point enjoy benefits that afford options for interaction and access to the greater Milwaukee community. During the initial intake assessment, a new resident receives a "Community resource manual" that outlines volunteer opportunities and access to those opportunities. Additionally, the *Resident Rights* policy states, "As a resident, you have the right to participate in religious, social and community activities."

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

As confirmed in the *Resident Handbook* and through resident interviews, each resident at Chai Point has the right to manage his or her personal resources unless delegated by the resident to someone of their choosing. Residents can choose their own bank, or choose to work with the facility in setting up an account at a small banking branch maintained at the Chai Point facility. The *Resident Handbook* also outlines that each resident has a choice in selecting non-residential services, including medical and social service providers.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [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

- A review of person-centered plans confirm that this setting, Chai Point, was selected from a choice of a variety of setting options, including non-disability specific settings. Additionally, documentation of annual review of choice of settings indicate that this setting continues to be the setting of choice for the individual.
- The Ovation Chai Point facility brochure prompts potential residents to consider “four things to consider when choosing a senior living community.”
- Copies of signature pages of five (5) person-centered support plans confirm choice in settings as well as confirmation of discussions during annual reviews that confirm that this setting continues to be the setting of choice. Additionally, resident interviews conducted during the onsite review included a question regarding choice of settings and each resident interview confirmed that the resident was actively involved in yearly planning and was able to exercise preference for 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

“COMPREHENSIVE INDIVIDUAL SERVICE PLAN Individual service plan review. Annually or when there is a change in a resident's needs, abilities or physical or mental condition, the individual service plan shall be reviewed and revised based on the assessment under sub. (1). All reviews of the individual service plan shall include input from the resident or legal representative, case manager, resident care staff, and other service providers as appropriate.” ([Wis. Admin. Code § DHS 83.35 \(1\)\(d\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- The Resident Handbook makes clear that Chai Point, “...offers each individual the freedom to live as active lifestyle that they desire.” Compliance within the provider-submitted documentation confirms that within the Chai Point senior community, each individual can enjoy in-house services, meals and complimentary services, dining options, and a robust activity program planned for in-house and community opportunities.
- Person-centered planning supports that the setting is the individual’s home and should be thought of and supported with a focus on individuality, privacy, needs, likes and preferences.
- Dining options, which include a café, sandwich shop, and dining room, observed during the onsite review. Interviews conducted with the residents indicate that residents have a variety of choices for dining and access to food options at any time.

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 Wisconsin State Standards and Regulations

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](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Review of the Chai Point resident agreement, *Selection of Physician and other health care and service options* (Page 3 E) indicates that the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Ovation Campus that the resident can choose but if they utilize outside services, Chai Point Assisted Living makes transportation available for those appointments.
- The *Resident Handbook* also cites that residents may “need to contract with third party (healthcare and professional) services in order to maintain each residents’ highest quality of life and degree of independence.”
- Additionally, the CBRF will allow for residents to contract with home health and other third-party service providers that support and maintain their residences.

The setting 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](#))

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](#))

“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](#))

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

- Review of the *Resident Handbook*, *Resident Rights Policy* and *Senior Living Policies* support the right of each resident to enjoy individual choice, autonomy and independence in making choices about their activities, décor, living arrangements and Chai Point’s philosophy and approach is to “focus on the lifestyles and values of seniors and respect for individuality, independence, dignity, choice, privacy and a strong sense of well-being.”
- A review of five (5) person-centered plans supported individual choice in activities, hobbies, religious observance, etc. In addition to person-centered plans, each resident has a wellness plan and an activity/recreational plan that assesses and documents interests, activities, involvement, etc.
- During the onsite review, the reviewer spoke with a group of residents and asked specific questions regarding choice, daily activities, lifestyle and involvement and the consensus was that there were so many opportunities to engage in if you choose to do so. In fact, one resident said that the choices were “overwhelming” and there is more to do on a daily basis than the resident was doing prior to residing at the facility.

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

- The *Resident Handbook* outlines and confirms the opportunities for each resident to have the “freedom to live as active a lifestyle as desired.” To that end, Chai Point offers scheduled group outings, entertainment and activities, worship opportunities, wellness programs, etc.
- Chai Point offers a home to each resident, encourages, and supports that each resident has the right to choose when he or she eat, when they sleep, whom they visit, who visits them and what each residents chooses to engage in. Dining options are offered to allow made to order menus, snack and café options.
- Reviewer was able to meet with a recreational group of ten (10) residents during the onsite visit. One of the residents is enrolled in Senior Learning College series and takes classes both online and at a community college. Another resident hosts a monthly *Coffee Klatch* for her Milwaukee friends as well as her Chai Point friends. One resident take a Barre yoga class at the local YMCA.

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 Wisconsin State Standards and Regulations

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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#))

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](#))

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

- The Chai Point *Resident Rights* policy addresses and ensures each of the requirements of 42 CFR § 441.301(c)(4)(iii)- These requirements are confirmed through staff training and updates and clearly comply with all applicable federal, state and local laws regarding abuse/neglect, etc. As part of this policy, each resident is encouraged to sign the residents’ rights protocol that ensures the facilities compliance with applicable statutes.
- New employee orientation, employee, and staff orientation checklists include sections on privacy, confidentiality, resident rights, abuse/neglect prevention, mandated reporting requirements and a Chai Point Assisted Living *Code of Ethics*.

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

Resident Handbook/Resident Rights Section confirms the “Right to Private and Unrestricted Communication:” Each resident has the right to private visitors and private visits as part of a reasonable visitor policy. The handbook asserts that the resident is responsible for guests that visit and that the setting will have defined guest rules.

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

- Resident Handbook states “Chai Point Assisted Living is a community that is the resident’s home and should be thought of and managed as a home.” Dining and auxiliary food choices are available at Chai Point and include a dining room with guest meals, a café with 24-hour service and a snack bar with juices, bakery items, water, etc. Residents can also have meals set aside for them to access at different times from the scheduled dining room hours. Residents can have guests at any meal and can host dinners and parties for their friends and families.
- During the onsite visit, the reviewer observed an active dining first floor with a full dining area, snack foyer and coffee shop.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity [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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#))

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. (WI Statewide Transition Plan, pg. 77; Summarized from Wis. Admin. Code § DHS 83.31)
State licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits. Through ongoing HCBS monitoring, Wisconsin will ensure that individuals maintain the right to make such choices while residing in this state-licensed community-based residential facility. Additionally, the state’s long-term care ombudsman program has regular access to the setting.

☒ Met ☐ Unmet ☐ Not Applicable

- Provider-submitted documents support compliance of landlord tenant laws that “Chai Point is responsible to be familiar with and comply with all requirements of applicable landlord tenant statutes for their local community.”
- At the onsite review, sample leases and admission agreements were reviewed and comply in accordance with HCBS. The occupancy agreement confirms that individuals residing at Chai Point occupy their residence under a legally enforceable occupancy agreement and that the individual enjoys the same responsibilities and protections from eviction by statute of their community.

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

Documents submitted include blueprints of the CBRF, RCAC and the campus.

1. Blueprint confirms separate entrances, exits, and signage for the settings on the campus. On site review confirmed, that the CBRF is located with apartments on the first four floors and the RCAC is located on the top floors. Each floor is individualized and there are separate elevators to the CBRF and to the RCAC. The SNF is located behind the dining room on the other side of the campus.
2. Photos submitted for the resident’s rooms. Each resident lives in a studio, one bedroom-2 bedroom apartment and are free to decorate to his or her personal taste.

3. Submitted photos show an expansive lobby area with a separate hallway that leads to the CBRF/RCAC apartments and signage for Chai Point Assisted Living and Ovation living.
4. On site review visit, confirm that there is separate signage for the Ovation Jewish Home (SNF), Chai Point Assisted Living (CBRF) and Ovation (RCAC). On site visit confirms that there is a clear separation from the Jewish Home to the adult day care and lobby.

Each individual has privacy in their sleeping or living unit.

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, [E-02138](#), 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

- During the onsite visit, the reviewer observed three separate apartments and can confirm that residents have private rooms and can enjoy physical and emotional privacy. Each resident has privacy with entrance doors lockable by the individual; with only appropriate staff having, keys to doors and individual do have a choice of roommates, if applicable.
- HCBS lock and privacy policies submitted for documents review and the HCBS privacy and lock policies are part of the HCBS staff training.

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Wisconsin State Standards and Regulations

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

- Each person at Chai Point has privacy in his/her sleeping unit including a lockable door. Tenant privacy and lock policies were submitted for document review and locks observed on all apartment doors in the CBRF setting during the onsite review.
- During the onsite review, resident interviews confirmed that their respective living units have lockable doors.
- Chai Point provided lock and privacy policies that confirmed that staff always knock and receive permission prior to entering a resident’s apartment; only the resident and the appropriate staff have keys to the living unit; and the written policy confirms that all staff receive training as part of the HCBS compliance for this protocol.

Individuals sharing units have a choice of roommates in that setting.

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](#), 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](#))

☒ Met ☐ Unmet ☒ Not Applicable

There are 38 living units at Chai Point, all private and either studios or one- and two-bedroom apartments. Spouses of residents who are also residents of Chai Point can live together.

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)(1-3)]

Compliance within Wisconsin State Standards and Regulations

Every resident in a community-based residential facility shall have the right to retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner. (Summarized from Wis. Stat. § 50.09)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of the *Resident Handbook* and *Admission Agreement* confirm that each resident can furnish their living units as they so choose. Submitted photos confirmed that each living unit was distinct and furnished by each resident.
- During the onsite review, the reviewer observed that the décor of each of the apartments were distinct from the SNF units and each resident could bring personal furniture and furnishings to their living space. Each of the apartment units also have a Welcome mat and, if chosen, a ledge outside the apartment door for personal belongings, pictures, etc.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within Wisconsin State Standards and Regulations

The bedroom and congregate dining and living area for any resident requiring a specified level of care and who is blind or not fully ambulatory shall be on the first floor. (Summarized from Wis. Admin. Code § DHS 83.50)

Bedrooms shall be designed and equipped to allow residents to achieve the highest level of independent functioning and shall be fully accessible to the resident. Within the bedroom, each resident shall have, or be provided with a closet or wardrobe with clothes hanging rods and shelves, and drawer space adequate to reasonably meet the needs of the resident. The bedroom shall have adequate accessible space for a resident's wheelchair or other adaptive or prosthetic equipment. (Summarized from Wis. Admin. Code § DHS 83.54)

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents.

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.” ([Wis. Admin. Code § DHS 83.29](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

- The *Resident Handbook* clearly outlines that Chai Point is responsible to be familiar with and comply with all requirements of applicable landlord tenant statutes for their community. The *Occupancy Agreement* affirms that the setting will provide “proper written notice to the resident whenever there is a decision regarding the resident’s occupancy agreement, i.e., termination, etc.”
 - The *Service Agreement* describes rate, care levels, termination notice and procedures, tenant policies and procedures.
-

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community–based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

- Documents submitted include the Financial and Business Office Department Flowchart; Chai Point Assisted Living Agreement, Organizational Charts and staffing schedules. Documents confirm that there are separate staffing levels and personnel for Chai Point Assisted Living (CBRF) from both the RCAC and the SNF.
- At the onsite review, the state reviewer reviewed organizational charts and staffing schedules and confirmed that there is minimal interconnectedness at the management and administrative levels for the settings. Additionally, the reviewer met with the management staff at Chai Point Assisted Living and the setting maintains a separate Executive Director and Director of Administration.

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

- Documents submitted included the Kronos Chai Point Staff Manifest and staffing schedules for the CBRF, SNF and RCAC, which clearly indicates that there is distinct staffing for each of the Ovation community’s settings.
 - Chai Point Staff Orientation and checklist include a written HCBS training curriculum that confirms the highlights of HCBS settings rule: “The tenant of Chai Point has the right to privacy and autonomy. The tenant must have a setting that is home like and residential in nature. Services are available to each resident including personal, supportive, care and nursing and are available and planned to meet the individual needs of the tenant. The tenant at Chai Point Assisted Living occupies an apartment and can expect to enjoy all levels of privacy and private living and community engagement available for each resident. A comprehensive person centered planning process and assessment is completed prior to admission and each tenant can expect that the plan will be updated regularly and formally on an annual basis.”
-

DHS Recommendation

Wisconsin can attest that [Chai Point RCAC](#) possesses the required home and community–based characteristics, is not isolating in nature, and overcomes the presumption of having institutional qualities.

Based on the individual interviews with residents, and discussions with staff and volunteers, there is sufficient evidence to support that Chai Point RCAC offers a comprehensive activity and resource community program, and that the planning, availability, and opportunities for activities are supported for each resident. Additional confirmation of choice in activities and involvement supported by each of the interviewee's person centered plans. Of particular note was the interview with the recreational therapist at Chai Point verifying her involvement in person-centered planning with each resident's preference for activities.

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

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DQA Provider Search webpage](#) and the provider directories available at the [Consumer Guide to Health Care – Finding and Choosing an Assisted Living Facility webpage](#).

Ongoing Compliance

Wisconsin's Division of Quality Assurance (DQA) will ensure through ongoing compliance reviews that [Chai Point RCAC](#) continues to meet the requirements of the HCBS Settings Rule. The DMS Bureau of Assisted Living (BAL) has incorporated the HCBS settings rule into its current assisted living survey process and activities. ([DQA Implementation of Home and Community-Based Services Settings Rule in Residential Assisted Living Facilities](#))

Waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are certified by the Wisconsin Department of Health Services (DHS) and work within the requirements of contracts with DHS. State licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits, by the state licensing authority, or by the entity that certified the provider if not regulated by the state. As part of these periodic licensing or certification reviews, the credentialing entity will also review the setting for continued HCBS compliance. Providers will be required to address any HCBS rule deficiencies.

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 areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care ombudsman program, which has regular access to the assisted living setting. [Wisconsin's Board on Aging & Long Term Care](#): The Board on Aging and Long Term Care advocates for the interests of Wisconsin's long-term care consumers, informs those consumers of their rights and educates the public about health care systems and long-term care. The Board also operates the [Long Term Care Ombudsman](#), and [Volunteer Ombudsman](#) services.

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Clement Manor Inc

License/Certification Number

16468

Facility Type

Community Based Residential Facility

Facility Address

3939 S 92nd St

City

Greenfield

County

Milwaukee

ZIP Code

553228

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Clement Manor Health Care Center
- ☐ 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 Clement Manor Inc 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

Clement Manor is a 47 bed Community Based Residential Facility (CBRF), that shares internal connections with Clement Manor Health Care Center, a 50 bed Skilled Nursing Facility (SNF). Clement Manor is in Greenfield Wisconsin in Milwaukee County and offers a variety of services and community activities that help residents access some of the most popular Milwaukee events. During an onsite visit in March of 2024, the reviewer noted that the setting offers many individualized activities, community outings, and has staff that work well with residents to ensure that residents are able to access and participate in activities of their choosing.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of resident's having access to the community during the review of the submitted materials. Activity calendars were submitted that show a variety of activities, including outings in the community.

Further evidence was observed during the onsite visit. All the Direct Care Staff interviewed reported that they take residents in the community regularly. One of the Direct Care Staff also reported that one of their responsibilities is to help residents access the community by coordinating with family and if family is not available, they will coordinate transportation and find staff to accompany the resident (if needed).

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to individualized activities during the review of submitted materials. The Activity Assessment provided asks residents for their preferences surrounding doing activities alone versus in a group.

Further evidence was observed during the onsite visit. One of the staff members interviewed reported that they really get to know their residents and that if a resident has a request to do an activity or go somewhere, they will find a staff member to support that resident.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's access to transportation during the review of the submitted materials. Page 3 of the Admission Agreement states, "Facility will arrange for transportation for Resident when needed for medical appointments, work, educational or training programs, religious services and for a reasonable number of community activities of interest."

Further evidence was observed during the onsite visit. One of the Direct Care Staff interviewed reported that one of their responsibilities is to help residents access the community by coordinating with family and if family is not available, they will coordinate transportation and find staff to accompany the resident (if needed).

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's having the opportunity to seek employment and work in a competitive integrated setting during the review of submitted materials. The Activity Assessment asks if residents have any interest in working in the community. During the onsite interview, the Administrator of Resident Services gave an overview of the process they would follow if a resident was interested in competitive integrated employment. Also, during the onsite review, one of the staff members interviewed reported that if a resident expressed interested in employment, they would let the Administrator of Resident Services know.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning and assessment for integration into the community, community life, interests, and preferences during the review of the submitted materials. Clement Manor's Assessment, ISPs and Evaluation Policy states that one area of assessment will be "social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts, and vocational needs." During the review of ISP's the reviewer observed ISPs that documented residents interests, needs, strengths, and how best to support the residents. The ISPs also included

information on leisure activities, family, spiritual desires and vocational needs. The ISPs were varied and focused heavily on resident interests and the best way to provide support to the residents.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident’s right to manage their own money during the review of the submitted documents. Page 23 of the CBRF Resident Handbook states, each resident has the right to “manage the resident’s own financial affairs, unless the resident delegates such responsibility to someone else of the resident’s choosing and that person accepts the responsibility.”

Further evidence was observed during the onsite visit. One resident interviewed reported that their son manages their money, not the CBRF.

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

Reviewer observed evidence of a resident's right to select their setting during the onsite visit. One resident interviewed reported that their son helped select the setting and that they moved there at their son's recommendation.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of the resident's right to choose their own service providers during the review of the submitted documents. Page 22 of the CBRF Resident Handbook states, each resident has the right to "use the licensed, certified or registered provided of healthcare and pharmacist of the resident's choice."

Further evidence was observed during the onsite visit. One resident interviewed reported that they had been given a choice in what doctor to see. The resident also reported that they get their hair done by their son, rather than by the barber at the setting.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of the resident's right to individual initiative, autonomy, and independence in making life choices during the review of the submitted documents. Page 22 of the CBRF Resident Handbook states, each resident has the right to "self determination. Make decisions relating to care, activities, daily routines, and other aspects of life which enhance the resident's self-reliance and support the resident's autonomy and decision making."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to plan their day out including which activities to participate in, when to come of their room, when and where they eat, when they wake up and when they go to bed at night.

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

Reviewer observed evidence of the resident's right to individual initiative, autonomy, and independence in making life choices during the review of the submitted documents. Page 22 of the CBRF Resident Handbook states, each resident has the right to "self determination. Make decisions relating to care, activities, daily routines and other aspects of life which enhance the resident's self-reliance and support the resident's autonomy and decision making."

Further evidence was observed during the onsite visit. The resident interviewed reported that they are able to plan their day out including which activities to participate in, when to come of the their room, when and where they eat, when they wake up and when they go to bed at night. One Direct Care Staff interviewed reported that residents are able to control their schedule to the extent that they desire. They notify residents of activities and meals, and offer to help them get there if needed, but the residents get to decide what they do.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of the resident's right to be privacy, dignity and respect, and freedom from coercion and restraint during the review of the submitted documents. Page 21 of the CBRF Resident Handbook states, each resident has the right to "freedom from mistreatment... Freedom from seclusion...Freedom from chemical restraints...freedom from physical restraints...be treated with courtesy, respect and full recognition of the resident's dignity and individuality...physical and emotional privacy."

Further evidence was observed during the onsite visit. One resident interviewed reported that they feel staff treat them with dignity and respect.

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

Reviewer observed evidence of the resident's right to have visitors at any time during the review of the submitted documents. Page 21 of the Clement Manor Residency and Service Agreement states, "residents may have visitors as he/she permits or deny visitors as he/she permits."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are allowed to have visitors at any time, including overnight. One Direct Care Staff interviewed reported that the doors are unlocked from 8a-8p but visitors are allowed whenever, they just need to call the desk to get let in; they also reported that they do allow overnight guests.

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

Reviewer observed evidence of the resident's right to have access to food at any time during the review of the submitted documents. Page 2 of the Clement Manor Residency and Service Agreement states, "facility will provide Resident with three (3) meals per day served in the dining room or other designated common area. Snacks that meet resident's individual nutritional needs are available twenty-four (24) hours per day, seven (7) days per week."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to eat whenever they choose. The Direct Care Staff interviewed reported that snacks are available upon request any time of the day or night.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a Residency Agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. Written Residency Agreements cover financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed a physical distinction between the HCBS setting and the institutional setting during the onsite review. The Skilled Nursing Facility (SNF) is on the first floor of the building; the CBRF is on the second floor. There are signs in the building that show where each setting is within the building and multiple entrances to the building.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. Clement Manor submitted a privacy policy that meets the HCBS requirements and Wisconsin Benchmark.

Further evidence was observed during the onsite visit. The reviewer viewed a sample of rooms and can confirm that residents have private rooms and can enjoy physical and emotional privacy. One residents interviewed reported that staff always knock before they enter, and they feel like staff respect their privacy and that they have privacy in their sleeping or living unit.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents have lockable door handles on their doors. Reviewer also observed evidence of residents accepting or denying keys on key forms, based on their personal preferences.

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](#), 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](#)).

☐ Met ☐ Unmet ☒ Not Applicable

The Administrator of Clement Manor reported that all the rooms are single rooms.

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

Reviewer observed evidence of residents' freedom to furnish and decorate their sleeping units during the onsite visit. One resident room that was viewed was full of knitting projects, prizes from bingo, cards from family, and knick knacks they had collected over the years.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to all individuals during the onsite visit.

[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

Reviewer observed evidence of Clement Manor having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The Administrator of Resident Services confirmed that they do not currently have any Medicaid residents who have been assessed to need an HCBS Settings Rule Modification.

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

Reviewer observed evidence of staff having training on person-centered planning during the review of submitted documents. One document submitted showed the PowerPoint used to train staff on person-centered planning. The training covers the principals of person-centered planning and how it relates to staff in various roles.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Clement Manor Inc possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Crossroads Care Center of Mayville Memory Care

License/Certification Number

18680

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

305 S Clark St

City

Mayville

County

Dodge

ZIP Code

53050

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Crossroads Care Center of Mayville
- ☐ 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 Crossroads Care Center of Mayville Memory Care 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

Crossroads Community Care Center of Mayville Memory care is in Mayville Wisconsin, in Dodge County. Mayville has over 5,000 residents and is on the Rock River. Crossroads Community Care Center of Mayville Memory Care is a 22 bed Community Based Residential Facility (CBRF) that is connected to 102 bed Skilled Nursing Facility (SNF). Crossroads Community Care Center of Mayville Memory Care has a separate wing in the building that houses the SNF and offers a variety of activities both at the setting and in the community. The smaller nature of the setting lends itself to residents and staff knowing each other well and having lots of positive interactions.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of residents having access to the community during the review of submitted documents. Activity calendars for April 2024, May 2024, and June 2024 were submitted that show multiple events in the community available per month.

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to come and go as they please. They go shopping, visit their significant other, go for walks, etc. as they desire. A Direct Care Staff member interviewed also reported that residents come and go as they please. They reported that residents sign in and out to ensure staff know if they are present or not, but that they do not stop residents from coming and going and that many residents leave and go into the community daily.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to individualized activities during the review of submitted documents. A set of Resident Activity Evaluations were provided that assess residents interest in a variety of activities as well as if the resident prefers to participate in each activity on individually, in a one to one setting, in a small group, or in a large group. Additionally, during the review of ISPs, multiple ISP's reviewed noted a variety of interests for different residents, as well as ways that staff should offer to support the residents in pursuing their interests.

Further evidence was observed during the onsite visit. One resident who was interviewed reported that they really enjoy doing puzzles. The resident showed off the puzzle area where puzzles are always available and showed which puzzles they had completed. The resident also reported that staff will often offer to do puzzles with them and at times they decline and other times they accept the help. They reported that staff will give space if they decline assistance. The resident also reported that at times they have helped move a puzzle over to a friend's room in the Skilled Nursing Facility (SNF) and back so they can work on the puzzle with their friend.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Evidence was observed of the setting supporting access to the community through transportation coordination during the review of submitted documents Attachment A of the Residency Agreement- Basic Services Offered- states, "There is scheduled transportation to shopping and planned social events, as seen on the monthly activity calendar. The facility will schedule and for all transportation related to medical appointments. If you would like assistance setting up

transportation for any other reason, the staff can assist you. Please request the newest copy of transportation companies if you wish to schedule your own transportation.”

Further evidence was observed during the onsite visit. One resident interviewed reported that Crossroads helps them arrange transportation for medical appointments. They have never requested transportation to non-medical appointments as they prefer to stay at the setting; however, they think staff would help if requested. One Direct Care Staff interviewed reported that if a resident requests assistance with transportation they connect with a designated person who will arrange the transportation.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to competitive integrated employment during the review of the submitted documents. One document submitted was a policy that states, “It is the policy of the facility to evaluate residents upon admission and on an annual basis for those who are seeking employment opportunity within the greater community.” The document goes on to outline the evaluation process and follow up for residents who are interested in competitive integrated employment. Additionally, the reviewer observed documentation of completed employment evaluations for all Medicaid residents.

During the review of ISPs, the reviewer also observed evidence of residents’ interested in employment being documented.

Further evidence was observed during the onsite visit. One resident interviewed reported that they had no interest in employment. However, the Administrator was able to outline the process that the setting would follow when a resident does express interested in competitive integrated employment.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of Person-Centered Planning during the review of the ISPs. Each ISP that was reviewed contained information on resident's interests, access to the community, interest in and access to competitive integrated employment, community, ability to control personal resources, and community connections.

Further evidence was observed during the onsite visit. Reviewer observed that staff knew multiple residents by name and discussed their interests with them. One resident loves dogs so a staff member offered to share a cute recent picture of their dog with the resident. The resident was very excited to see the picture. It is noted in that residents ISP that they love animals, enjoy visiting animals, and enjoy when staff share pictures of animals.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident's right to control their personal resources during the review of the submitted documents. Attachment B (Resident Rights) of the Residency Agreement states that residents have the right to, "manage the resident's own financial affairs, including any personal allowances under federal or state programs, unless the resident delegates, in writing, such responsibility to the CBRF and the CBRF accepts the responsibility or unless the resident delegates to someone else of the resident's choosing and that person accepts the responsibility.

Further evidence was observed during the onsite visit. One resident interviewed reported that they manage their own money and go to the bank as needed to get money.

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

Reviewer observed evidence of the residents having a choice in their setting during the onsite visit. The residents who were interviewed reported that they had selected to move into Crossroads Community Care Center at Mayville Memory Care and had other options available.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident's right to choose their own service providers during the review of the submitted documents. Attachment B (Resident Rights) of the Residency Agreement states that residents have the right to "make decision relating to care...use the licensed, certified or registered provider of health care and pharmacist of the resident's choice."

Further evidence was observed during the onsite visit. One resident interviewed reported that they continue to see a previous provider, even though that provider's practice is about 40 minutes away. The resident also reported that the CBRF helps them to obtain transportation to get to and from those appointments.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of a resident's right to independence and autonomy during the review of the submitted documents. Attachment B (Resident Rights) of the Residency Agreement states that residents have the right to "make decision relating to care, activities, daily routines and other aspects of life."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to come and go as they please. They reported that they pretty much do whatever they want, whenever they want and are able to be make decisions about their life. Another resident interviewed reported that they have a good friend who lives in the SNF and that they are able to visit the friend whenever they want and that staff will help take activities to the friend's room upon request.

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

Reviewer observed evidence of a resident's right to control their own schedule during the onsite visit. During the onsite visit, the Executive Director reported that meals are ready at 7:30, 12, and 4:30; however, residents do not have to eat at those times. Food will be hot and ready for an hour or so and if resident's

don't come out they will save a plate. The Executive Director also reported that residents can request a tray to their room. All of this information was confirmed by one Direct Care Staff interviewed.

One resident interviewed reported that they are able to wake up when they want, go to bed when they want, smoke when they want, and eat when they want. They reported that the food is better when it is fresh so they typically go when the food arrives, but that at times they have been napping or in the community and the setting always has food saved if they are not there at a meal time.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of a resident's right to independence and autonomy during the review of the submitted documents. Attachment B (Resident Rights) of the Residency Agreement states that residents have the right to "freedom from seclusion...freedom from chemical restraints...freedom from restraints...privacy and confidentiality...courtesy"

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

Evidence was observed a resident's right to have visitors at any time during the review of submitted documents. Page 11 of the Residency Agreement states, "Your visitors are welcome and encouraged at any time provided they respect the rights of other residents and staff and abide by the posted house rules." The House Rules reviewed are very basic and discuss no fighting, no illegal drugs, no smoking, and labeling food.

Further evidence was observed during the onsite visit. The Direct Care Staff interviewed reported that residents can have visitors at any time, including overnight. One resident who was interviewed also reported that they are able to have visitors at any time.

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

Reviewer observed evidence of residents access to food at any time during the onsite visit. During the interview with the Executive Director, it was reported that meals are ready at 7:30, 12, and 4:30; however, residents do not have to eat at those times. Food will be hot and ready for an hour or so and if resident's don't come out they will save a plate. It was also reported that residents have an alternate menu of always available food from the kitchen that they can request 24 hours per day, and they also have snacks upon request 24 hours per day.

One resident interviewed reported that they are able to get snacks whenever they want. Another resident interviewed reported that they keep food in their room and are able to get other snacks or meals when they want them. This information was confirmed by the Direct Care Staff interviewed and the Executive Director.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residency agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed service agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. Written tenant service agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a physical distinction between the SNF and the CBRF during the review of the submitted documents. The settings submitted pictures of signs by the external entrance and signs inside of the facility showing which way to go to get to the CBRF.

During the onsite visit, the reviewer observed a separate desk and activity room when crossing from the SNF into the CBRF and lots of decorations that were created by residents. The CBRF also had a wall of puzzles that were completed by the residents.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. Crossroads Community Care Center at Mayville Memory Care submitted a privacy policy that meets the HCBS requirements.

Further evidence was observed during the onsite visit. The reviewer viewed a sample of rooms and can confirm that residents have private rooms and can enjoy physical and emotional privacy. One resident interviewed reported that staff always knock before they enter, and they feel like staff respect their privacy and that they have privacy in their sleeping or living unit.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents right to privacy during the onsite visit. One resident interviewed reported that they have keys to their rooms. The Executive Director reported that all rooms have keyed locks on them and residents get keys at move in.

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](#), 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](#)).

☐ Met ☐ Unmet ☒ Not Applicable

Reviewer observed evidence that no residents share a living unit. The Executive Director reported that all rooms are single rooms and they do not have space to share units. The rooms observed during the on-site visit were single rooms.

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

Reviewer observed evidence of residents' freedom to decorate their sleeping units during the onsite visit. One resident showed the reviewer their room; the room had photos, artwork the resident had created, and lots of creative touches that were personal to the resident living there.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of physical accessibility during the onsite visit.

[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

Reviewer observed evidence of Crossroads Community Care Center at Mayville Memory Care having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification. The Executive Director reported that no residents have assessed needs that require an HCBS Settings Rule Modification at this time. The reviewer did not observe anything documented during the review of ISPs that would need to be an HCBS Settings Rule Modification.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite review. One Direct Care Staff was able to explain Person-Centered Planning to the reviewer. Additionally, the reviewer observed interactions between staff and residents that demonstrated the person-centered plan in action.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Crossroads Care Center of Mayville Memory Care possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Residential Care Apartment Complex (RCAC)

Facility Name

Dove Healthcare Bloomer Assisted Living

License/Certification #
19134

Facility Type
Residential Care Apartment Complex (RCAC)

Facility Address
2207 Duncan Rd

City
Bloomer

County
Chippewa

Zip Code
54724

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Dove Healthcare- Bloomer
- ☐ 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 Dove Healthcare Bloomer Assisted Living 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

Dove Healthcare Bloomer Assisted Living is a 24 bed Residential Care Apartment Complex (RCAC), that has an internal connection to Dove Healthcare-Bloomer, a 50 bed Skilled Nursing Facility (SNF).

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 MCOs](#):

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 Applicable

Reviewer observed evidence of residents having access to the community during review of the submitted materials. The January 2024 newsletter includes ideas on way to stay active in the winter and includes places in the community that can be utilized to help tenants stay healthy and active. It also includes an activity calendar with a community outing listed on it.

Further evidence of residents having access to the community was observed during the onsite visit. The reviewer observed a bulletin board in the lobby with flyer for upcoming community events on it. Additionally, during an interview with a resident, it was reported that they do regular outings and that activities staff have asked the resident if they have any requests for activities or outings.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to individualized activities and to the community beyond just settings-based activities during review of the submitted materials. The January 2024 newsletter includes ideas on way to stay active in the winter and includes places in the community that can be utilized to help tenants stay healthy and active. It also includes an activity calendar with a community outing listed on it.

Further evidence of residents having access to the community was observed during the onsite visit. During an interview with a resident, the resident reported that they have been asked for suggestions on outings and other activities.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' access to transportation during the review of the submitted materials. Page 13 of the Tenant Service Agreement states, "Dove Healthcare can assist with transportation to local appointments, events, or activities determined by the recreation director or assisted living director. Tenants are encouraged to utilize family or other community resources for leisure, employment, volunteering, or appointments outside of Dove Healthcare's transportation availability."

Further evidence of residents having access to transportation was observed during the onsite visit. During an interview with a resident, the resident reported that their spouse typically sets up all transportation; however, they were told that if they need assistance with transportation, the Assisted Living Director can help arrange transportation as needed. The Assisted Living Director's ability to help with transportation was confirmed by staff interviewed and the Assisted Living Director.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' ability to work in competitive integrated settings during the review of the submitted materials. Page 13 of the Tenant Service Agreement states, "For community volunteering and employment options, the tenant can choose to contact the WI Department of Workforce Development (DWD) or Aging & Disability Resource Center (ADRC); contact assisted living director if further assistance is needed."

Further evidence of residents having the right to work was observed during the onsite visit. During an interview the Assisted Living Director, it was reported that residents are assessed for interest in work when they first move in. If they are interested in employment, they will help connect the resident to any needed assistance (ADRC, DWD, etc). The Assisted Living Director also pointed out a bulletin board with information on employment as places that provide assistance in an area that residents have access should they decide they want to work.

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\(2\)\(a\)](#).

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

Reviewer observed evidence of person-centered planning and a resident having a comprehensive assessment including exploration of the member's preferences and opportunities for community integration during the review of the submitted materials.

The Service Plan and MCO MCP includes a thorough assessment of the members, strengths, preferences, interests, capacity for decision making, community interests.

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](#))

From [contract between SMA and specific MCO](#):

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 Applicable

Reviewer observed evidence a tenant's right to manage their own financial affairs during review of the submitted materials. The Tenant Rights section lists that tenants have the right to "manage his/her own financial affairs unless the tenant delegates, in writing, responsibility for financial management to someone of the tenant's choosing."

Further evidence was observed during the onsite visit. One resident interviewed reported that their spouse helps them manage their money.

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 MCOs](#):

- 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, Stats](#)

WI State Statute 50.034 Residential care apartment complexes.

5n) Required referral. Subject to sub. [\(5p\)](#), 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](#), unless any of the following applies:

- [50.034\(5n\)\(c\)](#) 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](#), pg. 85; Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)

☒ Met ☐ Unmet ☐ Not Applicable

Evidence of residents' choice in setting was observed during the onsite visit. One resident interviewed reported that their spouse had visited a few settings and wanted to move into Dove Healthcare Bloomer assisted living so they both moved to this setting.

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 Choice

1. 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](#)

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](#))

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\(2\)\(b\)](#). (WI Statewide Transition Plan, pg. 85; Summarized from Wis. Admin. Code § [DHS 89.34](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a tenants right choose their own providers during review of the submitted materials. The Tenant Rights section lists that tenants have the right “to choose his/her physician and providers of other medical and pharmaceutical services. A tenant shall not be required to use medical or pharmaceutical providers who are employed by or affiliated with the assisted living residence.”

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to choose their own providers and still see the same providers they saw prior to moving into Dove Healthcare Bloomer Assisted Living.

The setting 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](#))

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](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a tenants right to independence in their day and the ability to make choices during review of the submitted materials. The Tenant Rights section lists that tenants have the right “to make reasonable decisions relating to activities, daily routines, use of personal space, how to spend one’s time, and other aspects of life in the assisted living residence.”

Further evidence was observed during the onsite visit. The tenant interviewed reported that they are able to choose what to do with their time, and who they want to spend time with. They reported that they are always invited to activities and on outings but are able to attend or do other things as they choose. Direct Care Staff interviewed also reported that they notify tenants when activities are going to occur, but residents do not need to attend.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a tenants right to support and control their own schedule during a review of the submitted materials. Nothing in the tenant rights policy, Service Agreement, or any other paperwork submitted sets out times for things throughout the day. There is no set time for meals, wake up, meds, or evening cares. The flexibility in meals, wake up, and evening cares allows residents to control their own schedule.

Further evidence was observed during the onsite visit. The tenant interviewed reported that they are able to choose when and where to eat (although they do like to eat when the food is first ready), when they wake up, and when they go to bed. They feel like they have freedom and control over their daily routines.

The setting ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within State Standards

Dove Healthcare Bloomer Assisted Living 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](#))

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 and www.dhs.wisconsin.gov/dqa/memos/15-003.pdf (WI Statewide Transition Plan)

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a tenants right to privacy, dignity and respect, and freedom from coercion and restraint during a review of the submitted materials. The Tenant Rights policy states that tenants have the right to “be treated with courtesy, respect, and in full recognition of their dignity and individuality by all employees of the assisted living residence...to have privacy in his/her independent apartment and when receiving supportive personal, or nursing services...to be free from physical, sexual, or emotional abuse, neglect or financial exploitation or misappropriation of property by the assisted living residence, its employees, or any services provided under contract by the assisted living residence.”

Further evidence was observed during the onsite visit. The tenant interviewed reported that they are treated with dignity and respect by staff. The Assisted Living Director reported that they do not have any tenants that would require the use of any restraints; however, if they did they would consult with the MCO and follow the DHS process.

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](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a tenants right to have visitors at any time during a review of the submitted materials. Page 9 of the Tenant Service Agreement states, “We have no set visiting hours. Your family and friends are encouraged to visit Dove Healthcare as you desire at any time.”

Further evidence was observed during the onsite visit. The tenant interviewed reported that they are allowed to have visitors at any time, including overnight visitors. The Assisted Living Director and the Direct Care Staff interviewed all confirmed that visitors are allowed 24 hours per day.

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](#))

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 Applicable

Reviewer observed evidence of a tenants right to access to food at any time during a review of the submitted materials. The “Meal Service, access to food” policy states, “The facility provides three per day including breakfast, lunch and dinner. There are also snacks available 24 hours per day in the kitchen area. Tenants are welcome and encouraged to ask for additional food items at any time.”

Further evidence was observed during the onsite visit. The tenant interviewed reported that they are able to get food from the kitchen at any time. The tenant also reported that if they are gone and miss a meal, the kitchen will save them a plate to get when they return. The Assisted Living Director and the Direct Care Staff interviewed all confirmed that food is saved for residents who are not available at meal times, and that tenants are able to request snacks at any time.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that a unit is a physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services and the individual has, at a minimum, the same responsibilities and protections that tenants have under the landlord tenant law of Wisconsin during a review of the Tenant Service Agreement.

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

Reviewer observed evidence of a meaningful physical distinction during the onsite visit. The RCAC had a separate entrance with a sign indicating that it was Assisted Living and not Skilled Nursing. The RCAC has varied décor and a fire door separating the HCBS setting from the SNF.

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](#))

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. Dove Healthcare Bloomer Assisted Living submitted a privacy policy that meets the HCBS requirements and Wisconsin Benchmark.

Further evidence was observed during the onsite visit. The reviewer viewed a sample of apartments and can confirm that tenants have private apartments and can enjoy physical and emotional privacy. One tenant interviewed reported that staff always knock before they enter, and they feel like staff respect their privacy and that they have privacy in their apartment.

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](#))

"'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](#))

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of lockable doors during the review of submitted documents. The Tenant Privacy policy states, "The facility will ensure that tenants have the right to privacy and are able to lock their apartment at all times...Procedure: 1. Each apartment shall have door locking hardware and tenants will be provided keys. 2. Tenants have the right to keep their apartment locked at all times. 3. Staff will knock on tenant doors and receive permission before entering. 4. Staff will only enter tenant rooms without permission in case of an emergency such as a tenant health emergency, fire, etc."

Further evidence was observed during the onsite visit. During the tour of the RCAC, the reviewer noted that all units had doors with key locks on them. One tenant interviewed reported that they have a key for their apartment and lock it whenever both them and their spouse are out of the apartment.

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](#))

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](#), 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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a tenants right to choose a roommate, if desired, during a review of the submitted materials. Page 11 of the Tenant Service Agreement states, “No more than two persons will be admitted to an apartment of Dove Healthcare. This individual shall be limited to a spouse or roommate chosen at the initiative of the tenant.”

Further evidence was observed during the onsite visit. The tenant interviewed reported that they share an apartment with their spouse and that finding a setting that allowed them to share a space was important when they chose their setting. Both the tenant and their spouse were in agreement that they wanted to share an apartment.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a tenant's right to decorate their living unit during the onsite visit. The tenant interviewed showed me their apartment which was decorated with family pictures, Green Bay Packer memorabilia, and artwork from their grandchildren.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to all individuals during the onsite visit.

[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

Reviewer observed evidence of Dove Healthcare Bloomer Assisted Living having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The Executive Director confirmed that they do not currently have any Medicaid residents who have been assessed to need an HCBS Settings Rule Modification.

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

Reviewer observed evidence of staff having training on person-centered planning during the review of submitted documents. One document submitted documented that all staff have completed training on person-centered planning.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Dove Healthcare Bloomer Assisted Living possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Residential Care Apartment Complex (RCAC)

Facility Name

Euphoria of West Allis

License/Certification #
18355

Facility Type

Residential Care Apartment Complex (RCAC)

Facility Address

2330 54th Street

City

West Allis

County

Milwaukee

Zip Code

53219

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Aria at Michell Manor
- ☐ 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 Euphoria of West Allis 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

Aria West Allis is a 70 bed Community Based Residential Facility (CBRF) that is connected to Aria at Michell Manor, a 50 bed Skilled Nursing Facility (SNF), and Euphoria of West Allis, a 101 bed Residential Care Apartment Complex (RCAC). Aria and Euphoria are located in West Allis, which is residential section of the greater Milwaukee area. DHS completed one review for both the CBRF and RCAC. These findings apply to both settings.

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 MCOs](#):

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 Applicable

Enter Evidence Here

Reviewer observed evidence of residents' access to community life outside of the setting during the review of submitted documents. A review of the Activity Preference policy shows that residents meet with the Activities Director/Designee to be assessed for their activity preferences upon move in and every 90 days after that. The assessment collects information such as: does the resident prefer group or individual activities? Do they like outings in the community? Do they have any specific activities that they would like to see offered?

Further evidence was observed during the review of Activity Calendars. Activity calendars are posted at the setting and show activities scheduled both at the setting and in the community. Additionally, both residents interviewed reported that they are able to go out into the community as desired.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of individualized activities during the review of the submitted documents. The Activity Preference policy shows that residents meet with the Activities Director/Designee to be assessed for their activity preferences upon move in and every 90 days after that. The assessment collects information such as: does the resident prefer group or individual activities? Do they have any specific activities that they would like to see offered?

During an interview with The Executive Director, they reported that if a resident has interests that are unique, activities staff will do 1:1 activities with that resident. During the review of a sample of ISPs, it is noted for multiple residents that residents will “participate in...1:1 activities as desired.”

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of access to transportation during the review of submitted materials. Attachment A- Basic Services Offered- states, “there is scheduled transportation to shopping and planned social events, as further described in the Resident Handbook. Other transportation arrangements may be made by contacting any leadership team member onsite. You also have the convenience of public transportation as we are located in a residential community.”

Further evidence was observed during the onsite visit. One resident interviewed reported that they always get rides to medical appointments. They stated that they have never requested transportation anywhere other than to a medical appointment but have always gotten help with transportation when they have asked.

Staff advised that they have a driver who coordinates transportation; priority is given to medical appointments, but if there is time, other transportation requests are accommodated. If a transportation request is not able to be accommodated by their driver, the Executive Director helps facilitate rides via the city bus, a taxi or an uber.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to competitive integrated employment during the review of submitted documents. The setting utilizes a questionnaire that is completed with residents to gather information about their interest in competitive integrated employment. The evaluation states that “staff will assist with connecting residents to the proper agencies including but not limited to Managed Care Organizations (MCOs), the Department of Vocational Rehabilitation (DVR), or other entities that may be of further assistance in meeting this goal”. Staff reported that if a resident was interested in employment, they would talk to the MCO care manager and the Executive Director. The Executive Director reported that if a resident was interested working, they would connect with the MCO Care Manager and help provide resources upon request.

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\(2\)\(a\)](#).

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

Reviewer observed evidence of person-centered planning during the review of submitted materials. Activity Preference Assessments will be completed at admission and every 90 days afterwards to ensure that residents are actively engaged in activities and are having their needs met. Aria submitted updated plans to demonstrate the level of detail surrounding their activity plans. Plans viewed included individualized information on preferred activities including interest in group or individualized activities and activities in the broader community including specific activities and places the resident enjoys going. Plans are updated when there is a change in the comprehensive assessment, at the request of the facility, or at the request of or on behalf of the tenant. All updates will be mutually agreed upon by all parties to the agreement.

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](#))

From [contract between SMA and specific MCO](#):

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 Applicable

Reviewer observed evidence of resident's ability to control their own resources during review of submitted materials. Page 4 of the Resident Handbook states "we will not manage or hold any of your personal funds and will not provide you with any assistance in managing your personal funds during your residency at the Community. You will be responsible for holding and managing any funds you desire for personal expenditures during your residency at the Community."

Further evidence as observed during the onsite visit. Both residents interviewed reported that they manage their own money.

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 MCOs](#):

- 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](#), Stats

WI State Statute 50.034 Residential care apartment complexes.

5n) Required referral. Subject to sub. (5p), 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](#), unless any of the following applies:

- [50.034\(5n\)\(c\)](#) 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](#), pg. 85; Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident choice in setting during the onsite visit. One resident interviewed reported that they were given a choice of settings and that their POA selected this setting for them.

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 Choice

1. 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](#)

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](#))

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\(2\)\(b\)](#). (WI Statewide Transition Plan, pg. 85; Summarized from Wis. Admin. Code § [DHS 89.34](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of choice in services during the review of the submitted documents. Attachment B of the Admission Agreement, Resident Rights, states, “each resident shall have the right to:...use the licensed, certified or registered provider of health care and pharmacist of resident’s choice.”

Further evidence was observed during the onsite visit. One resident interviewed reported that they use go into the community for all of their appointments and that staff at Aria assist with transportation. One Direct Care Staff reported that many residents come and go for appointments and that residents are able to see whatever providers they choose. The staff member confirmed that residents can seek outside providers for any service they choose, including hair, nails, etc. and not just medical providers.

The setting 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](#))

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](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' right make choices about their own life during the review of the submitted documents. Attachment B of the Admission Agreement, Resident Rights, states, "each resident shall have the right to:... make decisions relating to care, activities, daily routines and other aspects of life which enhance the resident's self-reliance and support the resident's autonomy and decision making."

Further evidence was observed during the onsite visit. One resident interviewed report they are able to go to sleep when they choose, make daily choices regarding their activities and they can come and go throughout the day. Direct Care Staff interviewed confirmed this.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' ability to control their own schedules during the onsite visit. One resident interviewed report they are able to go to sleep when they choose, make daily choices regarding their activities and they can come and go throughout the day. Direct Care Staff interviewed confirmed this.

Additionally, the setting completed remediation following the on-site visit to ensure residents can eat when and where they want to instead of requiring residents to eat in the dining room at set meal times. The CBRF Mealtime Procedure which is used for both the CBRF and RCAC states, "You are all welcome to join our dining services in the dining room for all meals, breakfast, lunch and dinner. If you would like to eat in your room, you may also do so. We do ask you to come to get your meals if you are able. In the event you do need room service, please make arrangements in advance with the kitchen so they can accommodate this service. Below we have detailed mealtimes for your convenience. If adjustments are needed to these mealtimes for any reason to better accommodate you, please let any staff member know so we can inform the kitchen staff to prepare meals for you as needed. This can be a 1-time thing, or something that we can coordinate to honor your preference."

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within State Standards

Euphoria of West Allis 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](#))

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 and www.dhs.wisconsin.gov/dqa/memos/15-003.pdf (WI Statewide Transition Plan)

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of Aria's policy surrounding residents' rights to be treated with courtesy and respect, to have privacy, and to be free from abuse during the review of submitted documents. Further evidence was observed during the on-site visit through interview with the Executive Director and review of ISPs and MCPs.

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](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that Aria West Allis and Euphoria of West Allis have updated their Visitor Policy.

Individuals have access to food at any time.

Compliance within Wisconsin State Standards and Regulations

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Provider: Euphoria of West Allis

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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](#))

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 Applicable

Reviewer observed evidence of resident’s access to food at any time during onsite visit. Staff and residents reported that if a resident is gone from the setting during a mealtime, they will save food for them. Residents are able to keep food in their rooms (all residents interviewed had food in their rooms); the setting also has food available upon request. During the onsite tour, the reviewer observed food in multiple areas of the setting that were available to the residents at any time.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residency agreement that meets the requirements outlined in [42 CFR § 441.301(c)(4)(vi)(A)] during the review of the submitted documents. Reviewer observed signed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Residency Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a meaningful physical distinction between the SNF and the CBRF and RCAC during the onsite visit. The SNF has a separate entrance from both the RCAC and the CBRF. The SNF is on a separate floor and requires you to take an elevator or stairs to get to it. There are signs in multiple areas that designate which part of the facility you are in and signs with arrows showing which way to go to get to a different area of the setting.

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](#))

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. These settings submitted a Entering Residents Rooms RCAC/CBRF policy that meets the HCBS requirements and Wisconsin Benchmark.

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](#))

“‘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](#))

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Enter Evidence Here

Reviewer observed evidence during the onsite visit that all RCAC residents have keys to their apartments. Additionally, the provider completed remediation to ensure that all CBRF residents also had keys. Reviewer observed evidence of acknowledgement of receiving a key to their apartment and revised admission process to ensure all future RCAC and CBRF residents receive a key when they move in.

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

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“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](#))

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](#), 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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having a choice of roommates during the review of submitted documents. The Admissions Procedures Roommates and Share Room protocol gives an outline of the process that Aria will follow if there is a new admission who is looking for a shared room. This protocol also outlines the process if a resident is refusing a roommate or is unhappy with a roommate.

Further evidence as observed during the onsite visit. The Executive Director reported that have conversations with residents moving into shared rooms from the beginning reminding them that they may get a roommate and of the process to get a roommate. The Executive Director also reported that currently no rooms are shared.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents furnishing and decorating their own rooms at the onsite visit. One resident interviewed was very interested in birds and bird watching and had posters and information on birds throughout their room. The residents room also had a lot of furniture that was brought in by the resident. Another resident’s room had furniture and pictures throughout the room that had provided by the resident’s daughter.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to the residents during the onsite visit.

[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

Reviewer observed evidence of Aria West Allis and Euphoria of West Allis having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The Executive Director affirmed that they currently do not have any residents who require an HCBS Settings Rule Modification but that they will continue to assess residents at regularly scheduled care plan reviews and when there is a change in condition.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite review. The Executive Director advised that all staff received training on person-centered planning and staff are expected to have a basic understanding of it and use it in practice daily.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Euphoria of West Allis possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review

Facility Name

The Fields of Washington County RCAC

License/Certification #

0011418

Facility Type

Residential Care Apartment Complex (RCAC)

Facility Address

531 East Washington Street

City

West Bend

County

WI

Zip Code

53095

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment.
- ☒ Settings on the grounds of, or adjacent to, a public institution. Name of institution: [Washington County Samaritan Health Center](#)
- ☐ 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 [The Fields of Washington County RCAC](#) 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

The Fields of Washington County CBRF and RCAC were reviewed for compliance with the HCBS Settings Rule in 2020. When this evidentiary summary was previously submitted for public, the RCAC was not named in the Facility Information or Facility Summary sections of the report in error. These findings are the same as the Evidentiary Summary posted in 2021 under the name Fields of Washington County CBRF and apply to both the CBRF and to the RCAC.

The Fields of Washington County RCAC was certified in 2006 as a 24-bed RCAC in West Bend. The Fields of Washington County (CBRF) was opened in 2009 in response to numerous community and constituent requests and current staff recommendations to develop a more cost-effective option than skilled nursing care. The Fields CBRF is a 31-unit facility, designed to provide assisted living to low income, elderly and disabled individuals. At this writing, there are 23 residents supported by [Family Care](#) Medicaid long-term care funding. The Fields CBRF offers community living options that include 24-hr onsite assistance and access to a variety of social, health and wellness programs, and focuses on programs and services that enhance the quality of life, independence and

community integration for its residents. The foundation for its services is the person-centered plan, which includes self-direction using the least restrictive environment and promoting and encouraging choice of activities, healthcare providers and access to the greater West Bend community.

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

A review of the Program statement confirms that:

- The Fields of Washington CBRF program “creates a homelike, therapeutic environment within a small group setting, designed for emotional security, safety and comfort, with access to the community at large and the environment and the outdoors.”
- Review of policies and practices of the Fields confirms that when there is “an initial inquiry from a Community Member (potential resident) interested in the Fields, staff provide a referral to the Washington County ADRC for choice and options counseling and financial screen.” If the prospective member meets the initial qualifications, then a tour is arranged prior to admission.

Testimonials were submitted to further confirm that the greater West Bend community view the Fields as a community living resource and not institutional- One community volunteer that runs a club for interested residents to attend community events- The volunteer arranged bingo community events and a casino night. Additionally, prior to Covid-19, weekly outings were organized for the residents to attend the Lakeshore Chinook baseball games.

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](#))

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\(1\)\(d\)](#))

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

Narrative submitted that highlighted outings for eight(8) weeks, pre Covid-19:

- Restaurants (33 times)
- Community Church (19 times)
- Community Volunteering and Guitar Lessons (10 times)
- Scheduled outings – Enchantment in the Park, Christmas Light Tour, and fish fries

Testimonials

- Aging and Disability Resource Center Director: “The Fields of Washington County has been an excellent resource for the residents of Washington County. It is a home-like environment that allows residents freedom of choice in their schedules and activities.”

- Community Care Social Worker: “Members of the Fields are able to come and go as they please and to access community outings. Additionally, one of our Community Care volunteers at the Fields provides support to the residents at the nursing facility.
- Kettle Moraine YMCA “One of the residents is active at our YMCA and his membership helps to keep him physically active as well as helps to support his emotional and social well-being.”

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

- Narrative submitted that listed groups that organized outings and events for the residents: Kettle Classic Kar Club, 4-H, pet therapy, High school groups, etc.
- Photos and activity calendars were submitted promoting community events. Activity registration forms show individual residents choice in community activities.
- A review of the psychosocial section of three person centered plans indicates individualized choice in activities, volunteering, etc. One male resident regularly attends the YMCA. Another resident goes on a “Casino junket” once a month.
- The Community Member Handbook was submitted that indicated, “A monthly activity calendar with structured and non-structured groups is displayed on the bulletin boards. A monthly Community member meeting is held for the members input and also an opportunity to meet with the recreation department.”

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- Community Member Handbook, under Cars and Parking, states that residents can operate their own vehicles and that parking is provided in the main parking lot.
- A review of the Scope of Services and Admission Agreements at the Fields of Washington County Assisted Living indicate that the setting has available transportation for group activities in the community. Staff will also work closely with family members, friends and volunteers to arrange transportation for residents for appointments in the community, etc.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

- Residents at The Fields of Washington enjoy benefits that afford options for interaction and access to the greater West Bend community. Although the majority of residents are retired, a couple of residents still maintain volunteer positions in their community programs and they are encouraged to continue their participation as long as they choose.
- A review of one person-centered plan confirmed that a resident volunteers on a weekly basis at the local humane society and has been doing so for a number of years.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

A review of the *Community Member Handbook, Community Member Funds* section states, "community members are able to open an account in the business office and have access to their own personal funds 24/7." Community members can also bank in their community and maintain an account at their financial institution of preference.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

A review of the *Community Member Handbook, Community Member Funds* section states, "community members are able to open an account in the business office and have access to their own personal funds 24/7." Community members can also bank in their community and maintain an account at their financial institution of preference.

The setting is selected by the individual from among setting options including non-disability specific settings. [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

- A review of person-centered plans as well as the individual admission agreements, The Fields of Washington County CBRF was selected from a choice of a variety of setting options, including non-disability specific settings. Additionally, documentation of annual review of choice of settings indicate that this setting continues to be the setting of choice for the individual.
- Copies of signature pages of three admission agreements confirm choice in settings as well as confirmation of discussions during annual reviews that confirm that this setting continues to be the setting of choice.
- The Residency and Services Agreement confirms that the applicant/community member provide consent for choice of settings.

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

“COMPREHENSIVE INDIVIDUAL SERVICE PLAN Individual service plan review. Annually or when there is a change in a resident's needs, abilities or physical or mental condition, the individual service plan shall be reviewed and revised based on the assessment under sub. (1). All reviews of the individual service plan shall include input from the resident or legal representative, case manager, resident care staff, and other service providers as appropriate.” ([Wis. Admin. Code § DHS 83.35 \(1\)\(d\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the ISP Policy indicates that the Fields staff “will ensure that there is an individual ISP for each community member. It will list the services provided, establish measurable goals and describe the method of care.”
 - A review of Community Member Handbook states, “Three home-cooked meals and snacks are provided daily. Monthly menus are provided and snacks and drinks are provided 24 hours a day.” Community members can also have a refrigerator and microwave in their rooms.
 - A review of a sample of person-centered plans confirm that there is individual choice in “the preferred location of meals”. Community members can choose to take their meals in the dining room or have their meals in their individual rooms.
-

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 Wisconsin State Standards and Regulations

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](#)).

Person-Centered Planning

1. "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.)
2. 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](#))

☒ Met ☐ Unmet ☐ Not Applicable

A review of the *Community Members Rights Policy (CBRF)*, Item 6, *Choice of Health Care Providers* confirms that the "facility has a non-interference position with the Community Member's choice of his or her physician and providers of medical and other healthcare services. A community member shall not be required to use medical or mental health or providers who are employed by or affiliated with the facility. A Community Member's choice of providers of supportive, personal and nursing services from providers other than the community based residential facility is subject to the requirements of HFS89.24(2)(b.)."

The setting 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](#)).

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](#)).

"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](#)).

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

- Review of the Fields of Washington County CBRF Residence Bill of Rights, Admission Agreement and Program statement support the right of each resident to enjoy individual choice, autonomy and independence in making choices about their activities, décor, living arrangements.

- Review of the Community Based Residential (CBRF) Community Member Rights affirm: “that each resident with be treated with courtesy, respect and full recognition of the Member’s dignity and individuality by all employees of the facility.” Under the ***Self-Direction*** section, each resident is able “to make reasonable decisions relating to activities, daily routines, use of personal space, how to spend one’s time and other aspects of life in the CBRF.”
- A review of three person-centered plans demonstrated that each resident is actively involved in their care. As described under the section, *Need for Family/Community Contact- Family/Relationships*, a resident’s person centered plan clearly indicates that the resident is involved in his care, determines when he visits family and goes on outings. In the need/ service section, the plan highlighted- “authorizing/setting up transportation options for community outings of my choice.”

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

- Review of the Community Based Residential (CBRF) Community Member Rights affirm: “that each resident with be treated with courtesy, respect and full recognition of the Member’s dignity and individuality by all employees of the facility.” Under the ***Self-Direction*** section, each resident is able “to make reasonable decisions relating to activities, daily routines, use of personal space, how to spend one’s time and other aspects of life in the CBRF.”
- Review of the Community Member Handbook confirms, “Members are invited to participate, at their choice, in a variety of activities”.
- A review of a sampling of person centered plans confirmed that each of the members have the right to control their own schedules, participate in activities, etc. An example of this is that residents can have breakfast at leisure and wake up when they choose to.

The setting ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within Wisconsin State Standards and Regulations

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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

- A review of the Community Based Residential Facility Community Members Rights Program statement confirms, under the section of *Dignity and Respect* that each resident is entitled “to be treated with courtesy, respect and full recognition of the community member’s dignity and individuality by all employees of the facility and all employees of service providers associated with the facility.”
- A review of the Members rights statement confirms that each resident is entitled to a “safe environment’ and “freedom from abuse.”
- The Fields Community Member Rights policy addresses and ensures each of the requirements of 42 CFR § 441.301(c)(4)(iii)- These requirements are confirmed through staff training and updates and clearly comply with all applicable federal, state and local laws regarding abuse/neglect, etc. As part of this policy, each resident is encouraged to sign the residents’ rights protocol that ensures the facilities compliance with applicable statutes.

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

Under the Guest/Visitors section of the CBRF Handbook, community members “may have visitors any time of the day. Visits may be in the units or common area.”

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

The Fields of Washington County CBRF Admission Agreement entitles each resident to three meals a day, snacks anytime and access to food, as they desire. Each resident of the Fields can have a nutritional program and diet developed for them and every effort will be made to meet the individual needs of the resident. Dining and auxiliary food choices are also available at the Fields and include a dining room with guest meals, a snack bar and lounge with juices, bakery items, water, etc. Residents can also have meals set aside for them to access at different times from the scheduled dining room hours. Residents can have guests at any meal and can host dinners and parties for their friends and families.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

- Residents at The Fields of Washington County CBRF each have a Residency and Service Agreement, which outlines services that are provided to the resident including room, board, rates and personal services. The Fields of Washington County Assisted Living, through its Admission Agreement confirms that the setting will comply with all applicable laws including the Fair Housing Act.
 - The Residency and Service agreement confirms that the agreement is "governed by the laws of the State of Wisconsin and can be disputed in the Circuit Court of Washington County, Wisconsin.
-

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

- Documentation was submitted that demonstrates the physical distinction between the CBRF and the nursing home. The CBRF utilizes the main entrance for the Samaritan campus and there is outdoor signage that indicates that there is a separate entrance and signage for the CBRF.
 - Residents and guests at the CBRF utilize the main entrance and exit into their own hallway and bank of elevators. Elevators take the resident/guest to Floor 1, which leads to the individual rooms, lounges and community areas.
 - Photos were submitted of resident rooms that demonstrate a home-like environment and individually decorated. The lounge, activity areas and dining areas décor are decorated distinct from the SNF.
-

Each individual has privacy in their sleeping or living unit.

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](#), 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

- [HCBS lock and privacy policy was submitted for documents review and the HCBS privacy and lock policies are part of the HCBS staff training.](#)
-

- The Fields of Washington County's CBRF Resident Bill of Rights confirm that each resident is entitled to privacy, a key, lock, etc.

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Wisconsin State Standards and Regulations

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Each person at The Fields of Washington County Assisted Living has privacy in his/her sleeping unit including a lockable door. Tenant privacy and lock policies were submitted for document review and photos of living units with locks were submitted.

Individuals sharing units have a choice of roommates in that setting.

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](#), 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](#))

☐ Met ☐ Unmet ☒ Not Applicable

All of the living units at the Fields of Washington County are private.

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)(1-3)]

Compliance within Wisconsin State Standards and Regulations

Every resident in a community-based residential facility shall have the right to retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner. (Summarized from Wis. Stat. § 50.09)

☒ Met ☐ Unmet ☐ Not Applicable

Review of the Admission Agreement confirm that each resident can furnish their living units as they so choose. Submitted photos confirmed that each living unit was distinct and furnished by each resident.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within Wisconsin State Standards and Regulations

The bedroom and congregate dining and living area for any resident requiring a specified level of care and who is blind or not fully ambulatory shall be on the first floor. (Summarized from Wis. Admin. Code § DHS 83.50)

Bedrooms shall be designed and equipped to allow residents to achieve the highest level of independent functioning and shall be fully accessible to the resident. Within the bedroom, each resident shall have, or be provided with a closet or wardrobe with clothes hanging rods and shelves, and drawer space

adequate to reasonably meet the needs of the resident. The bedroom shall have adequate accessible space for a resident's wheelchair or other adaptive or prosthetic equipment. (Summarized from Wis. Admin. Code § DHS 83.54)

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to the individual resident-42 CFR § 441.301(c)(4)(vi)(E)]

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

- Review of the financial statements and narrative confirm that the Fields (CBRF) has its own separate and unique budget based on revenues and expenses and percentages of salary and benefits.
- Allocations are done between the CBRF and the SNF on a monthly basis and a percentage is allocated for salary and benefits.
- The reviewer viewed organizational charts and staffing schedules and confirmed that there is minimal interconnectedness at the management and administrative levels for the settings.

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

- Staffing and training narrative submitted that states that the Fields- “hires, trains and maintains staff in the housing units (CBRF and the RCAC) that are separate and distinct from the SNF.
- The Housing Manager works with the Washington County Human Resource Department to hire staff who are qualified in the regulated education components as a Resident Assistant.
- Countywide orientation of staff also includes separate training for staff in the CBRF on HCBS settings, resident’s rights and abuse, code of conduct and ethics training.

DHS Recommendation

Wisconsin can attest that The Fields of Washington County RCAC possesses the required home and community-based characteristics, is not isolating in nature, and overcomes the presumption of having institutional qualities.

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

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DQA Provider Search webpage](#) and the provider directories available at the [Consumer Guide to Health Care – Finding and Choosing an Assisted Living Facility webpage](#).

Ongoing Compliance

Wisconsin's Division of Quality Assurance (DQA) will ensure through ongoing compliance reviews that [The Fields of Washington County RCAC](#) continues to meet the requirements of the HCBS Settings Rule. The DMS Bureau of Assisted Living (BAL) has incorporated the HCBS settings rule into its current assisted living survey process and activities. ([DQA Implementation of Home and Community-Based Services Settings Rule in Residential Assisted Living Facilities](#))

Waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are certified by the Wisconsin Department of Health Services (DHS) and work within the requirements of contracts with DHS. State licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits, by the state licensing authority, or by the entity that certified the provider if not regulated by the state. As part of these periodic licensing or certification reviews, the credentialing entity will also review the setting for continued HCBS compliance. Providers will be required to address any HCBS rule deficiencies.

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 areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care ombudsman program, which has regular access to the assisted living setting. [Wisconsin's Board on Aging & Long Term Care](#): The Board on Aging and Long Term Care advocates for the interests of Wisconsin's long-term care consumers, informs those consumers of their rights and educates the public about health care systems and long-term care. The Board also operates the [Long Term Care Ombudsman](#), and [Volunteer Ombudsman](#) services.

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Grand Avenue Assisted Living

License/Certification Number

17201

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

620 Grandview Ave

City

Blair

County

Trempealeau

ZIP Code

54616

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Grand View Care Center
- ☐ 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 Grand Avenue Assisted Living 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

Grand Avenue Assisted Living is a 12 bed Community Based Residential Facility (CBRF) that has an internal connection to Grand View Care Center, which is a 50 bed Skilled Nursing Facility (SNF). Grand Avenue is located in Blair Wisconsin, which is a town of approximately 1,300 people.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of access to the community during the review of submitted documents. Current activity calendars were submitted that show a variety of activities at the SNF, the CBRF, and in the community. Many activities are joint due to overlapping interests and smaller numbers of residents, but not all are joint. Residents at the CBRF do have the option to attend any activities at the SNF that they would like to.

Further evidence was observed during the onsite visit. The residents interviewed reported really enjoying the music that comes to the CBRF and playing Bingo. One resident interviewed reported that they enjoy going out of the community and recently requested to go shopping at a specific store and was able to go out shopping with staff. The Administrator reported they also recently went on to a bar and restaurant for lunch and that all the residents who went along reported enjoying that outing very much. The Administrator also reported that they regularly ask residents for input related to community activities and for requests for new places to go.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of individualized activities, both in the community and in the CBRF during the onsite visit. The residents interviewed all reported enjoying the activities on site. One resident said that they requested to go shopping at a specific store and staff took them to that store. Based on resident interviews, the majority of the time in the community is with family; however, staff will take them to appointments or on specific outings that are requested. Residents and staff also reported that they do one on one activities with residents within the setting as well.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of access to transportation during the onsite visit. Transportation in Blair is limited (no bus, no taxi's). Grand Avenue does have a van that they use to transport residents within the community either for appointments or on outings. Staff also give residents the options to walk places with them if the destination is close. Grand Avenue is currently working on expanding their transportation options by contracting with a company for use of a van that would allow up to 6 wheelchairs.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents access to competitive integrated employment during the review of submitted documents. Grand Avenue submitted a copy of the activity assessment that they use at admission and for regular ISP updates. The assessment asks residents if they are interested in employment in the community and if so what type of employment they are interested in.

Further evidence was observed during the onsite visit. The Administrator explained the procedure to help connect residents to resources for employment if they express interest.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of submitted documents. Grand Avenue has a Leisure Time Service Plan, a Social Service Plan, and a Cognitive/Decision Making plan that are all part of their residents ISPs. The Leisure time plan covers interests in leisure activities and activity preferences (ex: large group vs individual vs one on one). The Social Service Plan covers interpersonal relationships, family and community contacts,

and vocational needs. The Cognitive/ Decision Making service plan covers the residents capacity for self-direction, ability to make decisions independently, communication skills, ability to make wants or needs known, and ability to control personal resources.

Further evidence was observed during the onsite visit. During the interview with the Administrator and RN Manager, both were able to discuss very specific details about residents and knew specific residents interests, preferences, communication preferences.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of individuals ability to control personal resources through the Residents Rights document and verified via interviews with staff and multiple residents. Grand Avenue does manage some residents money when the resident or his/her representative delegates responsibility to Grand Avenue. Grand Avenue will manage up to \$200 at a time and will provide an accounting of all financial transactions on a quarterly basis or upon request. Money is kept in a locked cabinet in the office and can be accessed upon request. During the interview process it was noted that some residents have family manage their money and some residents keep their own money. All options are allowable.

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

Reviewer observed evidence of resident choice in setting during the onsite visit. One resident interviewed stated that they had selected to move to Grand Avenue as it was the best of their options.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident choice in providers during the review of submitted materials. The Resident Rights policy states residents have the "right to select your own personal attending physician and use a licensed, certified, or registered provider of health care and the pharmacist of your choice as long as the medication packaging is approved by Grand Avenue."

Further evidence was observed during the onsite visit. During interviews with residents and staff, it was reported by multiple people that residents choose their own medical providers. Some residents have doctors who are close to the CBRF as it is convenient for appointments, but the residents that were interviewed reported that they still use the doctors that they had prior to moving in to the CBRF. Staff reported that typically family members take residents to medical appts or, if needed, the social worker will take them. Reviewer affirmed residents choice of non-healthcare services are also available.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of resident rights to make decisions related to care, activities, and daily routines during the review of submitted documents. The Resident Rights Policy states, "Residents have the right to choose activities, schedules, and health care consistent with their interests, assessments, and individual service plans, and make choices about aspects of their life that are significant to them. Have the right to participate in social, religious, and community activities."

Further evidence was observed during the onsite visit. The residents interviewed reported that they are allowed to do what they would like to do, wake up and go to bed when they choose, have visitors at any time, and make choices regarding their activities. The residents reported enjoying the activities and the flow of the day at Grand Avenue.

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

Reviewer observed evidence that residents have the right to control their own schedules during the review of submitted documents. The Residents Right Policy states "Residents have the right to choose activities, schedules, and health care consistent with their interests, assessments, and individual service plans, and make choices about aspects of their life that are significant to them. Have the right to participate in social, religious, and community activities."

Further evidence was observed during the onsite visit. The residents interviewed reported that they are able to set their own schedule; they stated that they like overall schedule (ie: when meals are ready, going to bed after evening cares, etc.). When asked if they would be able to get a meal at a different time or to change their schedule if they wanted, one resident reported that they would be able to; they would just need to let staff know so they could accommodate her requests. Staff interviewed during the onsite visit confirmed this flexibility in the resident schedules.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of residents right to be treated with courtesy, respect, and dignity by all staff, as well as the right to freedom from mistreatment and coercion during the review of submitted documents. The Residents Rights Policy states that "Residents have the right to: Dignity, respect, and a comfortable living environment; Be free from abuse, neglect, misappropriation of property, and discrimination"; it also states "the resident shall be treated with courtesy and respect, in full recognition of their dignity and individuality, by all employees of the facility and all licensed, certified, or registered health care providers employed or contracted by Grand Avenue. Grand Avenue will care for each of its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life."

Further evidence was observed during the onsite visit. One resident interviewed reported that they feel that staff treat them with courtesy and respect.

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

Reviewer observed evidence that residents have the right to visitors at any time during the review of submitted documents. The House Rules state, "Friends, family members, and other visitors are welcomed and encouraged to visit."

Further evidence was observed during the onsite visit. One resident interviewed reported they are allowed to have visitors at any time, including overnight. Direct Care staff confirmed this.

During the onsite visit, the reviewer witnessed multiple visitors come in and go directly to residents' rooms. Visitors were able to move about unrestricted and were seen in multiple areas including resident rooms, the dining area, and another sitting area.

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

Reviewer observed evidence of residents having access to food at any time during the onsite visit. Grand Avenue serves 3 meals a day that can be eaten in the dining room, a common room, or resident rooms. When meals are brought over from the SNF they are placed in a warmer and (per staff report) kept in there and warm until all residents eat. If a resident does not eat a meal when they food is ready, they are welcome to get it later.

During the visit, the reviewer observed that residents were notified that food was ready but that not all residents came out to eat right away. Meals were served to residents when they arrived in the dining room and asked for their food. Between meals, residents have access to a kitchen that has multiple other snack/meal options that can be prepared independently or with the assistance of staff. Grand Avenue also has a hydration station that gives residents access to beverages at any time. Some residents also keep a refrigerator and snacks in their room.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of an Admission Agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Admission Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. Written Admission Agreements cover financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a meaningful physical distinction between the CBRF and the SNF during the onsite visit. Grand Avenue Assisted Living has a separate entrance and signage than Grand View Care Center. Inside, there is a locked door separating the 2 facilities. Décor in Grand Avenue is varied.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. Grand Avenue submitted a privacy policy that meets the HCBS requirements.

Further evidence was observed during the onsite visit. The reviewer observed a sample of rooms and can confirm that residents have private rooms and can enjoy physical and emotional privacy. The residents interviewed reported that staff always knock before they enter, and they feel like staff respect their privacy and that they have privacy in their sleeping or living unit.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's having access to keys to their sleeping units during the review of the submitted materials. The setting has a process for distributing keys at admission that aligns with HCBS Requirements.

Further evidence was observed during the site visit. The reviewer viewed a sample of rooms and can confirm that residents have private rooms with entrance doors lockable by the individual. The residents interviewed had keys to their rooms.

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](#), 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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents’ right to have a choice in roommates during the onsite visit. The Administrator stated all rooms are single rooms; however, if residents really wanted, they could share a room. Both residents would need to consent to sharing a room.

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

Reviewer observed evidence of residents right to furnish and decorate their sleeping or living units during the onsite visit. The reviewer observed multiple rooms with different décor. Residents showed off items that had come from friends and family that held importance to them.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that all areas of the setting were accessible to all residents during the onsite visit.

[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

Reviewer observed evidence of Grand Avenue having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

At this time, no residents have a HCBS settings rule modification.

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

Reviewer observed evidence of staff having training on person-centered planning during the review of submitted documents. Training logs were observed that show all staff have completed training on person-centered planning.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Grand Avenue Assisted Living possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Hillside Terrace CBRF and Shorehaven Memory Care

License/Certification Number

18069 and 13899

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

1305 W. Wisconsin Ave

City

Oconomowoc

County

Waukesha

ZIP Code

53066

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Shorehaven Health and Rehabilitation Center
- ☐ 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 Hillside Terrace CBRF and Shorehaven Memory Care 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

Hillside Terrace is a 14 bed Community Based Residential Facility (CBRF) with internal connections to Shorehaven Memory Care, a 28 bed CBRF, Shorehaven Health and Rehabilitation Center, an 88 bed Skilled Nursing Facility (SNF), and Shorehaven Tower, a 61 bed Residential Care Apartment Complex (RCAC). Shorehaven Tower is also currently undergoing a Heightened Scrutiny Review.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of revised process in which activity staff will include additional monthly outings to the activity calendar per resident preferences that are discussed during assessment process and annual resident reviews. The activity section of the Resident Handbook has been updated to include information about how to request additional assistance to access the community, if needed. Residents will be assessed for interest in the community and outing preferences will be documented in the ISP.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of an "accessing the community" policy, which is also addressed in the resident handbook. The policy explains how residents, or their legal decision maker may contact the care coordinator to arrange for support and/or transportation to a community event.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of an "accessing the community" policy, which is also addressed in the resident handbook. The policy explains how residents, or their legal decision maker may contact the care coordinator to arrange for support and/or transportation to a community event.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a "Competitive Integrated Employment" policy in which the resident will be asked if they are interested in competitive integrated employment and how the facility will collaborate with the MCO care manager, resident, and legal decision maker if the resident does have an interest in this area. This information is also included in the resident handbook.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed the facilities updated process for residents (including residents who require an escort to leave the setting) to access the community.
Reviewer observed the updated process outlined in the resident handbook.

Reviewer has observed monthly activity calendars which now include a phrase explaining that residents may contact the care coordinator if they need support to arrange or attend an off-campus activity.

Reviewer observed ISPs for all Medicaid residents and a copy of the blank assessments used to determine independence in the community, what types of activities they are interested in, and interest in integrated employment.

The facility submitted documentation of staff training on the new activity process along with the names of the staff that completed the training.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residents right to manage their own personal funds during the onsite visit. Two residents interviewed reported that they manage their own money.

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

Reviewer observed evidence of residents right to select their setting during the onsite review. One resident who was interviewed reported that they had selected to move to Shorehaven and had been given other options.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' right to choose their providers during the review of submitted documents. Page 11 of the Resident and Family Handbook states, “residents have the choice to use any outside medical provider that they would like.”

Further evidence was observed during the onsite visit. One Direct Care Staff that was interviewed reported that residents do regularly go out to medical appointments. One resident that was interviewed reported that they still see the same providers that they have seen for 35 years. Residents also have the choice to receive other services from providers of their choosing in the community.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of residents right to have a choice in their day-to-day life during the onsite visit. One resident interviewed reported that they are able to control their day; they are able to get up when they choose and go to bed when they choose. They are able to participate in activities of their choice and decide who to spend time with.

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

Reviewer observed evidence of resident's freedom to support and control their own schedules during the onsite visit. The Direct Care Staff interviewed reported that they let residents know when food is ready, but they do not have to come and eat right away. If a resident does not want to eat, they can request a tray to their room or food to be saved for later. The residents who were interviewed reported that they are able to participate in whatever activities they choose.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of residents right to privacy, dignity and respect and freedom from coercion and restraint and during the review of the submitted documents. The Hillside Terrace CBRF Resident Bill of Rights states: "I shall be treated with courtesy and respect by all employees. My dignity and individuality shall always be preserved...I have the right to privacy...I have the right to be free of any type of restraint and this includes chemical restraints, physical restraints and seclusion."

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

Reviewer observed evidence of a residents right to have visitors at any time during the review of the submitted documents. Page 29 of the Resident Handbook states, "visitors are welcome at any time of the day the Resident wishes to receive these visits. For security purposes, our doors are locked when there isn't someone at our reception desk. When the doors are locked, visitors may gain entrance by following the directions posted by the telephone in between the double doors."

Further evidence was observed during the onsite visit. The Resident Care Staff reported that residents are allowed to have visitors at any time.

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

Reviewer observed evidence of residents having access to food at any time during a review of the submitted materials. Page 12 of the Resident Handbook states, "nourishments and snacks are available 24 hours a day."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are able to get snacks whenever they request. One Direct Care Staff interviewed reported that they always have snacks available in the dining area and will bring snacks to residents if they request.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residency agreement that meets the requirements during the review of the submitted documents. Reviewer observed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Residency Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a meaningful physical distinction between the HCBS Setting and the Institutional setting during the onsite visit. Each area of the setting was clearly labeled with lots of sign posts pointing to specific units or rooms. The CBRF had a lot more decoration in the halls and on the unit than the Skilled Nursing Facility did.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a key policy and procedure and a policy titled “Uphold Sanctity of Home” that meets the HCBS requirements and Wisconsin Benchmark.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence during the on-site visit that all resident doors had key locks on them. Additionally, reviewer observed evidence of the facility's revised key policy/procedure which ensures each resident receives a key to their living unit and only appropriate staff have keys.

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](#), 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](#)).

☐ Met ☐ Unmet ☒ Not Applicable

Reviewer observed evidence that no residents share a living unit. The Chief Operating Officer reported that all rooms are single rooms and they do not have space to share units. The rooms observed during the on-site visit were single rooms.

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

Reviewer observed evidence of residents right to furnish and decorate their sleeping or living units during the onsite visit. The reviewer observed multiple rooms with personalized decorations, including photographs, art work, and personal items to the residents.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to residents during the onsite visit.

[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

Reviewer observed evidence of a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The setting is in the process of working with the Managed Care Organization to assess if HCBS Settings Rule Modifications are needed for their residents.

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

The setting's staff will complete training on the HCBS Settings Rule and person-centered planning after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Hillside Terrace CBRF and Shorehaven Memory Care possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Kavod Terrace

License/Certification Number

19158

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

1410 N Prospect Ave

City

Milwaukee

County

Milwaukee

ZIP Code

53202

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Jewish Home and Care Center Inc.
- ☐ 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 Kavod Terrace 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

Kavod Terrace is a 16 bed Community Based Residential Facility (CBRF) with internal connections to Jewish Home and Care Center, Inc, a 136 bed Skilled Nursing Facility (SNF), to Chai Point, a 41 bed Residential Care Apartment Complex (RCAC) and to Chai Point Assisted Living, a 38 bed CBRF. Both Chai Point Assisted Living and Chai Point RCAC were reviewed for heightened scrutiny in 2021. Kavod Terrace does not have any Medicaid residents at this time but anticipates accepting Medicaid funding by the end of 2024.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of residents having access to activities that are individualized during the review of the submitted documents. April 2024 and May 2024 activity calendars were submitted for review. Both show a wide variety of activities on various areas of the campus and outside of the campus in the community.

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that if a resident wants to go out in the community and they are unable to leave independently, someone from activities would take them.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of Residents having access to activities that are individualized during the review of the submitted documents. The Activities Program Policy Document states, "Kavod Terrace will plan and carry out activities to accommodate individual resident needs and preferences. Each resident will be provided with the opportunity to participate in cultural, religious, political, social and intellectual activities within the home and community. No resident will be required to participate in these activities." One ISP reviewed listed resident preferred activities, what materials would be provided to the resident for individual activities as well as a plan to offer 1:1 activities as desired by the resident.

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that if a resident wants to go out someone from activities would take them.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to the community during the review of the submitted documents. The Transportation Services Policy states, "Kavod Terrace will arrange for resident transportation when needed for medical appointments, work, educational or training programs, religious services, and community activities."

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that if a resident needs transportation they would talk to the Executive Director and they would arrange it. The Executive Director confirmed this process. The Executive Director also listed three other staff that could help arrange transportation if a resident needs transportation outside of the Executive Directors working hours.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents right to see competitive integrated employment during the review of submitted documentation. The Activities Assessment assesses for interest in competitive integrated employment.

Further evidence of access to competitive integrated employment was observed during the onsite visit. The Executive Director reported that if resident expressed interest in employment, they would help that resident to connect with the Division of Vocational Rehabilitation to explore that interest.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of the submitted documents. Multiple ISP's reviewed provide information in preferences related to routines, preferred activities, necessity for 1:1 activities, religious preferences, and communication.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting does not manage resident funds during the review of submitted materials. Page 9 of the Kavod Terrace Welcome Book states "Facility will not manage or hold resident personal funds."

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

Kavod Terrace currently does not have any Medicaid residents, so Reviewer was unable to assess this criteria. Kavod Terrace will notify DMS staff when they accept Medicaid residents, and DMS will review the MCO’s member centered plan for the Medicaid residents.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's right to choose their own providers during the review of submitted materials. Page 4 of the Resident Rights document states that "resident may use health care providers of the resident's choice."

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that residents are able to see whatever providers they choose and that most have family members take them to the doctor. It was also reported that most residents have family take them for personal care appointments (haircuts, etc.); however, if a resident wanted to go and family was unable to take them, the setting would help arrange transportation, and an escort if necessary, to take the resident to their desired provider.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of residents having the freedom to control their own schedules and activities during the review of the submitted materials. Page 4 of the Resident Rights document states that residents have the right to "self-determination. To make decisions relating to care, activities, daily routines and other aspects of daily life which enhance the resident's self-reliance and support the residents' autonomy and decision making."

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that residents are able to decide what activities they would like to attend, they can decide who to spend time with and what alternative activities they do.

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

Reviewer observed evidence of residents having the freedom to control their own schedules and activities during the review of the submitted materials. Page 4 of the Resident Rights document states that residents have the right to "self-determination. To make decisions relating to care, activities, daily routines and other aspects of daily life which enhance the resident's self-reliance and support the residents' autonomy and decision making."

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that residents are allowed to eat whenever. Staff notify all residents when breakfast is ready, but they are not required to eat at that time. There is a window of time when food is served in the dining room; however, residents can ask for trays in their rooms, ask for food to be saved for later, or decline to eat that meal.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of residents having the right to privacy, dignity and respect, and freedom from coercion and restraint during the review of submitted materials. The Kavod Terrace Notice of Resident Rights states, "Every resident of a Community Based Residential Facility is afforded the rights described below... courtesy and respect. To be treated with courtesy, respect and full recognition of the resident's dignity and individuality, but all employees of the facility and resident's health care providers...Privacy. To physical and emotional privacy in treatment, living arrangement and in caring for personal needs...freedom from chemical restraints...freedom from physical restraints."

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

Reviewer observed evidence of residents having visitors at any time during a review of the submitted materials. Page 10 of the Kavod Terrace Welcome Book states, "visitors are welcome at any time; Please enter and exit the building through the main entrance at 1410 N. Prospect Ave or the entrance at 1414 N. Prospect Ave. Residents may have visitors as he/she permits or deny visitors as he/she permits."

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that residents are allowed visitors at any time, including overnight guests. This was confirmed by the Executive Director.

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

Reviewer observed evidence of residents having access to food at any time during the review of the submitted documents. Page 7 of the Kavod Terrace Welcome Book states, "snacks will be always available throughout the day. Grab and Go snacks will be located in the cafe.

Further evidence was observed during the onsite visit. The reviewer saw multiple snack stations throughout the setting. Additionally, the Direct Care Staff reported that they will get residents snacks whenever they request them.

Kavod Terrace is kosher facility. During the onsite visit, the Executive Director showed the reviewer the steps that they take to ensure that residents who are not kosher still have access to food of their choice. They have a separate kitchenette and dining room. They ask residents who are bringing in non-kosher food to prepare and eat food either in this area or in their rooms. The main kitchen and dining area does have separate toasters, microwaves, refrigerators, and silverware based on the type of food that is being prepared.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a Residency Agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. Written Residency Agreements cover financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a meaningful physical distinction between the HCBS setting and institutional setting during the onsite visit. The HCBS setting has a separate entrance from the Skilled Nursing Facility (SNF). If entering from the SNF entrance, there is signage and a desk where staff will provide directions to the HCBS setting. When transitioning from the SNF into the CBRF there is a distinction in lighting and decor. The SNF and CBRF are separated by a fire door.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. Kavod Terrace submitted a privacy policy that meets the HCBS requirements and Wisconsin Benchmark.

Further evidence was observed during the onsite visit. The reviewer observed that residents have private rooms and can enjoy physical and emotional privacy.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. Kavod Terrace submitted a privacy policy that meets the HCBS requirements and Wisconsin Benchmark.

Further evidence was observed during the onsite visit. Reviewer observed evidence of residents having lockable door handles on their doors. After Medicaid residents are accepted in the setting, DMS staff will confirm that they have a key and that only appropriate staff have a key.

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](#), 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](#)).

☐ Met ☐ Unmet ☒ Not Applicable

Per the Kavod Terrace Administrator, all rooms are single.

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

Reviewer observed evidence of residents right to furnish and decorate their sleeping or living units during the review of submitted documents. The resident handbook states, "we encourage residents to personalize their rooms as space and safety allow by bringing favorite items from home."

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that many residents have items from home that decorate their rooms.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to residents during the onsite visit.

[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

Reviewer observed evidence of Kavod Terrace having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

Kavod Terrace does not currently have any Medicaid residents and therefore does not have any residents that require a HCBS Settings Rule Modification at this time. After Medicaid residents are accepted in the setting, DMS staff will confirm that no modifications are in place unless they are appropriately assessed and documented with consent in alignment with the HCBS Settings Rule and Wisconsin Benchmark.

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

Reviewer observed evidence of staff having training on person-centered planning during the review of submitted documents. One document submitted showed the overview of person-centered planning training. The training covers the principals of person-centered planning.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Kavod Terrace possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name Lakehouse Cedarburg			
License/Certification Number 19881		Facility Type Community-Based Residential Facility (CBRF)	
Facility Address W56 N255 McKinley Blvd	City Cedarburg	County Ozaukee	ZIP Code 53012

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Cedarburg Health Services
- ☐ 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 Lakehouse Cedarburg has overcome the institutional presumption and meet 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

Lakehouse Cedarburg is a 65 bed Community Based Residential Facility (CBRF) that is connected through interior connections to Cedarburg Health Services, which is a 78 bed Skilled Nursing Facility (SNF). The CBRF and SNF recently completed the process for a change of ownership and name change. The heightened scrutiny review began when the setting was licensed as McKinley Place. The remediation identified during the on-site visit was completed by the newly licensed owners.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of activities both in the community and in the setting during a review of submitted materials. The materials reviewed including an activity calendar support resident access to the community. Additionally, the setting submitted a plan for supporting residents in accessing the community including for times when the activity coordinator is not on-site.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of activities both in the community and in the setting during a review of submitted materials. The Individual and Group Programs Policy states. "Policy: Residents who have the desire and ability to organize their own recreational activities may do so. In addition, residents may prefer to participate in individual and/or group programs organized and implemented through the efforts of staff or others. Procedure: 1) Residents who prefer to plan their own activities should have this noted on their care plan. 2) The Life Enrichment Coordinator (LEC) is responsible for assisting residents with individual activities. This need/preference and plan should be noted on the residents' care plan. 3) The LEC is responsible for designing group programs based on the interests and abilities of the residents. 4) The LEC is responsible for arranging assistance for residents who need special assistance in order to participate in group activities. This should be noted on the resident's care plan." Additionally, the setting revised their assessment process to include assessing for and support interest in accessing activities that occur outside of the setting campus.

Further evidence of individualized activities was observed during the onsite visit. Reviewer observed one resident ask to play cards and staff help find another resident to play cards with that resident. Staff reported that they frequently see residents playing cards in small groups as many residents enjoy that activity.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' access to the community through transportation coordination during review of submitted materials. The Residency Agreement contains information regarding arranging transportation.

Further evidence was observed during the onsite visit. One resident interviewed stated that when the weather is nice and she wants to go out the Activities Director helps her get out into the community. During an interview with a staff person, she stated that the community director will assist residents with setting up rides through Ozakee Share Ride or Life Star, and if neither of those is available, she will help schedule a cab ride.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' ability to seek employment in a competitive integrated setting during the onsite review. Both staff members interviewed reported that if a resident expressed interest in employment they would connect the resident with the Activities Director to create a plan to help support the resident find employment. Additionally, the setting revised their "Discovery Getting To Know You" assessment to assess for interest in competitive integrated employment.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of submitted materials. The "Getting to Know You" form completed at intake gathers information on the residents' interests and preferences including hobbies, interests, vocational needs, and preferred activities. It also has questions on

preferred community outings. Additionally, the setting's ISP has a section titled "Life Enrichment Activities / Socialization" that documents additional information on a resident's preference and interest.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident's right to manage their own funds during a review of the Resident Rights Document. The Resident Rights document states, "as a resident you have a right...to manage your own financial affairs." Additionally, the Access to Personal Funds and Resources Policy states "The Community does not hold or retain residents fund through a resident trust account. The Community also does not require employment paychecks and other types of income to be signed over or given to the facility. Rather, the Community supports the resident with access to funds as follows:...Offering a safe place within the Community where resident may keep their personal funds...Assisting residents to have their own bank account at a local community bank or other institution" This policy and information was affirmed during interviews with residents and staff during the onsite visit.

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

Reviewer observed evidence of residents' choice of setting during the onsite review. One resident who was interviewed stated that their son recommended the setting for them and they moved 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

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident’s right to choose their own providers during a review of the Resident Rights Document. The Resident Rights document states, “as a resident you have a right...to exercise complete choice of providers of physical and mental care and of pharmacist.”

Reviewer observed additional evidence of this during the onsite visit. One resident interviewed reported that they are able to see whatever provider they choose. Staff interviewed also stated that multiple residents go into the community to see their providers including for personal care (non-healthcare) services.

The setting 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](#)).

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](#)).

“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](#)).

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

Reviewer observed evidence of residents right to control their own schedule during the review of submitted materials. Appendix E of the Residents Rights document states that “residents have the right to meet with or participate in the activities of social, religious, and community groups at their discretion.” This was affirmed during an interview with one resident who stated that they are able to do what they want throughout the day, including attending activities as they desire, spending time with the people they choose, and having the opportunity to have input in the activities they would like to do.

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

Reviewer observed evidence of residents right to control what activities they participate in during the onsite visit. One resident interviewed reported that they can do whatever activities they want but does not have to participate in any if they do not want to. The direct care staff interviewed also reported that residents have a choice in their activities. Additionally, the setting’s policies and Residency Agreement were revised to include the residents’ ability to eat when and where they want to.

The setting ensures an individual’s rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of residents right to be treated with courtesy, respect, and dignity, right to privacy, freedom from abuse, and freedom from seclusion and physical or chemical restraints during review of submitted materials.

The Resident Rights document, includes, “As a resident, you have a right:...to be treated with courtesy and respect in recognition of the resident’s dignity and individuality by all employees of the facility...to have physical and emotional privacy in treatment, living arrangements, and caring for personal needs...to be free from seclusion and physical or chemical restraints.”

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

Reviewer observed evidence of the rights to visitors at any time during resident interviews. One resident interviewed reported that they have visitors whenever they want. Additionally, the settings visitation policy was revised to include the right to have visitors at any time including overnight.

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

Reviewer observed evidence of residents having access to food at any time during review of the Resident Handbook. The Resident Handbook states that residents may keep food in their room and alternate or additional menu items and servings are available upon request. Menus submitted also demonstrate multiple meal choices for each day.

During onsite review, residents and staff interviewed confirmed that residents do keep food in their rooms. They also confirmed that if a resident is hungry, staff will get them a snack any time they ask.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that living units are specific physical space that can be occupied under a legally enforceable Residency Agreement by the individual receiving services. The Residency Agreements were reviewed and meet the requirements for this item.

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

Reviewer observed evidence of a physical distinction between the Skilled Nursing Facility (SNF) and Community Based Residential Facility (CBFR) during onsite review. Signs in on the building designate the CBRF. There is a hallway with a sunroom and then another hallway that leads you through a fire door to get to the SNF. The SNF is not owned by the same company as the CBRF and shares no staff or policies.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a Right of Entry policy that meets the HCBS requirements and Wisconsin Benchmark.

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

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Provider: Lakehouse Cedarburg

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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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence during the review of submitted materials that residents have lockable doors with appropriate staff having keys. The Resident Handbook says that residents are given keys for their apartment and private mailbox at move-in and may request additional keys for a nominal fee. Further evidence was observed during interviews with residents at the onsite visit. One resident reported that they have a key to their room and lock it whenever they leave. Staff also reported that residents have keys and many lock their rooms.

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](#), 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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence in Section C "Rights and Responsibilities" of the Residency Agreement that the resident may share their apartment with a person who desires to live with them."

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

Reviewer observed evidence of the residents right to decorate their room as desired during the review of submitted materials. The Resident Handbook says that residents may decorate and personalize their apartments. The "Rights and Responsibilities" of the Residency Agreement says that individuals are free to decorate their apartment in accordance to the Resident Handbook. The Resident Handbook also states, "Residents may decorate and personalize the inside areas of their apartments. If a resident wishes to hang pictures and other objects on the wall, angle nail hangers should be used. " It also states "Residents are encouraged to furnish and personalize their apartments. If requested, the Residence may assist the resident in furnishing his/her apartment with items such as a bed, dresser, nightstand and chair. "

Further evidence was observed during the onsite visit. One resident showed off their room which was full of pictures of family, blankets they had made, books, and furniture they brought with them.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed physical accessibility to all residents during the onsite visit.

[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

Reviewer observed evidence of a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

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

The setting's staff will complete training on the HCBS Settings Rule and person centered planning after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Lakehouse Cedarburg possess the required home and community-based characteristics overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name Lakeview Care Partners at Waterford II			
License/Certification Number 16982		Facility Type Community-Based Residential Facility (CBRF)	
Facility Address 1701 Sharp Rd	City Waterford	County Racine	ZIP Code 53185

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Lakeview Specialty Hospital and Rehab
- ☐ 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 Lakeview Care Partners at Waterford II 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

Lakeview Care Partners at Waterford II is an 8 bed Community Based Residential Facility (CBRF) that has internal connections to Lakeview Specialty Hospital and Rehab, which is a Joint Commission Accredited and licensed long-term acute care hospital (LTACH), and Lakeview Care Partners at Waterford, a 20 bed CBRF. Lakeview Care Partners completed a Heightened Scrutiny Review in 2021.

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of residents' access to community life outside of the setting during a review of activity calendars and the onsite review. Activity calendars are posted at the setting and show activities scheduled both at the setting and in the community. The activity board also has options for community outings posted as well as a note that says "Talk to [Activity Staff] if you're interested in one of these outings! Other outing suggestions are greatly appreciated."

During the onsite review, the residents interviewed reported that they have gone into the community recently to go shopping. One resident reported that they are excited to go on an outing to the Humane Society that will be happening soon as a result of the resident telling the activities person that they have an interest in animals.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to individualized activities that are more than just settings-based group activities during the onsite visit. During the onsite visit, staff reported that residents have a lot of freedom in their activities. In addition to an activity calendar of activities held in different areas of the campus, the CBRF has a well-stocked game closet, a lot of art options available, and movies and books to choose from. Staff reported that residents currently really like art, so they do a lot of art. Additionally, during the onsite the reviewer observed one resident asking to go to the gym and play badminton; the staff took the resident to the gym upon request.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of the CBRF facilitating access to transportation during review of the submitted documents and the onsite review. Section G of the Program Statement states that "Lakeview Care Partners, Inc. utilizes several transportation agencies dependent upon individual needs...Lakeview Care Partners, Inc. also has two ambulances and several vans available for transportation, two of which have wheelchair lifts."

During the onsite review, one direct care staff interviewed reported that the activities person helps set up transportation as needed for both medical appointments and outings in the community. One resident interviewed reported that if they wanted to go anywhere, they would ask the activities person and the activities person would help arrange transportation.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of the CBRF supporting residents right to work in a competitive integrated setting during the onsite visit. The residents interviewed during the onsite visit reported that they work currently at Lakeview Care Partners. They have coworkers from the community who do not have disabilities and they make at least minimum wage.

The Reviewer confirmed that residents are not required to work for Lakeview Care Partners. A resident interviewed reported that they like their job and would not want to work anywhere else. The Chief Nursing Officer reported that if a resident expressed interest in seeking employment somewhere else, they would assist the resident in that.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of submitted documents. The setting submitted ISPs and MCPs for all Medicaid residents. The ISP's observed include detailed personal information on the residents including information the residents' interests in the community, supports

available, goals for the future, interest in employment, desires for social and community integration, ability to control personal resources, and community connections.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residents right to manage their own personal funds during a review of submitted materials. Page 8 of the Resident and Family Orientation addresses Resident Trust Funds: “as a convenience to you, and with your signed consent, we will maintain a personal trust fund for you...you may open or close your account at any point by informing the Program Director.”

During the onsite review, all the residents that were interviewed reported that their guardians manage their money.

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

Reviewer observed evidence of residents right to select their setting during the onsite review. One resident reported that their guardian selected this setting and they agreed. Another resident interviewed reported that they were given three options and they selected this CBRF.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents right to use providers of their choice during the review of submitted documentation and onsite review. Page 15 of the Resident and Family Orientation states that residents have the right "to exercise complete choice of providers of physical and mental health care and pharmacist."

Further evidence was observed during the onsite interview. One resident interviewed reported that they continue to see the providers that they saw prior to moving to Lakeview, including Mental Health provider, dental provider, and behavior supports. The resident reported that they have not needed any personal care services (hair cut, etc) yet, but have been told that they can go wherever they want for those services.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence of residents right to have a choice in their day-to-day life during the onsite visit. One resident that was interviewed reported that while there a loose structure to their day, they are able to choose what activities they participate in, where they would like to spend their time, and who they want to talk to. They have a variety of activity options, are able to request activities and outings, and choose how they spend their time. One resident reported that they do not like going in the community, so they do all of their activities at the setting; they prefer to do art alone in their room and spend a lot of time doing that.

One Direct Care Staff interviewed reported they often help the residents cook breakfast instead of eating what the kitchen prepares because the residents on the unit prefer to have the same breakfast every day.

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

Reviewer observed evidence of residents' freedom to support and control their own schedules during the onsite visit. One resident interviewed reported that the staff notify them when meals are hot and ready but that they do not have to eat at those times. They also reported that the only time they are told to do something at a specific time is if they have an appointment. Residents are able to choose to attend or refuse to attend appointments.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of residents rights to privacy, dignity and respect, and freedom from coercion and restraint during the review of submitted materials. Page 13 of the Resident and Family Handbook states residents have the right “to private, unrestricted communications with family, physician, attorney, and others...physical and emotional privacy in treatment and living arrangements, and in caring for personal needs...freedom from physical, sexual and mental abuse, neglect, seclusion and from financial exploitation...including physical and/or chemical restraints unless authorized in writing by a physician as in an emergency to protect the resident from injury to self.”

Further evidence was observed during the interview with the Chief Operating Office who reported that they do not do any physical or chemical restraints and that if a situation called for it they would notify DHS immediately in accordance with Wisconsin policy and work with the team (MCO, resident, guardian, doctor, etc) to ensure that the resident is in the correct setting and appropriate interventions are in place so that restraints would not be needed again.

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

Reviewer observed evidence of residents having access to visitors at any time during the review of submitted documents. The Visitor Policy states, “Our residents are afforded autonomy, including independent choices related to their visitors and the times they receive visits; this includes the option of having overnight guests.”

Further evidence was observed during the onsite visit. One Direct Care Staff interviewed reported that residents are able to have visitors at any time, including overnight.

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

Reviewer observed evidence of residents having access to food at any time during a review of the submitted materials. Page 1 of the Resident and Family Handbook states, “Residents will have access to food at all times.”

Further evidence was observed during the onsite visit. During a tour of the setting, the reviewer observed that there were snacks available in the kitchen and in resident rooms. Both residents interviewed during the onsite visit also confirmed that they are allowed to eat whenever they want.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that a unit is a physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of Wisconsin during a review of the Admission Agreement.

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

Reviewer observed a meaningful physical distinction between the HCBS Settings and the institutional setting during the onsite visit. There are multiple entrances to the setting, including an entrance that specifies that it is for the CBRFs. Upon entering the setting there is a desk with a receptionist who will show visitors where to go in the facility. There are also signs with arrows on the wall that point visitors to the CBRFs. One CBRF is on the main floor, the other CBRF is on the second floor. This is designated by signage in the hallway and in the elevator.

There is a locked fire door that separates the CBRFs from the LTACH.

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](#), 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

Reviewer observed evidence that residents have privacy in their sleeping unit, including a lockable key entry door, during review of the submitted materials. The Residential Door Lock Policy states, "All residents are entitled to have locks (or suitable security equivalents) to their living units designated so that they can operate them safely to go out and come in, but also which enable staff to gain access in order to carry out their agreed care tasks or in the event of an emergency... Residents Use of Key: The resident will exercise full authority to choose when to lock his or her door. The resident will disengage the lock from the interior by turning the handle and by using a traditional key from the exterior."

Further evidence was observed during the onsite visit. During the interview one the direct care staff, it was reported they have a process that they follow that meets the HCBS requirements to ensure resident privacy. They never enter without being invited in.

One resident reported that staff do not enter their room without permission. The resident reported that they have not observed staff open their door to check on them, without being invited in, during their time 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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that residents have privacy in their sleeping unit, including a lockable key entry door, during review of the submitted materials. The Residential Door Lock Policy states, "All residents are entitled to have locks (or suitable security equivalents) to their living units designated so that they can operate them safely to go out and come in, but also which enable staff to gain access in order to carry out their agreed care tasks or in the event of an emergency... Residents Use of Key: The resident will exercise full authority to choose when to lock his or her door. The resident will disengage the lock from the interior by turning the handle and by using a traditional key from the exterior."

Further evidence was observed during the onsite visit. One of the residents interviewed reported that they never lock their door but have a key. Another resident interviewed reported that they always lock their door.

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](#), 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](#)).

☐ Met ☐ Unmet ☒ Not Applicable

The Chief Nursing Officer reported that all rooms are single rooms.

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

Reviewer observed evidence of residents right to furnish and decorate their sleeping or living units during the onsite visit. Both residents interviewed offered to show the reviewer their rooms. The first resident had minimal decorations in their room. They reported that they do not like a lot of things on the wall. The only personal touch was a photograph of the resident and a family member. The second resident’s room was full of colorful artwork, stuffed animals, and had blankets hanging on the wall. The resident reported that they love having color all over the place and staff helped them hang up decorations as they desired.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to residents during the onsite visit.

[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

Reviewer observed evidence of Lakeview Care Center at Waterford II having a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

A current Medicaid resident has an HCBS Settings Rule Modifications that is documented in the MCO's MCP in accordance with the regulation including consent of the resident. Additional residents may need HCBS Settings Rule Modifications, and they have upcoming meetings scheduled with their MCO to discuss the potential need.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite visit. One Direct Care staff interviewed reported that they have had training on person-centered planning and was able to explain the principals of it and how they use person-centered planning in their job.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Lakeview Care Partners at Waterford II possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name Oakwood Village Tabor Oaks			
License/Certification # 110198		Facility Type Community-Based Residential Facility (CBRF)	
Facility Address 6175 Mineral Point Rd	City Madison	County Dane	Zip Code 53705

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Hebron Oaks
- ☐ 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 Oakwood Village Tabor Oaks 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

Oakwood Village Tabor Oaks is a community-based residential facility (CBRF) in Madison Wisconsin. It is connected to Hebron Oaks (a Skilled Nursing Facility), Heritage Oaks (a Residential Care Apartment Complex that only accepts private pay tenants), and Covenant Oaks (another CBRF that was reviewed for Heightened Scrutiny in 2021). Tabor Oaks provides care for 60 residents. In March of 2024, a reviewer went onsite to visit the campus that includes a nine-acre nature preserved with paved trails, multiple onsite dining options, a library, a general store, a beauty salon, and options for multiple activities in all areas of campus daily. During the onsite visit, the reviewer interviewed a sample of Medicaid residents who provided information about their experience at Tabor Oaks, including the freedoms they experience, the variety of opportunities available to them, and the support they receive from staff to help them live as they desire.

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

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](#))

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\(1\)\(d\)](#))

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

Reviewer observed evidence of access to the community during the review of the submitted documents. The activity calendars submitted show a variety of activities at Tabor Oaks, on the Oakwood campus, and in the community. Page 12 of the Tabor Oaks Resident and Family Guide says "Life Enrichment programs are offered daily on campus and off campus as scheduled. The Life Enrichment offerings are designed around the dimensions of wellness including physical, social, emotional, environmental and intellectual offerings which includes both music and art therapy. All programs are designed to recognize and continue past interests, stimulate new interests, encourage community involvement and meet psychosocial needs." A sample of Individual Service Plans (ISPs) were reviewed and listed specific activities that the residents enjoy participating in, including preferences on where to participate in activities.

Further evidence was observed during the onsite visit. One resident interviewed reported that they enjoy frequently going into the community and had gone on with setting staff and other residents to get a donut that morning. They reported that they enjoy the activities offered and go with the setting staff and other residents into the community at least twice per week. They also reported that they frequently utilize transportation services provided to access the community independently.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to individualized activities during the review of the submitted materials. Page 6 of the Standards of Practice for Resident Care Policy states, "Group programs and/or 1:1 room visit are offered to residents per their preference, honoring defined resident preferences as needed." Appendix D of the Residency Agreement, Resident Rights, states, "Residents have the following rights:...Activity Choice: To meet with and participate in activities of social, religious and community groups at the Resident's discretion." A sample of ISPs were reviewed during the document review process, and both listed out preferences about activities. One ISP states, "I prefer to do activities on an individual basis in my room such as watching TV, playing on my iPad, drawing, or painting my many art projects and writing."

Further evidence was observed during the onsite visit. One Direct Care Staff member interviewed reported that if a resident asked to play a game or go for a walk, etc., they would take them (unless they were in the middle of passing meds; then they would come back after meds). One resident interviewed really likes the activities and participates in many of the activities; unless they are out in the community on their own. The second resident interviewed reported that they like many of the activities offered; however, sometimes they want to sit in their room and watch TV. The resident reported that staff always invite them to

activities, but that if they want to stay in their room they are never pushed to participate. They also stated that they have requested individual activities and supplies in the past and that Life Enrichment has done individual activities and provided the requested supplies.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of the setting supporting access to transportation during the review of submitted materials. Page 14 of the Tabor Oaks Resident and Family Guide states, “The Oakwood Shuttle bus is used for group outings as coordinated by Life Enrichment. Oakwood Village has transportation available for scheduling. Please contact the Social Worker about your options.” The Oakwood Village Tabor Oaks Program Statement states, “Assistance with transportation arrangements is available as needed.”

Further evidence was observed during the onsite visit. During the onsite visit, the reviewer interviewed two direct care staff. Both Direct Care Staff interviewed outlined to process to help a resident access transportation. This process included who to contact depending on the situation (there was a different process for a scheduled appointment verses wanting to go to do an activity) and an approximate timeline. One of the Direct Care Staff (who works various shifts) outlined the process for requests when the Social Worker or Life Enrichment Staff are not in the building (for example, if someone wanted to go do something on second shift or on a Saturday, there are alternate staff who can help set up same day transportation for individual activities). The Assisted Living Director confirmed this process. Additionally, one of the residents interviewed reported that they go into the community multiple times per week. The resident stated that typically one is a scheduled outing and the other time they have staff help arrange transportation so they can go visit friends.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having opportunities to seek employment in competitive integrated settings during the review of submitted documents. Page 2 of the Health and Wellness Review- Part Two asks if residents are employed and if they are interested in employment. A memo sent to all residents outlines a process for residents who are interested in competitive integrated employment to access employment opportunities.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of submitted documents. Tabor Oaks had Member-Centered plans for all Medicaid residents. Tabor Oaks has updated their assessment process for incoming residents to include an assessment in addition to the previous comprehensive assessment they were using. All of the information is used to create an ISP that contains information on: leisure activities, family, mobility, preferences, religious interests, decision making ability/acting independently, community contacts/supports and vocational needs.

Reviewer read a sample of ISP's updated using the new assessment process. The updated ISPs that were reviewed contained detailed information on leisure activities, family, mobility, preferences, religious interests, ability to act independently, community contacts and vocational needs. The ISPs focus heavily on the resident's strengths and discuss areas where support from the setting and staff will assist the resident in meeting their goals.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents being able to control their personal finances during the review of the submitted materials. Exhibit D of the Service Agreement, Resident Rights, states, "Residents have the following rights:... To manage the Resident's own financial affairs including any personal allowance under federal or state programs, 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 the Resident's choosing and that person accepts the responsibility."

Further evidence was observed during the onsite visit. One resident interviewed reported that they manage their own money with the help of their son.

The Assisted Living Director reported that they do have resident accounts (where they keep cash on hand for residents), but residents still have full access to that money.

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

Reviewer observed evidence of the residents having a choice in their setting during the onsite visit. The residents who were interviewed reported that they had selected to move into Tabor Oaks and had other options available.

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](#)).

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents right to select providers during the review of submitted materials. Exhibit D of the Service Agreement, Resident Rights, states, "Residents have the following rights:...To use the licensed, certified or registered provider of health care and pharmacist of the Resident's choice." The Resident Right to Choose/Be Informed of Attending Physician document states, “The resident has the right to choose his or her attending physician.”

Further evidence was observed during the onsite visit. Reviewer observed evidence of the residents having a choice in their setting for services during the onsite visit. The residents who were interviewed reported that they go off site to see providers (doctors, dentists, personal care providers, etc) of their choosing.

One of the Direct Care Staff that was interviewed reported that many residents go into the community to see medical providers. The staff also reported that they have residents who go into the community for personal care appointments (getting nails done, getting hair done, etc).

The setting 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](#)).

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](#)).

“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](#)).

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

Reviewer observed evidence of residents freedoms during the review of submitted materials. Exhibit D of the Service Agreement, Resident Rights, states, "Residents have the following rights:...to make decisions relating to care, activities, daily routines and other aspects of life which enhance the Resident's self-reliance and support the Resident's autonomy and decision-making."

Further evidence was observed during the onsite visit. One resident interviewed reported that they are not big on activities and do a lot of things in their room or independently. They reported that they are allowed to participate or sit out as they desire. They also reported that they get to select their own schedule, including sleeping and waking times. Another resident interviewed reported that they are in full control of their life; they go into the community often, participate in activities at the setting as well as in other parts of Oakwood, and spend time with friends as they desire.

The reviewer interviewed two Direct Care Staff. Both Direct Care Staff interviewed confirmed that residents are allowed to stay up as late as they want to and sleep in as late as they want to; residents are allowed to choose what activities they participate in and if residents don't want to participate in a large group activity they offer individual activities or alternatives based on the residents interests; and, residents are able to leave and return to the setting when they want (they are asked to sign in and out so staff know if a resident is present or not).

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

Reviewer observed evidence of residents' freedoms during the review of submitted materials. Exhibit D of the Service Agreement, Resident Rights, states, "Residents have the following rights:...to make decisions relating to care, activities, daily routines and other aspects of life which enhance the Resident's self-reliance and support the Resident's autonomy and decision-making."

Further evidence was observed during the onsite visit. The residents who were interviewed reported that they are able to control their daily schedule, including sleeping and waking times, what activities they participate in, where they go and when, who they spend time with, and when they eat meals and snacks.

The reviewer interviewed two Direct Care Staff. Both Direct Care Staff interviewed confirmed that residents are allowed to stay up as late as they want to and sleep in as late as they want to; residents are allowed to choose what activities they participate in and if residents don't want to participate in a large group activity they offer individual activities or alternatives based on the residents interests; residents are able to leave and return to the setting when they want (they are asked to sign in and out so staff know if a resident is present or not); and, residents are able to eat meals and snacks whenever they choose. Direct Care Staff noted that Tabor Oaks does have set times when food is hot and ready, but residents do not have to eat at those times. They are able to have food saved for later if they want, alternative meals available upon request, and snacks available 24 hours per day.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of residents’ rights during the review of the submitted materials. Exhibit D of the Service Agreement, Resident Rights, states, “Residents have the following rights: ...To be treated with courtesy, respect, and full recognition of the Resident's dignity...Privacy...freedom from seclusion and restraints”.

The Standard of Practice for Resident Care Policy states, “Residents dignity is promoted by: Always respect the privacy of the resident...privacy curtains are drawn during care...Staff announce their presence and introduce themselves by knocking on the door and requesting permission before entering a resident’s room...Staff honor choices/preferences (ADL times, sleep patterns, therapy schedules, bathing, meals, and other activities); residents reserve the right to change these preferences daily as they self-determine...Confidentiality ins maintained per the resident’s designated responsible party(s)...With each contact, the staff is expected to smile and greet the resident by their preferred name and not refer to the resident as “honey or sweetie”...”Safety of residents is a primary focus of care delivery. Levels of supervision for residents are an interdisciplinary decision. The use of physical or chemical restraints is not acceptable...As a condition of employment, Oakwood does not tolerate verbal, mental, sexual or physical abuse, misappropriation of resident personnel possessions, corporal punishment or involuntary seclusions, neglect, exploitation, or mistreatment of a resident.”

Further evidence was observed during the onsite visit. The reviewer observed staff interactions with residents. The staff that the reviewer observed greeted residents by name, was polite, knocked before entering rooms, and when a resident asked a question about a need they had, the staff walked with that resident to a more private area to talk.

The residents interviewed reported that they feel staff are very respectful, call them by their names, and knock before entering their rooms.

The Assisted Living Director reported that Tabor Oaks does not have any residents that require the use of restraints.

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

Reviewer observed evidence of residents right to have visitors at any time during the review of the submitted documents. The Oakwood Visitation guidelines and Service agreement include the right to have visitors of the residents choosing.

Further evidence was observed during the onsite visit. One of the residents who was interviewed reported that they think they can have visitors whenever they want; Tabor Oaks has always let their family come whenever they want. Another resident interviewed reported that they do allow visitors whenever, including overnight. The reviewer interviewed two Direct Care Staff and both of the Direct Care Staff interviewed confirmed that residents are able to have visitors at any time, including overnight.

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

Reviewer observed evidence of residents having access to food at any time during the review of the submitted materials. Page 10 of the Tabor Oaks Resident and Family guide states, "Residents may keep snacks or drinks in their room for personal use. Oakwood staff also provide snacks to residents daily." The Standards of Practice for Resident Care Policy states, alternative food options "are offered to residents as needed. The Resident is provided snacks based on their needs and requests. A 'snack cart or nourishment room' is located in each unit."

Further evidence was observed during the onsite visit. During the tour, the reviewer observed snack stations throughout the setting, as well as residents eating snacks. One resident interviewed reported that they typically keep their own snacks in their room, but if they want something different, staff will get them snacks upon request. The reviewer interviewed two Direct Care Staff and both Direct Care Staff interviewed reported that residents ask for snacks 24 hours per day and staff provide snacks upon request.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a Residency Agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Residency Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a meaningful physical distinction between the CBRF and SNF during the onsite visit. There were lots of external signs identifying the different buildings on campus. Once inside, there were signs saying that you were in Tabor Oaks CBRF. The CBRF is on three floors; all three floors had signs and the elevator had information on what was on each floor.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a privacy policy that meets the HCBS requirements and Wisconsin Benchmark.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to keys to their sleeping units during the review of the submitted materials. The setting has a process for distributing keys at admission. The resident and family guide will be updated to reflect the regulation and benchmark. A key will be created to describe the process, policy and any modifications. Additionally, a key audit will be conducted with the marketing team to ensure every resident has a key to their room. Future residents will be given a key upon move in. Staff will be educated on the key policy. Residents will be updated on the key policy.

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](#), 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](#))

☐ Met ☐ Unmet ☒ Not Applicable

This setting only offers private rooms. No individuals share a unit.

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

Reviewer observed evidence of residents' freedom to furnish and decorate their sleeping units during the review of the submitted documents. The Oakwood Village Resident and Family Guide includes a move-in checklist. It notes, "Tabor Oaks suites are unfurnished. You get the opportunity to select which items

are moved in. Please see below for our recommendations- these are all optional:...Personal Items:...Bedding, Decorations for outside shelf, night lights, telephone, clock, artwork and pictures”.

Further evidence was observed during onsite visit. The residents interviewed showed the reviewer their rooms. The rooms were distinct in their décor and had many personal items that the residents had brought with them. One resident proudly showed off their military awards, photos of their family, and a collection of Word War II memorabilia.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to all individuals during the onsite visit.

[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

Reviewer observed evidence of a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite review. The reviewer interviewed two Direct Care Staff and both staff were able to explain the principles of person-centered planning and how it relates to the residents they care for.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Oakwood Village Tabor Oaks possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Prairie Pointe Assisted Living and Memory Care

License/Certification #
0018831

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address
286 N Willson Dr

City
Altoona

County
WI

Zip Code
54720

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 Prairie Pointe Assisted Living and Memory Care 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

Prairie Pointe Assisted Living and Memory Care is a new, 50-bed residential CBRF in Altoona, WI. The rehabilitation suites were converted to the CBRF. Skilled nursing and rehabilitation services continue to be offered at River Pines Skilled Nursing Facility. Prairie Point Assisted Living and Memory Care provides a support those who benefit from extra care in a home-like environment and includes designated memory care suites designed to allow those living with dementia to live their best life. Prairie Pines has a license capacity of 50 beds.

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

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](#))

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\(1\)\(d\)](#))

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

Reviewer observed evidence on the activity calendar that monthly activities include scheduled trips into the community. Both the press release announcing the new setting and the brochure advertising the Assisted Living setting emphasizes the home-like environment and community outings. The on-site reviewer observed evidence in resident ISP(s) of resident interests/desires for going into the community. The facility has its own vehicles to provide individual as well as group access into the community. The location also lends itself to allowing resident access into the community on their own. There is public transit within close walking proximity to the facility, and a paved walking trail that leads to the River Prairie Development that includes safe access to a variety of shopping, entertainment, and restaurants.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

The reviewer observed evidence in the resident ISP(s) of resident interests/desires for going into the community. Reviewer observed evidence through on-site interviews with staff of how individualized, outside activities are facilitated. Per the interview, upon request by a resident, the facility can coordinate resident para-transit needs as well as provide transportation with their own vehicles. Family is another alternative along with easy access to a public transit bus line every two hours.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

The reviewer observed evidence in the "Services and Charges" and "Transportation" policy that indicates the setting facilities special community outings, and that the setting can assist with coordinating transportation for medical or leisure travel upon request. The setting has their own vans and bus to assist with transportation and will provide staff assist based on the Managed Care Organization's plan for the resident. Additionally, the transportation policy indicates that the facility Administrator can connect individuals with additional community resources to assist with transportation.

Further evidence was observed during the on-site visit. The reviewer interviewed residents who reported the facility was able to accommodate them for their transportation needs.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having opportunities to seek employment in competitive integrated settings during the review of submitted documents. Page 2 of the Pre Admission Agreement asks if residents are interested in employment in their community.

Further evidence was observed during the on-site visit. The staff interviewed by the reviewer had knowledge of employment resources that their residents could be connected to including the Career Development Center and Senior Employment.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence in the ISP Development policy that the planning process includes the resident/legal representative, case manager (if applicable), resident care staff, and other service providers as appropriate. The planning process includes personal care needs, supervision needs, leisure time activity needs, community activity needs, family and social needs, communication needs, health monitoring, medication administration, behavior management, information and referrals, as well as transportation needs. The sample of ISPs reviewed included individualized information addressing these areas for each member reviewed including individualized interest such as one resident's ISP indicating they like to go eat at a certain restaurant.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence in the "Services and Charges" and "Resident Trust Account" policies that a resident may deposit \$200 in a resident trust account if they wish. The "Resident Trust Policy" document is a part of the admission packet and reviewed at the time of admission. The policy states "to sign if only they accept" having the facility set up a resident trust account. Further evidence was observed in the review of resident ISPs under Finances where it describes how and who the resident selects to handle their finances.

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

Reviewer observed evidence in the signed, MCO Member Centered Plan that different living options and member choice of current option were discussed with the members and included the member preference.

Member preference in their living arrangement was validated during the on-site visit. The on-site reviewer interviewed multiple residents and was told by the residents that they had been given living options and given choice.

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](#)).

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence in the "Residents Rights" documenting a resident's right to choice of providers and treatment. The "Services and Charges" policy also documents the resident's freedom to choose which providers or organizations are involved with their care including autonomy to choose which home health, hospice, pharmacy, clinic, hospital, transportation company, or beautician service provider they choose to work with.

Further evidence was observed during the on-site visit. In the on-site reviewer's discussion with staff and review of resident MCP(s) and provider ISP(s), it was evidenced that residents were receiving some services from community-based providers. This was further confirmed in speaking with several residents.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence on the activity calendar that monthly activities include a variety of activities for the residents to choose from. Additionally, the "Residents Right" information documents that the resident has rights of activity choice, have visitors, permitted but not required to participate in religious activities, and the least restrictive conditions which states, "No curfew, rule or other restriction on a resident's freedom of choice shall be imposed." Additionally, the "Services and Charges" policy states "Residents who call Grace Lutheran Communities Assisted Livings home enjoy the freedom to determine their own schedules, choose what activities to participate in, and visit the surrounding community at their leisure. In addition, we encourage residents to participate in planning and directing their care."

Further evidence was observed during the on-site visit. Residents indicate they have choices and can make decisions.

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

Reviewer observed evidence in the "Residents Right" document documents that the resident has rights of activity choice, have visitors, permitted but not required to participate in religious activities, and the least restrictive conditions which states, "No curfew, rule or other restriction on a resident's freedom of choice shall be imposed."

Further evidence was observed during the on-site visit. The reviewer confirmed that the facility maintains an in and out log of resident coming and goings into the community. Residents are asked to sign out and sign back in whenever they leave the facility but may come and go as they wish. Posted information in the setting also provides evidence of freedom of choice for bedtime and rising time.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence in the "Joint Notice of Grace Lutheran Communities' Privacy Practices (HIPAA)-Patient Record Confidentiality & Patient Rights" and the "Joint Notice Privacy Practice Summary (HIPAA)" documenting privacy of healthcare information and personal records. Reviewer observed evidence in the "Residents Rights" documenting the right to fair treatment including being treated with courtesy, respect and full recognition of the residents dignity; physical and emotional privacy; confidentiality, freedom from seclusion and chemical restraint; and freedom from physical restraint except upon prior review and approval by the department and upon written authorization from the resident's primary physician in accordance with Wisconsin policy and the Medicaid waivers.

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

Reviewer observed evidence in "Resident Rights" documenting the right to have private visitors. Additionally, the "Services and Charges" policy indicates that residents can host visitors whenever they choose.

Further evidence was observed during the on-site visit. During conversations with residents, the on-site reviewer heard consistently that they were able to have visitors.

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

Reviewer observed evidence in the "Services and Charges" policy that breakfast is served when a resident is ready for breakfast and that nourishment is available on a 24/7 basis upon request.

Further evidence was observed during the on-site visit. In the on-site reviewer's discussion with staff, the staff indicated that the facility offers three main meals per day to residents. Meal times are breakfast 7:00 am-10:00 am, lunch 12:00 pm-3:00pm, and dinner 5:00 pm-8:00 pm. Residents have the choice of eating during these times or at a time of their choice in the main dining room, in a private dining room, or in their own room. Residents have a choice for each meal of

a special daily entree or a selection of a variety of food/meals from a standard menu. If the resident chooses to eat at another time their meal is placed in a warmer and served when the resident is ready to eat. Residents can access snacks throughout the day either in the main dining room area or in a second kitchenette area. Resident(s) can store and have open access to their own snacks in this kitchenette area or in their own rooms.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

The reviewer observed evidence of signed admissions agreement for each Medicaid funded resident that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.

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

On-site reviewer observed new signage displayed both outside and inside the facility. During the tour of the setting, the reviewer observed a common entry into the facility for the Assisted Living Suites and the Memory Care Suites. There is long hallway separating both of these areas. There is also another longer hallway leading to a common area for both areas that includes a Therapy gym, a community center/chapel, a Beauty salon, a bistro area and administrative offices. Just past this common area is another long hallway leading to the Skilled Nursing Facility, however, there is a separate entrance for the Skilled Nursing Facility. The decor includes unique home-like features including a living room atmosphere, smaller kitchenette area for residents to store food/snacks, and two private dining areas.

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](#), 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

Reviewer observed evidence to the right to privacy in their sleeping and living unit through their unit door keys and locks policy. The policy states that the setting "believes in providing our residents a high level of privacy." The policy was reviewed and meetings HCBS requirements for privacy in the sleeping and living unit.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence during a virtual tour of the setting that each individual unit has an entrance door lockable by the setting. Further evidence was observed in the door keys and locks policy which was reviewed and confirmed to meet HCBS Settings Rule requirements.

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](#), 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](#))

☐ Met ☐ Unmet ☒ Not Applicable

All rooms are private rooms. No individuals share a unit.

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

Reviewer observed evidence in the Program Statement that residents are encouraged to bring personal furniture for their bedroom along with photographs and memorabilia to help ease the transition into their new home.

Further evidence was observed during the on-site visit. The observer toured multiple resident rooms and observed them all decorated to the personal taste of each resident. This included all types of furniture, floor lamps, family pictures, and other artwork on the walls.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to all individuals during the onsite visit.

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

The reviewer observed evidence of a staff training on Home and Community-Based Services Settings Rule that reviews person centered planning and outlines the expectations of the rule. In addition, the setting has a formal mentoring program to match staff with CBRF experience and training with newer staff.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Prairie Pointe Assisted Living and Memory Care possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name Residence by Rennes Peshtigo			
License/Certification Number 19599		Facility Type Community-Based Residential Facility (CBRF)	
Facility Address 725 Willow St	City Peshtigo	County Marinette	ZIP Code 54157

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Rennes Health and Rehab Center- East
- ☐ 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 Residence by Rennes Peshtigo 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

Residence by Rennes Peshtigo is a 29 bed Community Based Residential Facility (CBRF) with internal connection to Rennes Health and Rehab Center- East, a 50 bed Skilled Nursing Facility (SNF).

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

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](#)).

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\(1\)\(d\)](#)).

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

Reviewer observed evidence of residents having access to the community during the review of submitted documents. The Activity calendars for April 2024, May 2024, and June 2024 each have multiple activities in the community listed.

Activity assessments reviewed also show documentation of resident interests in the community. During the review the Community Director, it was reported that activities staff use the assessments to help plan activities in the community.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residents right to control their own schedule during a review of the documents submitted. Page 21 of The Resident Rights document in the Admission packet states that "the resident has the right to make decisions relating to care, activities, daily routines, and other aspects of life which enhance the resident's self-reliance and support the resident's autonomy and decision making"

During the onsite visit, the resident interviewed reported that they are in full control of their schedule. They reported that they are able to request activities and that if they want to do something, staff will help them do it. One direct care staff interviewed reported that when they have time, they are encouraged to find activities to do with the residents.

During the onsite visit, the reviewer also observed staff playing a card game with two residents and another direct care staff reading with a resident.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of access to the community through transportation during the review of submitted materials. The Resident Transportation Policy states, "The facility will assist with coordinator of transportation options for community activities to include medical appointments."

Further evidence was observed during the onsite visit. The Director of Nursing reported that they do arrange transportation for any medical appointments, and that if residents want to go offsite for other appointments (hair, personal care, etc) they would also help arrange transportation for that. The Director of Nursing

also reported that they prefer 48 hours notice to arrange transportation but if someone has a last-minute request and they are able to accommodate (they have transportation available or they are able to help the person get a cab) they will accommodate.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident's opportunity to seek employment during the review of the submitted materials. The Resident Handbook states, "Residents are encouraged to make choices about aspects of their lives in the facility and the community, including: Choosing outside employment as they wish. If a resident chooses outside employment the facility will inform the resident and/or responsible party that employment paychecks and other types of income are not required to be signed over or given to the facility." The review of the activity assessment shows that each resident at the setting is asked about interest in competitive integrated employment.

During the onsite review, the Director of Nursing and the Community Director outlined the process to assist residents who are interested in competitive integrated employment in accessing it.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of the documents submitted. A selection of ISPs were reviewed and the reviewer noted that each ISP includes information on community interests, leisure activities, spiritual needs, nutritional needs, family, transportation needs, finances, employment, and decision making. ISPs showed a variety of individualized responses that matched the information in the assessments that were also provided.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's right to control their personal resources during a review of the submitted materials. Page 5 of the Service Agreement states, "The Resident has the right to manage his/her own personal funds. The Resident may delegate, in writing, the Facility as manager of those funds, up to a total of \$200.00. If the Resident delegated the Facility as manager, the Resident would maintain the right to access those funds during normal business hours. The Facility will legibly and accurately account for Resident funds. The accounting will include a record of all disbursements and deposits made on behalf of the resident. Documentation of the disbursement will accompany disbursements. The facility will provide the Resident or Authorized Representative a record of the Resident's account on a semi-annual basis or upon request."

During the onsite review, one resident interviewed reported that their son helps manage their money.

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

Reviewer observed evidence that the resident has a choice in setting during the onsite review. One resident interviewed reported that their son selected this setting and that they agreed to it.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residents right to use outside providers during review of submitted documents. Page 6 of the Service Agreement states, "The Resident's use of outside providers: The Resident is free to contract independently with outside providers for any and all services, including Supportive, Personal and Nursing Services, beyond the scope of services specified in the Agreement..."

During the onsite review, The Director of Nursing reported that they do have outside providers to come into the setting. A resident interviewed reported that they see the same doctors as they saw prior to moving into the setting.

The setting 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](#)).

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](#)).

"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](#)).

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

Reviewer observed evidence that the setting optimizes but does not regiment individual initiative, autonomy, and independence during the review of submitted paperwork. The Resident Rights document on page 21 of the Admission packet states that "the resident has the right to make decisions relating to care, activities, daily routines, and other aspects of life which enhance the resident's self-reliance and support the resident's autonomy and decision making"

During the onsite visit, one resident interviewed reported that they are able to control all areas of their life. They choose when to wake up, what to do throughout the day, who they spend time with, and what activities they want to participate in.

During interviews with Direct Care Staff, staff reported that residents have a lot of freedom in their day. They let them know when food is hot and ready but they do not have to eat just because food is ready. They let them know when an activity is happening, but they do not have to participate in the activity if they do not want to. They offer to play games with residents when time allows. If a resident makes a request, they accommodate that request when able.

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

Reviewer observed evidence of residents' freedom to support and control their own schedules during a review of submitted materials. The Resident Self Determination and Participation Policy states "Our facility respects and promotes the right of each resident to exercise his or her autonomy regarding what the resident considers to be important facets of his or her life to enhance the resident's quality of life. Each resident is allowed to choose activities, schedules and health care that are consistent with his or her interests, values, assessments and plans of care, including: daily routine, such as sleeping and waking, eating, exercise and bathing schedules; personal care needs, such as bathing methods, grooming styles and dress; Health care scheduling, such as times of day for ADL assistance and certain treatments; outside providers for services; activities, hobbies and interests; and, religious affiliation and worship preferences. Choices regarding outside employment. Involvement in community events and/or group inside or outside the facility."

During the onsite review, one resident interviewed reported that they are able to control their own schedule. They do not have to do anything at a specific time, unless they schedule an appointment. Residents are able to choose to attend or refuse to attend appointments.

During interviews with Direct Care Staff, staff reported that residents have a lot of freedom in their day. They let them know when food is hot and ready but they do not have to eat just because food is ready. They let them know when an activity is happening, but they do not have to participate in the activity if they do not want to.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of a resident's right to privacy, dignity and respect, and freedom from coercion and restraint during a review of submitted materials. Page 20 of the Service Agreement Packet states "The resident has the right to be free from physical, sexual, and mental abuse and neglect, and from financial exploitation and misappropriation of property. The Resident has the right to be free from seclusion. Seclusion means physical or social separation of a resident from others by actions of employees but does not include a separation to prevent the spread of communicable disease or voluntary cool-down periods in an unlocked room. The resident has the right to be free from all chemical restraints... The resident has the right to be free from physical restraints except upon prior review and approval by the department upon written and authorization from the resident's primary physician or advance practice nurse prescribes"

During the onsite visit, the Community Manager reported that they do not have anyone who currently requires restraints or seclusion. If they did, they would consult with the MCO and would follow the process in place by DHS.

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

Reviewer observed evidence of a resident's right to have visitors at any time during the review of the submitted materials. The Visitation Policy Interpretation and Implementation reviewed indicated that the resident is permitted to have visitors as he/she wishes. The setting has a process for when supervised visits or other restrictions related to visitors are required. See the benchmark on HCBS Settings Rule Modifications for more information.

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

Reviewer observed evidence of residents' having access to food at any time during a review of the submitted materials. The Dining/food policy states, "Staff will offer a positive and dignified dining experience and offer a variety of foods with delicious, nutritionally balanced complete menu. All meals will be present attractively to entice residents' interest...The facility will ensure food items are always available to residents."

During the onsite visit, one resident interviewed confirmed that they have access to food at any time. They can request their meals when they want them and meals will be brought to them if they requests. Staff offer snacks and they can ask for a snack whenever they are hungry. They also keeps food in their room so they have access to some of their favorite treats.

During an interview with Direct Care Staff, the staff member confirmed that meals are ready at 8:15, 12:15, and 5:15 but residents are able to get meals at different times if they let staff know. The Direct Care Staff also reported that they offer snacks and residents can request snacks at any time as well.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a Residency Agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Residency Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed a physical distinction between the HCBS Setting and Skilled Nursing Facility (SNF) during the onsite visit. There was a separate sign for the HCBS setting. When the reviewer entered the building, there was a fire door separating the HCBS Setting from the SNF and lots of information about the activities happening in the setting.

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](#), 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

Reviewer observed evidence of residents right to privacy during a review of the submitted documents. The Door Lock and Privacy policy reviewed ensure the residents right to privacy in their sleeping unit.

Further evidence was observed during the onsite visit. One resident interviewed reported that staff always knock and wait for her to answer and invite them in.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of living units having doors lockable by the resident, as well as the staff policy on knocking, during review of the submitted materials. Further evidence was observed during the onsite visit when one resident interviewed reported that she does have a key for her room.

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](#), 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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident's right to have a choice in roommate during the review of the submitted materials. The Resident Self Determination and Participation Policy states "Residents are encouraged to make choices about aspects of their lives in the facility and the community, including: Rooming with the person of his or her choice, providing both individuals consent to the choice." It was confirmed during the onsite visit, by the Community Manager, that they do not currently have any residents sharing a room but that if a resident was interested and both parties agreed, they would be able to share a room.

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

Reviewer observed evidence of residents' freedom to furnish and decorate their room as they desire during the onsite visit. While interviewing a resident, the reviewer noted that they had artwork from home, knickknacks and wall-hangings that they reported came from their house, and their own recliner.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting was physically accessible to all residents during the onsite visit.

[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

Reviewer observed evidence of Residence by Rennes having a process to work with the resident and Managed Care Organization (MCO), in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

Residence by Rennes is currently working with MCO's to follow the approved process for the residents who were identified as having an assessed need that may require a HCBS Settings Rule Modification.

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

Reviewer observed evidence of staff having training on person-centered planning during the review of submitted materials. Residence by Rennes submitted a staff meeting agenda that showed that they provided training to direct care staff on the principals of person-centered planning.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Residence by Rennes Peshtigo possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Residential Care Apartment Complex (RCAC)

Facility Name Shorehaven Tower			
License/Certification # 10358		Facility Type Residential Care Apartment Complex (RCAC)	
Facility Address 1305 W Wisconsin Ave	City Oconomowoc	County Waukesha	Zip Code 53066

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Shorehaven Health and Rehabilitation Center
- ☐ 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 Shorehaven Tower 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

Shorehaven Tower is a 61 bed Residential Care Apartment Complex (RCAC) that has internal connections to Shorehaven Health and Rehabilitation Center, an 88 bed Skilled Nursing Facility (SNF), Shorehaven Memory Care, a 28 bed Community Based Residential Facility (CBRF) and Hillside Terrace, a 14 bed CBRF. Shorehaven Memory Care and Hillside Terrace are currently also undergoing a Heightened Scrutiny review. Shorehaven Tower offers more than 60 apartments and a variety of amenities, including a variety of activities and supports offered at the setting and regular outings into the community.

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 MCOs](#):

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 Applicable

Reviewer observed evidence of tenants having the opportunity to participate in typical community life during the review of submitted documents. Page 14 of the Resident Handbook states, “residents are encouraged to attend and participate in the activities offered...activities may include, but are not limited to: arts and crafts, cards, bingo, social hour, fitness/exercise, shopping trips, sing-a-longs, music, table games, trivia, birthday/holiday parties, special breakfasts or meals, outside entertainment, bus outings, pontoon boat rides, visits from school children, etc. The activities department welcomes any activity suggestions you may have.”

Further evidence was observed during the onsite visit. One tenant interviewed reported that Shorehaven offers a variety of activities both on the campus and in the community. They reported that they could request an outing if they wanted, and that activities staff do ask for suggestions. The Direct Care Staff interviewed reported that the tenants go on lots of activities both in large groups and in smaller groups.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of tenants having access to individualized activities during the review of the submitted paperwork. The CBRF needs assessment, which is utilized by the Shorehaven Tower, has questions surrounding resident interests and support needed for activities. During the review of the ISPs submitted, it was observed that there is a section where it documents needs for social participation and leisure time activities.

Further evidence was observed during the onsite visit. All tenants interviewed reported that they enjoyed the variety of activities provided. None of the tenants interviewed require assistance attending activities. One tenant reported that if they had a specific activity that they wanted to participate in, they could talk to the activities person who would facilitate that activity.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of access to the community through coordination of transportation during the review of submitted documents. Policy # 82, Access to Public Transportation, states, “Residents have access to public transportation...The Shorehaven Tower Administrative Assistant is available to assist residents with making transportation arrangements.”

Further evidence was observed during the onsite visit. The Direct Care Staff interviewed reported that the Administrative Assistant arranges transportation when they are present; if a resident needs a ride when the Administrative Assistant is not working, a care coordinator will arrange for the transportation (there is always a care coordinator working). The tenant interviewed reported that they have family who take them out most of the time, but if they need transportation the Administrative Assistant will help arrange it.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Review observed evidence of individuals having opportunity to seek employment in competitive integrated settings through review of Provider revised documents regarding the right of tenants to seek independent employee including the Residents Rights Literature that is posted in the building, the Resident Handbook, and as part of the ECP Electronic Medical Records Assessment form. There is a section on the electronic assessment form under Social Participation that asks residents about their vocational needs. This section indicates to the LPN Care Coordinator if the tenant wishes to obtain employment, which will help the organization better assist the tenant in their achieving their vocational goals. The MCO will be notified if a tenant indicates they wish to obtain employment.

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\(2\)\(a\)](#).

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

Reviewer observed evidence of person-centered planning during the review of the submitted MCO's Member Centered Plans (MCP), CBRF Needs Assessments, and Service Plans. The CBRF Needs assessment completed by Shorehaven Tower assesses for community integration, leisure activities, interest in competitive integrated employment, interest in religious activities, interpersonal relationships, family contacts, and ability to control personal resources. The information from the CBRF Needs assessment is then incorporated into the Service Plan which includes a section on activities and social connectedness.

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](#))

From [contract between SMA and specific MCO](#):

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 Applicable

Reviewer observed evidence of residents having the right to control their own resources during a review of the submitted documents. The Resident Rights document states, “Residents...Have a right to manage his or her own financial affairs unless the resident delegates, in writing, responsibility for financial management to someone of the resident’s choosing or the resident is adjudicated incompetent, in which case the guardian shall be responsible.”

Further evidence was observed during the onsite visit. One tenant interviewed reported that their spouse (who lives with them) manages their money.

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 MCOs](#):

- 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](#), Stats

WI State Statute 50.034 Residential care apartment complexes.

5n) Required referral. Subject to sub. [\(5p\)](#), 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](#), unless any of the following applies:

- [50.034\(5n\)\(c\)](#) 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](#), pg. 85; Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents right to select their setting during the onsite review. All of the tenants who were interviewed reported that they had selected to move to Shorehaven.

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 Choice

1. 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](#)

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](#))

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\(2\)\(b\)](#). (WI Statewide Transition Plan, pg. 85; Summarized from Wis. Admin. Code § [DHS 89.34](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having the right to choose their own providers during a review of the submitted documents. The Resident Rights document states, “Residents...Have a right to their choice of health care providers. A resident shall not be required to use medical, mental health, or pharmaceutical providers who are employed by or affiliated with the facility or to whom the resident is referred by facility staff.”

Further evidence was observed during the onsite visit. One tenant interviewed reported they still see the same providers as when they were living independently and that Shorehaven Tower helps them arrange transportation for all medical appointments. Tenants can also utilize personal care and other providers of their choice.

The setting 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](#))

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](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having the right to have the freedom and support to control their own schedules during a review of the submitted documents. The Resident Rights document states, "You have the right to make decisions relating to activities, daily routines, use of personal space, how to spend one's time and other aspects of life in the assisted living facility."

Further evidence was observed during the onsite visit. One tenant interviewed reported they are able to spend their days as they choose. They are able to pick sleeping and waking times, activities they wish to participate in, and who to spend time with.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having the right to have the freedom and support to control their own schedules during a review of the submitted documents. The Resident Rights document states, "You have the right to make decisions relating to activities, daily routines, use of personal space, how to spend one's time and other aspects of life in the assisted living facility."

Further evidence was observed during the onsite visit. Direct Care Staff interviewed reported that residents have the ability to control their schedule and make decisions about their life. All tenants interviewed reported that they have full control of their schedules and are able to follow the routines that they prefer. One tenant reported feeling empowered to make decisions about their every day life.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within State Standards

Shorehaven Tower 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](#))

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 and www.dhs.wisconsin.gov/dqa/memos/15-003.pdf (WI Statewide Transition Plan)

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having the rights to privacy, dignity and respect, and freedom from coercion and restraint during the review of submitted documents. The Resident Handbook states, “Residents... Shall be treated with courtesy, respect and full recognition of the resident’s dignity and individuality by all employees of the facility... have the right to privacy in his or her independent apartment... have 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.”

Further evidence was observed during the onsite visit. During the interview with Direct Care Staff they reported that they do not do any form of restraint. This was confirmed by the COO.

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](#))

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a residents right to have visitors at any time during the review of the submitted documents. The Right to have Visitors Policy states, “All residents have the right to have visitors... Residents have the same civil and legal rights that all citizens have. These rights are not forfeited upon admission to Shorehaven Tower. All residents have the right to have visitors.”

Further evidence was observed during the onsite visit. The Direct Care Staff reported that tenants are allowed to have visitors at any time, including overnight guests. All tenants who were interviewed also reported that they are allowed to have visitors at any time, including overnight.

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](#))

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 Applicable

Reviewer observed evidence of residents access to food at any time during the onsite visit. The resident interviewed reported that they keep food in their apartment and are able to eat whenever they choose.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a Residency Agreement that meets the requirements during the review of the submitted documents. Reviewer observed signed Residency Agreements that show that the unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The written Residency Agreement covers financial arrangement, costs of services, optional services, termination, transfer to different care levels, facility termination, refunds, etc.

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

Reviewer observed evidence of a meaningful physical distinction between the HCBS Setting and the Institutional setting during the onsite visit. Each area of the setting was clearly labeled with lots of sign posts pointing to specific units or rooms. The RCAC had a lot more decoration in the halls and on the unit than the Skilled Nursing Facility did.

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](#))

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a Permission to Enter Apartment policy that meets the HCBS requirements and Wisconsin Benchmark.

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](#))

"'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](#))

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having lockable entrance doors during the review of submitted documents. The Shorehaven Tower Door Lock Policy states, "All apartment doors have a lock." Page 18 of the Resident Handbook states, "Two keys will be provided at the time of occupancy. A Third key may be issued upon request."

Further evidence was observed during the onsite tour that all apartments have doors with key locks on them. During the tour of the setting, the reviewer observed that all apartment doors had key locks on them. Residents interviewed reported that they have keys to their apartments.

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](#))

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](#), 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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident's right to have a choice in roommate during the onsite visit. The COO reported that tenants are able to choose who lives in their unit.

Further evidence was observed during the onsite visit. One tenant interviewed reported that they live in their apartment with their spouse. Another tenant interviewed reported that they live alone and like it that way.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a resident's freedom to furnish and decorate their sleeping and living units during a review of the submitted documents. The Resident Rights document states, "Residents...have the right to furnish his or her independent apartment and to maintain personal possessions as space permits, as long as the resident does not unreasonably interfere with the other residents' choices or endanger the health or safety of other residents.

Further evidence was observed during the onsite visit. The tenant apartment viewed by the reviewer had personalized décor and lots of photos and artwork of the tenant and their family.

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to tenants during the onsite visit.

[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

Reviewer observed evidence through review of updated policies, procedures, and practices that Shorehaven Tower ensures there are no restrictions put into place unless an HCBS Settings Rule Modification is assessed and appropriately documented in the MCO's MCP with consent.

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

Reviewer observed evidence of staff having training on person-centered planning during the onsite visit. One Direct Care staff interviewed reported that they have had training on person-centered planning and was able to explain the principals of it and how they use person-centered planning in their job.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Shorehaven Tower possess the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name St. Camillus Memory Care North Residence		Facility Type Community-Based Residential Facility (CBRF)	
License/Certification # 0016852			County Milwaukee
Facility Address 10101 West Wisconsin Avenue	City Wauwatosa	State WI	Zip Code 53226

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. St. Camillus Health Center
- ☐ Settings on the grounds of, or adjacent to, a public institution. Name of institution:
- ☐ 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 St. Camillus Memory Care North Residence 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

St. Camillus and St Camillus Memory Care North Residence were reviewed for compliance with the HCBS Settings Rule in 2020. When this evidentiary summary was previously submitted for public, the St Camillus Memory Care North Residence was not specifically named in the Facility Information or Facility Summary sections of the report in error. These findings are the same as the Evidentiary Summary posted in 2021 under the name St. Camillus CBRF and apply to both St. Camillus and to St Camillus Memory Care North Residence.

St. Camillus, located in Wauwatosa, Wisconsin, is licensed by the State of Wisconsin as a community-based residential facility (CBRF). St. Camillus CBRF is located on a 22-acre continuing care campus offering residential apartments, home hospice, skilled nursing and rehabilitation services, and complimentary therapies. The assisted living programs are designed to provide a full array of services for older adults who are no longer able to remain at home, but do not require the level of care offered by a skilled nursing facility. Program services support the resident in allowing and maintaining independence. Wauwatosa is a

community of over 45,000 residents located about 15 minutes from downtown Milwaukee. Residents at St. Camillus have lived rich lives in the Wauwatosa and Milwaukee communities and can access services, see family and friends and enjoy activities that the region has to offer.

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- St. Camillus enjoys a rich heritage and tradition in Milwaukee: Community members and resident's opinions were sought out over the years for planning and involvement: History from www.stcam.com documents:
"The campus expanded further into senior care when the West Residence, formerly known as San Camillo (independent living), was built in 1989 and further expanded independent living in 1992. St. Camillus Health and Rehabilitation Center, a 210 bed skilled nursing building, built in 1990, and this new building changed the original hospital from being a nursing home into serving as an assisted living community. In 2006, the Corporation and the Order decided that a strategic shift to reduce the nursing home bed count so the Health Center was remodeled to assisted living offering 76 assisted living units and a reduced amount of licensed nursing home beds to 67 beds. Today, St. Camillus is undergoing an expansion project adding an additional 168 independent living apartments scheduled for completion in spring of 2022."
- *Cover letter*: "Evidence of regular participation in community life activities, outside the facility, occurs through regular outings, planned and unplanned and the residents can come and go as they choose."
- *Program Statement* highlights program goals that maintain independence in decision making for each resident. Encourages an awareness and contact with the outside community, family and friends and urges residents to explore and develop leisure time interests both within and outside the setting.
- Flyers describing group outings to Blue Mound Gardens, Brewers Games, Milwaukee Art Museum, restaurants submitted.
- A review of sample person-centered plans highlights one resident who continues to attend church in Milwaukee and continues to be part of the church choir.

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](#))

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\(1\)\(d\)](#))

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

Program Statement, Program Goals describes the person-centered planning process and goals:

- "Maintain independence in decision making which is protected by resident rights."

- “Be assisted to reach and maintain their optimal level of functioning: physically, mentally, socially and emotionally”.
- Maintain an awareness and contact with the outside community, family and friends.
- “Enjoy exploring and developing leisure time interests both within and outside St. Camillus.”

A review of three person-centered plans cited family and social involvement including weekly outings to restaurants, holiday overnight stays, etc.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

- St. Camillus staff assist residents in planning social and recreational activities both at St. Camillus and away from the setting. Activities are a standard agenda item at each monthly resident council meeting. Some are group activities like a Christmas lights tour through the community, attending fairs, and picnics. Residents and families are encouraged to engage in community activities together.
- *Program Statement* confirms that the goal of the recreational program is diversity of choice and support of individual interests. Scheduled transportation to community outings are offered on a regular basis.
- *Cover letter* confirms, “There are no limitations on residents to choose activities in the community. St. Camillus assists each resident in obtaining tickets for events, etc.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- As stated in the *Program Handbook*, “Scheduled transportation to community outings are offered on a regular basis.”
- St. Camillus has access to the campus mini-bus/van vehicle for group activities. Taxi and ride-share services are also available in the Wauwatosa area and the residential staff arranges for individual residents. The greater Milwaukee community has public transportation options and residents that choose public transportation will receive training and assistance.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

St. Camillus CBRF residents who are supported with waiver funding are directly involved in the member-centered plan process which includes discussion of their preferred outcomes including employment and volunteering if they wish. Residents chose their schedules and can come and go as they wish, including employment if they desire.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

- The *Resident Rights Policy* and *Admission Agreement* support that residents manage their own financial affairs. The *St. Camillus Policy Document*, section R, *Financial Affairs* confirms each resident "to manage their own financial affairs, as provided in Wisconsin Statutes, 50.09.
- St. Camillus maintains a branch of a local bank on campus that residents can access, if they so choose.

The setting is selected by the individual from among setting options including non-disability specific settings. [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

Three person-centered plans reviewed for additional long-term care services and treatment options. As outlined in the *Policy and Procedure Handbook, Section J* each resident will “participate in the planning of care and treatment, be fully informed of care, treatment, long term options and have the right to refuse any form of care unless ordered by the court.” Each of the person-centered plans submitted indicate that the resident chooses all of their options and consents to their individual plans.

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

“COMPREHENSIVE INDIVIDUAL SERVICE PLAN Individual service plan review. Annually or when there is a change in a resident's needs, abilities or physical or mental condition, the individual service plan shall be reviewed and revised based on the assessment under sub. (1). All reviews of the individual service plan shall include input from the resident or legal representative, case manager, resident care staff, and other service providers as appropriate.” ([Wis. Admin. Code § DHS 83.35 \(1\)\(d\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- The *Policy Handbook, Section K, Self-Determination* confirms that each resident “Makes decisions relating to care, activities, daily routines and other aspects of life which enhance the resident’s self-reliance and support the resident’s autonomy and decision making.”
- Person-centered plans reviewed for *Long-Term Care Preferences*, activity preferences, daily life routines, etc. After the resident’s admission, a person-centered plan is developed, personalized and reviewed within thirty days after admission. Each plan seeks an integrated program and individually designed activities and services for each resident. *Resident A* plan detailed the resident’s inability to deal with family members and the plan devised that each week; the resident would call one or two of his children.

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 Wisconsin State Standards and Regulations

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](#)).

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

- *Program Statement, Services Lists:* “Access to additional medical support is on campus. Audiologist, case management, home hospice, home health, geriatric certified physicians. Residents can continue to see their own healthcare providers in the community, and “exercise complete control of providers of physical and mental health care and pharmacist.”
- Under *Section J, Treatment Options*, each resident has the right to “participate in the planning of care and treatment, be fully informed of care and the use of licensed, certified or registered providers of health care and pharmacy is of each resident’s choice.

The setting 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](#)).

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](#)).

“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](#)).

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

The St. Camillus *Program Statement* confirms the following:

- “The supportive living programs offered at St. Camillus are designed to provide a full array of services for older adults who are no longer able to remain living a totally independent life”. “The nature of our program is to provide the support so critically needed to allow an elderly person to maintain independence.”
- Each resident will “maintain independence in decision making which is protected by their resident rights.”
- Residents are encouraged to “maintain an awareness and contact with the outside community.”
- Residents are encouraged to “enjoy exploring and developing leisure time interests both within and outside the facility.”
- As stated in the *Policy and Procedure Document, Section I, Least Restrictive Environment*, each resident is entitled to “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.”

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

As stated in the Policy and Procedure Document, Section K, Self-Determination, each resident "makes decisions relating to care, activities, daily routines and other aspects of life which enhance the resident's self-reliance and support the resident's autonomy and decision-making."

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within Wisconsin State Standards and Regulations

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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

- *In Policy and Procedure, Section D, Freedom from Mistreatment: "Be free from physical, sexual and mental abuse and neglect, and from financial exploitation and misappropriation of property." Under Section E, Freedom from Seclusion, each resident "be free from seclusion."*
- *As stated in Policy and Procedure, Section F, Freedom from Chemical Restraints, and Section G, Freedom from Physical Restraints, each resident "be free from physical restraints and chemical restraints except upon prior review and approval by the department with written authorization from the resident's physician."*

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

Program Policy and Assisted Living Resident's Rights confirm that residents may have visitors at any time, 24-7.

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

Program Statement affirms that each resident is entitled to three meals and snacks on a 24-hour basis. Meal choices are available to each resident and dietary considerations made in consultation with the resident and the nutritionist. There is a café, store and other amenities, on campus, that sell snacks and refreshments.

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, pg. 77; Wis. Admin. Code § DHS 83.29).

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).

☒ Met ☐ Unmet ☐ Not Applicable

The St. Camillus CBRF Admission Agreement describes monthly charges, bed hold fees and other charges. Either party, in compliance with Wis. Admin., delineates discharge and termination procedures including a 30-day notice. Code § DHS 83.31.

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

- Description submitted describing evidence of physical distinction cites that “St. Camillus has separate entrances for each licensed facility on campus. Signage both inside and outside directs visitors to the setting and the individual entrances. Each of the three licensed CBRFs has separate outside and internal entrances, separate décor and signage.”
- Photo submitted that shows the sign, “St. Camillus Assisted Living.”
- Photo submitted that shows the South Residence Lobby entrance and directs visitors to the CBRF apartments in the North Residence and the Assisted Living Apartments in the South Residence.
- Photos of common areas, lounges, etc. of the CBRF show home-like furnishings and softer color schemes.

Each individual has privacy in their sleeping or living unit.

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](#), 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

- St. Camillus has both a North and South Residence with 76 apartments. As of January, 2021 is 63 resident, with 6 residents supported with [Family Care](#) Medicaid long-term care funding.
- St. Camillus CBRF submitted pictures of resident rooms with locks. Additionally, St. Camillus attested to the HCBS lock and policy requirement for the settings rule.
- Each of the living units include a private suite and each unit has an individual keyed lock.

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Wisconsin State Standards and Regulations

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

As part of the *Policy and Procedure Handbook, Section U, Privacy*: Each resident has the right to privacy in their living quarters.

Individuals sharing units have a choice of roommates in that setting.

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](#), 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](#))

☒ Met ☐ Unmet ☐ Not Applicable

All apartments are for single individuals and in some cases, the one bedroom apartments are for couples. Shared units involving roommates is not an issue at St. Camillus.

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)(1-3)]

Compliance within Wisconsin State Standards and Regulations

☒ Met ☐ Unmet ☐ Not Applicable

- Each apartment in both the North and South residences are completely unfurnished and decorated by the residents with their own furniture and belongings. Each apartment has great views of the landscaped terrace and outdoor courtyards.
- Photos submitted of resident apartments illustrate homey atmospheres, large spacious apartments, individual preferences, etc.

The setting is physical accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

St. Camillus is physically accessible, as evidenced in *Policy Handbook, Section N, Safe Environment*, and each resident is safeguarded from environmental hazards, physical barriers and hazardous conditions.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

- Documents submitted show separate accounting of residents personal funds account for the CBRF and the SNF.
- St. Camillus Department Directory show that there are separate Administrative Directors for the CBRFs and the other settings.
- Screenshot submitted confirms that each licensed area of the campus has a separate worksheet for developing goals and objectives.
- Job descriptions were submitted for the CBRF and the SNF’s positions, which show separate responsibilities.
- Executive financial summaries submitted demonstrate a clear differentiation in financial accounting and operations between the CBRFs and the SNF.

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

- Documentation submitted indicate that few staff are shared between the Assisted Living programs and the SNF. There are two CNAs and one LPN who are cross-trained and any staff who work in both areas receive training in both areas prior to working in the new area.

-
- Submitted list of *Assisted Living Training Curriculum* summarizes HCBS initial training and ongoing resident rights training.
-

DHS Recommendation

DHS finds that [St. Camillus Memory Care North Residence](#) possesses the required home and community-based characteristics, is not isolating in nature, and overcomes the presumption of having institutional qualities.

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

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DQA Provider Search webpage](#) and the provider directories available at the [Consumer Guide to Health Care – Finding and Choosing an Assisted Living Facility webpage](#).

Ongoing Compliance

Wisconsin's Division of Quality Assurance (DQA) will ensure through ongoing compliance reviews that [St. Camillus Memory Care North Residence](#) continues to meet the requirements of the HCBS Settings Rule. The DMS Bureau of Assisted Living (BAL) has incorporated the HCBS settings rule into its current assisted living survey process and activities. ([DQA Implementation of Home and Community-Based Services Settings Rule in Residential Assisted Living Facilities](#))

Waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are certified by the Wisconsin Department of Health Services (DHS) and work within the requirements of contracts with DHS. State licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits, by the state licensing authority, or by the entity that certified the provider if not regulated by the state. As part of these periodic licensing or certification reviews, the credentialing entity will also review the setting for continued HCBS compliance. Providers will be required to address any HCBS rule deficiencies.

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 areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care ombudsman program, which has regular access to the assisted living setting. [Wisconsin's Board on Aging & Long Term Care](#): The Board on Aging and Long Term Care advocates for the interests of Wisconsin's long-term care consumers, informs those consumers of their rights and educates the public about health care systems and long-term care. The Board also operates the [Long Term Care Ombudsman](#), and [Volunteer Ombudsman](#) services.

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name			
The Gardens at Luther Manor			
License/Certification Number		Facility Type	
19637		Community-Based Residential Facility (CBRF)	
Facility Address	City	County	ZIP Code
4603 N 92 nd St	Wauwatosa	Milwaukee	53225

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Lutheran Home
- ☐ 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 The Gardens at Luther Manor overcomes 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

The Gardens at Luther Manor is an 18 bed CBRF located in the same building as Lutheran Home, a 160-bed Skilled Nursing Facility (SNF). The Gardens at Luther Manor provides residential services for those with memory impairments. The program's mission statement emphasis providing special programming that provides mental stimulation, socialization, and physical activities to promote physical, emotional, social, psychosocial, and spiritual well-being. An additional goal of the program is to maximize the resident's independence.

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

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](#)).

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\(1\)\(d\)](#)).

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

Review observed evidence of written documentation supporting the residents' access to community life outside of the setting. A review of The Gardens at Luther Manor Person-Centered Plan policy indicates that residents are assessed upon admission, again after residing at the facility for more than seven days and annually. The assessments address self-direction, social participation, interpersonal relationships leisure time activities, family and community contacts and vocational needs and includes how residents are supporting in accessing the community.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to individualized activities during the review of the submitted documents. One ISP that was reviewed reflected that a resident really enjoys cooking and baking so someone from Life Enrichment will do a cooking or baking activity with that resident weekly.

Further evidence was observed during the onsite visit. One resident interviewed reported that they really like to do speed walk and when they ask staff to do it too, they will. During the onsite interview, staff reported that they have certain activities that they do with specific residents individually each week.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having access to transportation during the review of the submitted documentation. Verification of the documentation that indicates transportation can be arranged with family members or friends for outside medical appointments, or a resident may request services through a transportation company via the unit secretary and/or social services staff who will assist with arrangements.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Evidence was observed of a new assessment process to assess for interest in Competitive Integrated Employment and having opportunities to seek employment.

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](#); summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence of person-centered planning during the review of the setting's ISPs. One ISP reviewed notes that a resident enjoys cooking and baking so Life Enrichment will provide one cooking or baking activity for that resident once per week.

Additionally, the Gardens provided evidence of their person-centered planning policy and process in which multiple assessments are completed (at admission, more than 7 days after admission, and annually) for each resident. Information gathered from the assessments provide information to build an ISP that addresses the resident's capacity for self-direction, social participation, interpersonal relationships, leisure time activities, family and community contacts and vocational needs.

The setting provided evidence of Member Centered Plans for all Medicaid Residents.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents being able to control their personal resources during the onsite visit. One resident interviewed reported that their family manages their money and that they do not need any money at The Gardens.

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

Reviewer observed evidence of a residents right to choose their setting during the onsite visit. One resident interviewed reported that they had selected to move to The Gardens from multiple options provided to them.

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](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents right to choose their providers during the review of the submitted documents. Page 5 of the Resident Handbook states, “residents are welcome to retain their primary care physician and/or other medical professionals.”

Further evidence was observed during the onsite review. One resident interviewed reported that they use the same providers they used prior to coming to The Gardens. One Direct Care Staff interviewed reported that residents can use whatever doctor they choose and that residents do go out with family to attend medical appointments. Residents can also choose other non-medical services in the community.

The setting 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](#)).

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](#)).

“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](#)).

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

Reviewer observed evidence of a tenants right to support and control their own schedule during a review of the submitted materials. The Rights of Resident document states, “Each Resident shall have all the following rights: ... Self-Determination: Make decisions related to care, activities, daily routines, and Resident’s autonomy and decision-making.”

Further evidence was observed during the onsite visit. Both Direct Care Staff interviewed reported that residents can participate in any activities that they choose and are able to decline activities or select other things to do if they do not want to participate in an activity. One of the residents interviewed reported that they are able to pretty much do whatever they want, whenever they want; there are no set times for anything other than when food is ready.

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

Reviewer observed evidence of a tenants right to support and control their own schedule during a review of the submitted materials. The Rights of Resident document states, "Each Resident shall have all the following rights: ... Self-Determination: Make decisions related to care, activities, daily routines, and Resident's autonomy and decision-making."

Further evidence was observed during the onsite visit. Both Direct Care Staff interviewed reported that residents can participate in any activities that they choose and are able to decline activities or select other things to do if they do not want to participate in an activity. One of the residents interviewed reported that they are able to pretty much do whatever they want, whenever they want."

The Gardens provided evidence that ensures that residents have access to participate in activities of their choice unless an HCBS Settings Rule modification to the HCBS settings rules is documented in the resident's Managed Care Organization (MCO) Member Centered Plan (MCP).

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of a tenants right to privacy, dignity and respect, and freedom from coercion and restraint during a review of the submitted materials. The Rights of Resident document states, "Each resident shall have all the following rights: a. Confidentiality: the right to approve or refuse release of information to any individual outside the facility, except when then Resident is transferred to another facility or as required by law or contracts...f. Freedom from physical restraints: Be free from physical restraints except upon review and approval from the Wisconsin Department of Health Services upon written authorization from the Resident's primary physician...g. Freedom from chemical restraints: Be free from all chemical restraints." The Residents' Bill of Rights at a Glance states, "Luther Manor residents are encouraged and assisted to exercise their rights as residents and citizens, and accordingly have the: ...Right to privacy and confidentiality...Right to individual dignity and respect."

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

Reviewer observed evidence of residents right to have visitors at any time during the review of the submitted materials, including the Resident Handbook which states, "The resident has the following rights, which may be restricted for health and safety reasons as permitted by law:... The right to choose who, when, where, and how long you have visitors (including overnight)."

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

Reviewer observed evidence of residents having access to food at any time during the review of the submitted documents. Page 15 of the Resident Handbook states, "Each apartment unit is furnished with a small refrigerator, giving residents access to food of their choice at any time. If a resident does not have their personal food/beverage stocked in their refrigerator, staff can assist a resident with obtaining a snack or beverage between scheduled meals."

Further evidence was observed during the onsite visit. One resident interviewed reported that they can have food whenever they want; they keep food in their room, but if they want something else, staff will get it. Two Direct Care Staff members who were interviewed confirmed that they get residents snacks whenever they are requested.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a living unit being a physical space that can be rented under a legally enforceable agreement during the review of the submitted documentation. The Admission Agreement was updated to include terms for voluntary discharge and reasons and notice for involuntary discharge or transfer that align with Wis. Admin. Code DHS § 83.31 Discharge or transfer.

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

Reviewer observed evidence of a meaningful physical distinction between the HCBS Setting and the institutional setting during the onsite visit. The Gardens has a separate entrance from the Skilled Nursing Facility (SNF). If entering from the SNF entrance, there are signs and arrows directing you to the CBRF. Upon entrance into the CBRF from the SNF, there is a noticeable difference in decor, lighting, and personalization.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a Resident Room Entry policy that meets the HCBS requirements and Wisconsin Benchmark.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's having units with lockable doors with only appropriate staff having keys during the review of the submitted documents. Page 13 of the Resident Handbook states, "Resident apartments are considered private homes, and residents are due privacy and respect. Luther Manor recognizes the right of residents to a safe and secure home. Residents are provided an individualized lock with a key to their apartment; only Luther Manor staff with a specific need to enter the apartment will have keys to it.

Further evidence was observed during the onsite visit. Direct Care staff reported that residents have keys to their rooms. One of the residents interviewed confirmed that they do have a key to their room. Additionally, the reviewer observed that the doors were lockable for the resident.

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](#), 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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having a choice in roommate during the review of submitted materials. The Resident Handbook states, "The resident has the right to share a room with their spouse (opposite or same-sex couples) who live at Luther Manor, and both spouses consent to the arrangement. Resident(s) have the right to choose their own roommate if sharing a unit." Further evidence was observed during the onsite visit. The Administrator stated that residents are allowed choice in roommate and they would allow non-married couples to share a room if both residents consented to it.

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

Reviewer observed evidence of a resident's right to decorate their living unit during the review of the submitted materials. Page 15 of the Resident Handbook states, "The resident has the right to furnish and decorate their apartment unit and use personal possessions and appropriate clothing as space permits unless doing so would infringe upon the rights or health and safety of other residents."

Further evidence was observed during the onsite visit. One resident interviewed showed me their apartment which was decorated with family pictures, knick knacks, and artwork from their grandchildren.

The setting is physically accessible to the individual [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance Within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence that the setting is physically accessible to all individuals during the onsite visit.

[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

Reviewer observed evidence of a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The setting is in the process of working with the Managed Care Organization to assess if HCBS Settings Rule Modifications are needed for their residents.

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

Reviewer observed evidence of staff having received training on person-centered planning.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that The Gardens at Luther Manor possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (CBRF)

Facility Name

Villas at Maple Ridge

License/Certification #

16828

Facility Type

Community-Based Residential Facility (CBRF)

Facility Address

819 Ash St

City

Spooner

County

Washburn

Zip Code

54801

Reason for Institutional Presumption

- ☒ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Dove Healthcare- Spooner
- ☐ 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 Villas at Maple Ridge 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

The Villas at Maple Ridge is a 14 bed Community Based Residential Facility (CBRF), with an internal connection to Dove Healthcare- Spooner, a 75 bed Skilled Nursing Facility (SNF). The Villas at Maple Ridge is currently undergoing a Change in Ownership as it was recently acquired by Dove Healthcare. The CBRF is transitioning to using the name of Dove Healthcare- Spooner Assisted Living. The SNF went by the name Maple Ridge Care Center prior to the change in ownership

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

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](#))

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\(1\)\(d\)](#))

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

Reviewer observed evidence of residents' having access to the greater community during the review of the submitted documents. Submitted activity calendars for June 2024 show multiple activities in the community.

Activities are individualized or include more than just setting-based group activities.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of individualized activities during the review of the submitted documents. A sample of ISP's were reviewed. During the review, it was observed that residents have very detailed information regarding their interests in activities, both in the setting and in the community, and list ways for staff to engage the residents in either group activities or in individual activities. The ISP's also list supplies the residents would like to be provided with to help them stay active and engaged in preferred leisure time activities.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of resident's access to transportation during the onsite visit. The administrator reported that they provide transportation as needed. The CBRF does not currently have their own van; however, they are able to reserve the van from Dove Healthcare-Bloomer. The administrator also reported that staff are able to transport residents when needed, and staff were able to outline the process to request transportation support from the MCO. Additionally, one resident interviewed reported that the administrator has transported them to get their hair done on multiple occasions.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' access to employment during the review of submitted documents. The pre-admission assessment asks if residents are working or if they have any interest in employment. Reviewer observed documentation of resident's interest in employment during the review of ISPs.

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](#); Summarized from [Wis. Admin. Code § DHS 83.35](#)).

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

Reviewer observed evidence in the Preadmission assessment that each resident is assessed in the ability to manage finances, transportation, use of phone, socialization, communication, behavior, eating patterns and preferences, support system, spiritual needs, interest and hobbies, activities liked by resident, and daily routine, and interest in participating in programs away from the facility. Additionally, the reviewer observed evidence that the MCO Member Centered Plan for one of the sample residents included a goal related to communication integration with personal experience outcome steps to achieving the goal.

Pre-admission assessments will include a review and integration of the information resident's MCP for MCO residents. The MCP will be used in planning and implementation of the resident's facility Individual Service Plan. ISPs will include goals listed in the resident's MCP. The facility will request a copy of each current resident's current MCP and goals will be integrated with the facility ISP. All current staff will review updated ISPs upon completion. Future staff will review ISPs in orientation and as otherwise required.

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents' right to manage their personal resources during the review of submitted documents. The Resident House rules state, "every resident... is responsible for his/her own valuables and is encouraged to use bank savings accounts and safe deposit boxes for money and valuables. A moderate amount of money may be deposited in the facility for your convenience in a resident 'trust account'."

Further evidence was observed during the onsite visit. Multiple residents reported that their finances are managed by their guardians.

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

Reviewer observed evidence of resident's choice of setting during the review of submitted documents. A sample of MCO Member Centered Plans were reviewed and discussed setting options and how the residents came to select this setting.

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](#)).

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](#))

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents’ right to choice in provider during the review of submitted documents. Page 3 of the Resident Rights document (Addendum C of the Admission Agreement) states, “As a resident of Dove Healthcare- Spooner Assisted Living, I have the right to...use licensed, certified or registered provider of health care and pharmacist of the resident’s choice.”

Further evidence was observed during the onsite visit. Direct Care Staff interviewed reported that residents have choice in their providers and staff follow orders from resident’s primary care physicians. Additionally, residents have a choice of services for other providers including non-healthcare providers.

The setting 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](#)).

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](#)).

“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](#)).

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

Reviewer observed evidence of residents’ right to individual initiative, autonomy, and independence in making life choices during the review of submitted documents. Page 3 of the Resident Rights document (Addendum C of the Admission Agreement) states, “As a resident of Dove Healthcare- Spooner Assisted Living, I have the right to...make decisions relating to care, activities, daily routines and other aspects of life which enhance the resident’s self-reliance and support the resident autonomy and decision making.”

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

Reviewer observed evidence in the "CBRF Residents Rights" employee policy that the residents have the right to make decisions relating to care, activities, daily routines, and other aspects of life as well as the right to have at least restrictive conditions including that the CBRF may not impose a curfew, rule, or other restriction on a resident's freedom of choice.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from 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](#), pg. 72; Summarized from [Wis. Stat. § 50.09](#)).

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](#)).

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

Reviewer observed evidence of resident's rights to privacy dignity and respect, and freedom from coercion and restraint during the review of submitted documents. The Resident Rights document (Addendum C of the Admission Agreement) states, "As a resident of Dove Healthcare- Spooner Assisted Living, I have the right to...be treated with courtesy, respect and full recognition of the resident's dignity and individuality...physical and emotional privacy in treatment, living arrangements and in caring for personal needs...be free from seclusion...be free from mental abuse, sexual abuse, physical abuse, neglect, and be free from chemical and physical restraints."

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

Reviewer observed evidence of residents' right to have visitors at any time of their choosing during the review of submitted documents. The Visitation policy and procedure states, "visitors will be welcome at any time. The facility is locked between the hours of 10pm and 6am for the protection of the residents and employees. During these times access to the facility can be achieved by calling main line and staff will meet visitors at the door to let them in."

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

Reviewer observed evidence of residents having access to food at any time during the onsite visit. Residents interviewed reported that they are able to get snacks whenever they choose and to save food for later and have staff reheat it. Residents also reported that if they have their own food in their rooms, staff will help prepare that food upon request. Staff affirmed this practice.

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](#), pg. 77; [Wis. Admin. Code § DHS 83.29](#)).

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](#)).

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residence of residents having a legally enforceable agreement and that the living unit is a specific place that can be rented during the review of the submitted document. Current resident will receive an amendment to their previously signed residency agreements correcting the language in accordance with Wisconsin DHS 83 Administrative codes. Future residency agreements will contain correct language and code citations. Current staff will be given a copy of the amendment to the residency agreement to review and sign. Future staff will be instructed to follow the corrected language and current DHS 83 codes.

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

Reviewer observed evidence of a meaningful physical distinction during the onsite visit. When entering, there is an indoor directory directing residents and visitors to Dove Healthcare- Spooner (SNF) and the Villas a Maple Ridge (CBRF) which is separated by a long hallway. The reviewer observed a clear and distinct separation between entrances for Maple Ridge Care Center and the Villas at Maple Ridge. Once inside the entranceway for the CBRF it was pointed out by staff a very long hallway on the first floor that leads to the Maple Ridge Care Center. The Villas at Maple Ridge is located on the second floor. Once inside the entranceway, signage is lacking to provide direction on how to access the CBRF.

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](#), 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

Reviewer observed evidence of residents having privacy in their sleeping or living unit during the review of the submitted documents. The setting submitted a privacy policy that meets the HCBS requirements and Wisconsin Benchmark.

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 in 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](#) for additional lock-related information.

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of residents having lockable entrance doors during the onsite visit. The reviewer confirmed that all rooms are single occupancy and that all doors are lockable key entry doors for resident privacy. Reviewer confirmed that residents had a key to their room in accordance with their preferences. The setting has a policy that outlines which staff will access to the master key and why.

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](#), 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](#))

☐ Met ☐ Unmet ☒ Not Applicable

The Administrator reported that all rooms are single rooms and no residents share rooms.

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

Reviewer observed evidence of residents' right to furnish and decorate their rooms during the on-site visit. The reviewer toured several rooms that were each decorated with personal furnishings and family mementos.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within State Standards

☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed that all areas of the setting physically accessible to all individuals during the onsite visit.

[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.

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- 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.
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☒ Met ☐ Unmet ☐ Not Applicable

Reviewer observed evidence of a process to work with the resident and Managed Care Organization, in alignment with the HCBS Settings Rule and the Wisconsin Benchmark, if a resident is assessed to have a specific need that might require a modification.

The setting is in the process of working with the Managed Care Organization to assess if HCBS Settings Rule Modifications are needed for their residents.

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

Reviewer observed evidence of staff training on person centered planning and the HCBS Settings Rule during the onsite visit. During the on-site visit randomly selected individual employee training records were reviewed and evidence found that staff received resident rights training per DHS 83. In addition, during staff interviews, staff were able to verify they were required to read residents' ISPs which are found in individual resident binders, and were also able to demonstrate their understanding of person-centered planning and the HCBS setting rule principles.

Additionally, the setting's staff will complete training on the HCBS Settings Rule after receiving training guidance and resources that will be provided by DMS.

DHS Recommendation

DHS finds that Villas at Maple Ridge possesses the required home and community-based characteristics and overcomes the presumption of having institutional qualities.

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