

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review for Adult Family Homes (AFH), Community Based Residential Settings (CBRF), and Residential Care Apartment Complexes (RCAC)

Setting name The Evergreens		Setting type CBRF		
License/Certification # 0021584	County La Crosse	Name of institution this setting is in or on the grounds of Hillview Health Care Center		
Setting address 3501 Park Lane Drive		City La Crosse	State WI	Zip code 54601
Setting Website Address https://www.lacrossecounty.org/hillview/the-evergreens				

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.
- ☐ 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 setting named above 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, refer to the following state standard or regulation, where applicable: [Wis. Stat. §§ 50.034, 50.035, 50.09](#), [Wis. Admin. Code §§ DHS 83, DHS 88](#), and [DHS 89](#)

Setting Summary:

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[42 CFR § 441.301\(c\)\(4\)\(i\)](#) The setting is integrated in and supports access of individuals receiving Medicaid HCBS to 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, to the same degree of access as individuals not receiving Medicaid HCBS.

The setting identifies resident's preferences regarding competitive integrated employment and community-based activities and integration and documents them in the setting's person-centered plan.

☒ Met ☐ Unmet ☐ Not Applicable

Setting submitted resident assessment tool that was reviewed. The assessment was reviewed and found to gather an individual's interest in integrated employment and in-house and community activities.

The setting supports residents interested in pursuing competitive integrated employment by notifying the Medicaid case manager (managed care organization (MCO) care manager or Include, Respect, I Self-Direct (IRIS) consultant).

☒ Met ☐ Unmet ☐ Not Applicable

The setting provided the process in which the setting notifies the MCO when an HCBS resident is interested in integrated employment. The MCO will then work with the resident to connect them to employment that meets their goals.

The setting provides or facilitates residents with the opportunity to participate in typical community life activities outside of the setting based on the individual's preferences and needs.

☒ Met ☐ Unmet ☐ Not Applicable

The DHS reviewer verified two monthly calendars of events along with a reminder note of who to contact if they need assistance with signing up for an event, including arranging travel, to access community events. During onsite visits the setting's posting of community events on the bulletin in a common space,

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

☒ Met ☐ Unmet ☐ Not Applicable

During admission and reviews, the household coordinator meets with each resident to discuss activities they like to do. These ideas are used to develop the monthly activity calendar. The setting has multiple shared common areas throughout the facility for residents to participate in group or individual activities. Puzzles, games, televisions, etc. are available in shared common areas. Staff are available to assist residents to access a community event individually upon request. This was verified with a staff person during an onsite interview with the DHS reviewer.

The setting provides or supports resident access to transportation between setting and the broader community including paid employment.

☒ Met ☐ Unmet ☐ Not Applicable

The setting submitted their transportation policy. Verification that the setting provides transportation to local medical appointments. If a resident needs transportation, they may schedule their own community transportation or request staff at the facility to assist them to make transportation arrangements to community activities or their employment.

Individuals are able to control their personal resources.

☒ Met ☐ Unmet ☐ Not Applicable

Verification of the CBRF's policy, that was shared with all current and will be shared with all new residents. The Evergreens supports residents in maintaining control over their personal finances and resources to the greatest extent possible. Residents manage their own funds unless a legal representative or payee has been designated, in which case the individual remains informed and involved in financial decisions. Funds held by the facility are maintained in accordance with DHS 83 requirements with accurate accounting, documentation, and access provided upon request.

441.301(c)(4)(ii) 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, for residential settings, resources available for room and board.

Individuals have a choice of setting.

☒ Met ☐ Unmet ☐ Not Applicable

The CBRF's Resident Choice policy was reviewed by DMS. The policy ensures that residents are informed of their right to choose their living setting and are supported if they express interest in exploring other residential or community options. When a resident indicates a desire to consider a different setting, staff promptly notify the individual's case manager and collaborate to provide information, referrals, and transition support, as appropriate.

441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

Setting employees have completed training on resident rights.

☒ Met ☐ Unmet ☐ Not Applicable

Setting submitted Staff Development/Education policy and list of employees with training completion dates. The training provides how staff need to ensure an individual's rights, assurance that a resident's services are kept private and confidential, requirements that staff treat residents with dignity and respect, and the residents' right to be free from coercion including when they file a complaint or grievance. The setting ensured that they do not utilize chemical or physical restraints.

Individuals have the right to privacy, dignity and respect, and freedom from coercion and restraint.

☐ Met ☐ Unmet ☐ Not Applicable

The setting submitted a copy of their resident's rights training, Resident Rights Policy, and Grievance Policy and Procedure. These documents indicate how staff ensure an individual's rights, assurance that a resident's services are kept private and confidential, requirements that staff treat residents with dignity and respect, and the residents' right to be free from coercion, including when they file a complaint or grievance.

441.301(c)(4)(iv) 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.

Individuals have autonomy and choice.

☒ Met ☐ Unmet ☐ Not Applicable

The setting submitted a policy indicating residents are not required to participate in any activities or events they choose not to participate in and are able to make choices about their environment and whom they interact with.

441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.

Individuals have choice of services and supports.

☒ Met ☐ Unmet ☐ Not Applicable

Per the setting's policy (submitted to and verified by the DHS reviewer), residents at the setting that receive HCBS maintain autonomy and choice in daily life, including decisions about routines, meals, activities, and community participation. may choose to receive services and support in any location within or outside of the facility. This includes medical services, religious services or activities, cosmetic services, and any other paid or unpaid service.

441.301(c)(4)(vi) In a provider-owned or controlled residential provider, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:

441.301(c)(4)(vi)(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), 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:

- 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.

HCBS settings rule modifications follow required process, if applicable.

☒ Met ☐ Unmet ☐ Not Applicable

The setting submitted their policy, which was verified by the DHS reviewer, that follows the HCBS settings rule modification process outlined in 441.301(c)(4)(vi). Currently, the setting is not yet approved to admit recipients in Medicaid waiver programs therefore it is not possible to provide examples of active modifications in practice. After heightened scrutiny conditional approval setting and admission of Medicaid waiver members, the setting will submit two ISPs and any modification materials. Three to four months after admission of Medicaid members a reviewer will complete interviews to verify HCBS setting rules are being complied with.

441.301(c)(4)(vi)(A) The unit or dwelling 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 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. For settings in which landlord tenant laws do not apply, 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.

Setting ensures that each individual has a signed service agreement.

☒ Met ☐ Unmet ☐ Not Applicable

The setting submitted their Service Agreement, which was reviewed by the DHS reviewer. The residency agreement follows the requirements also outlined in Wisconsin's DHS administrative code and includes reasons and notice requirements for involuntary discharge. The setting attested to reviewing the agreement upon each resident's admission.

441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

Individuals have privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

All resident suites within The Evergreens are designed and constructed to be fully private living units each accommodating only one resident.

Units have lockable doors with only appropriate staff having keys.

☒ Met ☐ Unmet ☐ Not Applicable

During the onsite visit, the DHS reviewer observed that each resident room is unlocked using the resident's individual room key. The setting attested that only the main staff working on the unit had access to master keys to unlock a resident door which is only used in the event of an emergency. The DHS reviewer also verified the setting's Policy on Lockable Doors-Resident Suite.

Individuals have a choice of roommates.

☐ Met ☐ Unmet ☒ Not Applicable

All rooms at the setting are private, single-occupancy suites that are licensed to accommodate only one resident with no option for shared rooms or multiple occupants.

Individuals have freedom to furnish and decorate.

☒ Met ☐ Unmet ☐ Not Applicable

The DHS reviewer verified in the Resident Freedom to Decorate Living Unit Policy and the Services Agreement and during the onsite visit that the setting allows residents full freedom to furnish and decorate their private suites in accordance with their personal preferences. Each suite is designed as an individualized living space, allowing residents to bring their own furniture, décor, and personal items that reflect their tastes, cultural backgrounds, and lifestyles. Staff assist only as requested to help with arranging furniture or ensuring safety and accessibility. There are no restrictions on decorating beyond standard safety considerations (e.g. maintaining clear Egress and avoiding fire hazards).

441.301(c)(4)(vi)(C) Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.

Individuals have control of schedules and activities.

☒ Met ☐ Unmet ☐ Not Applicable

As verified in the Resident Control Over Daily Schedule Policy, residents at The Evergreens retain full control over their daily schedules, routines, and preferred activities. Individuals choose when to wake up, eat meals, participate in social or recreational opportunities, engage in personal hobbies or rest. Staff support these choices by offering flexible assistance, honoring individual preferences, and providing opportunities rather than directing or mandating participation. No facility-wide schedules are imposed on residents. All planned activities are optional, and residents may request alternative options or decline participation.

Individuals have access to food at any time.

☒ Met ☐ Unmet ☐ Not Applicable

As verified in the Resident Access to Food and Beverages at any Time Policy and during the onsite visit, residents have unrestricted access to food and beverages. DHS reviewer observes a basket of snacks on the counter. The cabinets, refrigerator, and beverage station are unlocked and available to residents at any time. Mealtimes are offered, however there are signs posted indicating residents can choose to eat at other times and in the location they wish.

441.301(c)(4)(vi)(D) Individuals are able to have visitors at any time.

Individuals have access to visitors.

☒ Met ☐ Unmet ☐ Not Applicable

The setting submitted verification of Resident Access to Visitors and Overnight Guests Policy and the Resident Handbook that indicate visitors may visit residents at any time in common areas or their rooms. During the onsite visit, no visiting hour signs were visible.

441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.

Setting is physically accessible.

☒ Met ☐ Unmet ☐ Not Applicable

The setting attested to the building's physical accessibility and sent pictures of the entrance, resident rooms, bathrooms, all common areas, and the spa which verified physical accessibility. The DHS reviewer observed physical accessibility during the onsite visit and confirmed that the entire setting is zero entry/no stairs.

42 CFR 441.301(c)(5)(v) (5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following: (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

Physical distinction: The setting demonstrates a meaningful physical distinction between the HCBS setting and the institutional facility, including separate entrances and signage.

☒ Met ☐ Unmet ☐ Not Applicable

Although the CBRF and skilled nursing facility are connected under the same roof, the setting demonstrates a clear and distinct separation from the skilled nursing facility (SNF) which the DHS reviewer observed during the onsite visit. The CBRF has a separate entrance and there is a locked door between the SNF and the CBRF that can only be accessible with a staff badge.

Staff training: All staff working in the setting has received initial and annual training on the HCBS Settings Rule's requirements and on person-centered planning:

- Initial training must occur prior to assuming responsibilities with residents.
- Annual training must occur each calendar year beginning with the first full calendar year of employment.

☒ Met ☐ Unmet ☐ Not Applicable

The setting submitted attestations for each staff showing the individual's completion of HCBS settings rule training and the date.

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