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

Introduction and Background

Background and applicability: The Wisconsin Statewide Transition Plan was developed by the Department of Health Services, the State Medicaid Agency (SMA), in accordance with the Medicaid Home and Community-Based Setting Requirements of the Medicaid Home and Community-Based Services Final Regulation at CMS 2249-F/2296-F. The statewide transition plan laid out in this document applies to the Medicaid Home and Community-Based Services (HCBS) waivers under § 1915(c) of the Social Security Act that provides the authority for the Community Options Program (COP) Waiver, the Community Integration Program (CIP), the Children's Long-Term Support (CLTS) Waiver Program, the IRIS (Include, Respect, I Self-Direct) program, the Family Care program, and the Family Care Partnership program.[1]

This statewide transition plan is intended to supersede the waiver-specific plans that were approved by the Centers for Medicare and Medicaid Services (CMS) for the IRIS and Family Care/Family Care Partnership 1915(c) waivers. The SMA has identified opportunities to align and combine many of the activities described in those plans and reflected in the following plan. This is critical since many settings and providers serve individuals in more than one of the waivers listed above. The SMA will replace the waiver-specific plans with the statewide transition plan at the next amendment or renewal of those waivers. The CIP, COP, and CLTS Waiver programs do not have approved waiver-specific plans and will follow the statewide transition plan.

Assessment of compliance: Wisconsin is using a multi-phase process to assess and ensure continuing compliance with the HCBS settings requirements for both residential and nonresidential settings types. This approach includes:

I. A preliminary review of all waiver services and settings in which they are typically provided to determine whether or not the setting is subject to additional review (that is, provider self-assessment and validation) under the rule.

[1] The waivers covered by this plan are: WI.0154 (COP-W); WI.0229 (CIP-W); WI.0367 (Family Care); WI.0414 (CLTS); and WI.0484 (IRIS).

II. An assessment of the regulatory and policy framework for both residential and nonresidential settings and identification and implementation of systemic remediation actions.
III. Provider self-assessment.
IV. Review and validation of the self-assessment responses through both provider site visits and examination of assessment response by the SMA.
V. Identification and completion of site-specific remediation by providers.
VI. Ongoing monitoring, to include re-evaluation of settings at routine intervals.
VII. Implementation of the heightened scrutiny process.

I. Preliminary review and assessment of services and settings

The SMA conducted a preliminary review of all existing home and community-based services and the types of settings in which each service is typically provided. The SMA further evaluated these settings types for their consistency with HCBS characteristics identified in the rule and classified as:

- Yes—the setting has HCBS characteristics.
- No—the settings is not home and community-based.
- The setting type is subject to further assessment by the state.

A list of services and typical settings is found at Appendix 2. Some services are closely tied or synonymous with specific settings while others can occur in various settings based on the needs of the program participant. SMA staff with knowledge of waiver services and the settings in which they are provided reviewed each service and determined the typical settings for all waiver services. The different settings were then compiled across all services and the types of settings were reviewed to determine which were settings that serve primarily people with disabilities and which were natural community settings that were not specific to people with disabilities. All waiver services are provided in one or more of the settings that are identified in this document.

The SMA has made this assessment for all 1915(c) waiver programs. Per the final rule, a participant's private residence, including the parental home for a child, is presumed to be compliant. In addition, the SMA determined that the following settings would typically meet the requirements of 42 C.F.R. § 441.301(c)(4):

- Places of integrated, competitive employment.
- Community sites predominantly used by the general public for typical community activities, unless specifically prohibited by 42 C.F.R. § 441.301(c)(5), including but not limited to: retail establishments; schools; recreational and entertainment facilities; libraries; places of religious worship; public and private transportation settings such as buses, trains, and private vehicles; restaurants; community centers; professional offices; non-disability related service establishments; streets; and other public accommodations.

The following settings found in the CLTS Waiver Program also meet the requirements of the rule:

- Family's private residence, whether owned or rented.
- Child care facilities predominantly used by the general public for child care.
- Child care provider's private residence, whether owned or rented, used for child care.

The SMA has determined that the settings listed above are typically integrated in the greater community, or in the case of residences in rural settings, are the person's choice and consistent with the character of such communities; do not segregate or isolate participants, except with respect to private residences in rural areas where such is the chosen preference of the person, or his or her guardian; provide opportunities for regular interaction in daily activities with non-HCBS waiver participants; facilitate participant-centered choice in services, daily activities, and assumption of typical, age-appropriate social roles; and support rights to dignity, respect, autonomy, and freedom from coercion.

While these settings are viewed as a group as integrated in the community, the SMA will not assume that in each instance they meet the HCBS settings requirements. As part of the ongoing person-centered planning process used by all waiver agencies in Wisconsin, all settings in which waiver services are delivered, including those described above, will be assessed by the waiver agency, or other entity delegated by the SMA, to ensure that the setting is not designed in such a way that it isolates the individual from the greater community. This assessment occurs at the time of development of the initial person-centered plan and at reviews of that plan on at least an annual basis. The assessment includes periodic face-to-face meetings with the participant in the setting in question.

Per the HCBS final rule, services provided in the following settings **are not** considered home and community-based and are not allowable settings for home and community-based services:

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

The SMA has determined the following settings for delivering services to children are not considered home and community-based and are not allowable living arrangements for the CLTS Waiver Program:

- Residential care center for children and youth
- Group home for children

All other settings will be initially assessed individually by the SMA through a multi-phase process, using SMA staff or contracted entities under the direction of the SMA. These settings will also be reviewed for compliance on an ongoing basis. The following settings will be subject to further assessment:

Residential settings

- Community-based residential facilities
- Licensed 3-4 bed adult family homes
- Certified adult family homes, including 1-2 bed homes and homes certified under Wis. Admin. Code ch. DHS 82
- Residential care apartment complexes
- Foster homes for children
- Level 5 exceptional treatment foster homes (CLTS only)

Nonresidential settings

- Adult day service settings (adult day care)
- Children's day services settings (CLTS only)
- Fixed-site day habilitation service settings (day center services)
- Fixed-site prevocational service settings (center-based sites where individuals receive pre-vocational services intended to enable progression to integrated employment)
- Group-supported employment settings (enclaves/work crews)

Summary of Preliminary Analysis of Settings		
Waivers	Age Group	Settings Determined Compliant without Additional Review
All[2]	Adults	Private residences not owned or controlled by service providers and not regulated under Wisconsin law or policy as residences for persons with disabilities
		Places of integrated, competitive employment
		Community sites predominantly used by the general public for typical community activities
WI.0414	Children's settings	Family's private residence, whether owned or rented
		Child care facilities predominantly used by the general public for child care
		Child care provider's private residence, whether owned or rented, used to provide child care
Waivers	Age Group	Settings Requiring Additional Review
All	Adults	Community-based residential facilities (CBRFs)
		Licensed 3-4 bed adult family homes (AFHs)
		Certified bed adult family homes (AFHs)
		Residential care apartment complexes (RCACs)
		Adult day service settings (adult day care)
		Day habilitation service settings (day center services)
		Prevocational service settings
WI.0414	Children	Foster homes
		Level 5 exceptional treatment foster homes
		Children's day services settings (disability-related)
Waivers	Age Group	Settings Determined to be Noncompliant
All	All ages	Nursing facility
		Institution for mental diseases
		Intermediate care facility for individuals with intellectual disabilities
		Hospital
WI.0414	Children only	Residential care center for children and youth
		Group home for children

II. Assessment of regulations and policies for residential and nonresidential settings

Some of the HCBS standards found in the federal rule, such as choice of setting, choice of providers, and financial support for access to activities in the community, are the responsibility of the entity providing care management or consultation, not the service provider. Other standards such as preference for a private room or choice of roommate and access to activities in the community are a joint responsibility of the setting and the waiver agency. For example, if a

[2] The waivers covered by this plan are: WI.0154 (COP-W); WI.0229 (CIP-W); WI.0367 (Family Care); WI.0414 (CLTS); and WI.0484 (IRIS). CLTS Waivers serve individuals ages 18-22 who may receive services in adult settings.

setting does not have private rooms or none are available, the waiver agency should assist the participant to consider another setting with private rooms. While all settings must allow access to the community, an individual may need more support to engage in an activity than the setting can provide. In such cases, the waiver agency is responsible for working with the participant and the setting to identify resources. This is true across all HCBS waiver programs in Wisconsin. Monitoring of the quality of person-centered planning is an ongoing process in all of these programs. A description of person-centered planning is found in each of the waivers listed in this document (see footnote 1) and in the policy documents that govern those programs. These policy documents include:

- DHS-MCO Contract for Family Care, Partnership, and PACE
- Medicaid Waivers Manual for CIP, COP and CLTS waivers
- IRIS Policy Manual
- IRIS Work Instructions
- Being a Full Partner (Family Care member booklet)
- Vocational Services State Guidance Website
- Wisconsin Stat. ch. 51
- Wisconsin Admin. Code ch. DHS 94
- Other related technical assistance documents

Person-centered planning requirements are addressed by the SMA for each program through contracts and program policy. The systemic assessment crosswalk (Appendix 3, Table 1) provides analysis of the role of person-centered planning in enforcing the requirements of the rule.

The remaining tables in the crosswalk address setting-specific policy guidance that relates to the provisions of the final rule. The analysis of each setting type focuses on those standards within the control of the setting, while addressing all aspects of the rule.

Wisconsin's initial assessment of the settings that are determined to need additional review is based on crosswalks of current state regulations, standards, and policies to the requirements articulated in the final federal rule.

Residential settings: For residential settings, the service standards in Wisconsin's waivers are based upon and reference applicable state statutes and regulations. The SMA conducted an analysis of the current regulatory requirements for the residential settings that serve adults and identified those that align with and meet specific requirements of the HCBS regulations and guidelines for these residential settings. The analysis indicates that most of the requirements included in the federal rule are already covered by Wisconsin's statutes and regulations that govern certain licensed or certified residential settings.

The SMA determined that Wisconsin's state statutes, state regulations, and DHS standards related to residential settings do not conflict with any requirements of the HCBS regulations—that is they do not include any requirement for certification or licensure that would put the setting out of compliance with the rule. The results of the analysis conducted by the SMA are detailed in the crosswalk found in Appendix 3. The crosswalk identifies areas of compliance and areas where the statutes, regulations and standards are silent, and specifies the remediation actions to be taken to ensure that settings used by waiver programs are compliant.

Nonresidential settings: The SMA used the same process for systemic assessment of nonresidential settings. The crosswalk is based on the language of the HCBS settings regulation and the state's existing regulatory or SMA policy requirements where applicable. As not all day and vocational settings are covered by state law, regulation or certification standards, the SMA analyzed program policies as articulated in Wisconsin's waivers, policy documents, and contract requirements to determine the degree of compliance with the HCBS settings rules. The crosswalk for nonresidential settings, including remediation actions, is included as part of Appendix 3.

Conclusion of analysis: Wisconsin laws, regulations, standards, and other policies address most of the requirements of the rule, including provider agreements, participant choice, participant rights, and accessibility. In some cases, however, the policies do not address all of the criteria that CMS has suggested in its toolkits and other sub-regulatory guidance. In addition, Wisconsin policies are silent on some aspects of the rule. Therefore, provider assessments will be performed to determine whether requirements of the federal rule that are not addressed in detail through state policies are met by individual providers.

Based on CMS guidance, areas where the SMA has determined additional information is needed include:

- Location of the setting—characteristics of surrounding area
- Access to transportation
- Opportunities to receive services in an integrated community setting
- Opportunities to engage in competitive integrated employment
- Lockable entrances to individual living spaces
- Opportunities for privacy
- Nature of ability to make individual choices, such as access to food and money
- Access to certain areas in the setting

As necessary, additional requirements will be incorporated into waivers, SMA policies, contracts, and other documents used to articulate program requirements per the remediation plan described below.

Remediation at the system level: Because contracting and direct oversight of providers differs across Wisconsin's HCBS waiver programs and generally involves local waiver agencies, remediation strategies may have program-level variation. The SMA has analyzed regulations that govern certified and licensed settings and determined that there is no need to propose changes to regulations or certification standards for those programs.[3] Both licensed and certified providers also serve people who do not receive Medicaid HCBS and any instances where additional criteria must be met for compliance with the HCBS settings rule can be accommodated through requirements specific to HCBS waiver providers. The crosswalk analysis for both the residential and nonresidential settings validates that none of the HCBS requirements are in conflict with the statutes or licensing regulations. The SMA can impose additional requirements on licensed or certified providers above those required in statute and rule in order for the provider to serve HCBS program participants. The SMA will ensure that any setting that serves one or more HCBS waiver participants will be required to comply with the requirements through our additional requirements and monitoring. The policy documents referenced on page 6 will be used to convey these additional requirements to waiver agencies.

As the program guidance is revised, the SMA will determine the extent to which additional documents need revision to reflect the revised policies. These documents include:

- Waiver provider agreements and other provider materials
- Participant/member handbooks and other participant informational materials
- Standards and requirements for specific waiver services

All programs will review policy and technical assistance documents and make revisions as needed. All changes will be in place to ensure compliance with the HCBS settings requirements on or before March 17, 2019.

Waiver agencies will be required by contract to ensure compliance with the requirements of the HCBS settings rule through their contracts and agreements with waiver providers. As part of the SMA's review of waiver agency compliance with contract and waiver standards, the SMA will validate waiver agency compliance with these requirements. For self-directed programs, the SMA will engage a third party for compliance validation.

In addition to ensuring that existing program policies and guidance are compliant with the settings rule, the SMA will analyze and develop infrastructure and procedures consistent with each program structure to implement oversight of compliance. This will include:

[3] Licensure requirements and detailed standards are defined in state statutes and administrative code. Both require either action or review and concurrence by the Wisconsin Legislature. Settings that are governed by state statutes and administrative code are CBRFs, 3-4 bed AFHs, RCACs, level 5 exceptional treatment foster home care, and child day care.

- Procedures to document provider remediation and validate implementation of those plans.
- Development of educational materials for providers, waiver agencies, aging and disability resource centers, participants, family members, and others.
- Consideration of additional processes to verify ongoing compliance, such as participant surveys.
- Development of mechanisms to notify waiver agencies and third-party administrators of noncompliant providers.
- Updating information management systems to assure ongoing compliance with the rule.

III. Provider self-assessment

Residential settings: The SMA has identified nearly 5,000 individual residential settings that are subject to individual assessment for compliance with the HCBS settings rule. Wisconsin used a single standardized tool to conduct provider self-assessments of all residential settings serving adult HCBS waiver participants. Residential providers were directed to respond to the assessment for each location in situations in which the provider operates multiple sites. Providers are required to produce documentation of the accuracy of their responses upon request of the SMA.

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

The SMA released the self-assessment tool to providers in an online format. Each site was provided with a personalized link to the tool so that the state could determine the response rate. A paper version of the tool was available upon request for providers who did not have access to a computer. The tool requested a yes or no response to most questions with space allowed for comments. Other questions provided a list of options from which the respondent could select. Providers were not asked to attach documentation to the self-assessment, but were informed that follow-up could include a request for such documentation.

The SMA is using several methods to ensure that all covered providers receive information about the self-assessment. Waiver agency provider lists (managed care organizations, county and tribal waiver agencies, IRIS agencies) were collected and compiled to create a comprehensive list. The SMA will continue to work with these entities as the list of compliant providers is developed to ensure that providers or individual settings were not overlooked.

The SMA furnished information to, and is working closely with, the state licensing entities responsible for licensing residential facilities—the Department of Health Services (DHS), Division of Quality Assurance (DQA) for adult settings and the Department of Children and Families (DCF), Division of Early Child Care and Education and Division of Safety and Permanence for children's settings. The SMA has also notified the entities that certify 1-2 AFHs. These entities vary by program and include Family Care managed care organizations; county and tribal waiver agencies for CIP, COP, and CLTS; and Lutheran Social Services for IRIS. SMA staff provided information to provider associations to share with their members. SMA representatives have presented at provider meetings held by associations as well as at forums hosted by the DQA and DCF (the state licensing entities).

Providers must complete the self-assessment for each site that they operate. Provider responses are being compiled and evaluated by SMA staff and contractors. Entities that do not currently provide waiver services are encouraged to complete the self-assessment if the provider anticipates delivering HCBS waiver services in the future. If such a provider does not complete the self-assessment during the transition period, they will need to contact the credentialing agency and request an HCBS compliance review before they can deliver waiver services.

Children's residential settings, including traditional foster care and level 5 exceptional treatment foster homes, were not asked to complete a self-assessment. Because these settings do not primarily serve HCBS waiver participants, the SMA will use the site visit process outlined in section IV of the statewide transition plan for assessing and ensuring HCBS settings compliance. All foster care providers currently serving as a residential setting for waiver participants will receive a site visit. Personnel conducting site visits to determine if the residential provider meets compliance with the HCBS setting rule are using a standardized review tool developed by the SMA. Provider compliance designations will follow the same process as all other settings.

Nonresidential settings: Wisconsin has identified approximately 500-600 individual nonresidential settings that are subject to individual assessment for compliance with the HCBS settings rule.

The nonresidential setting types submitting the nonresidential self-assessment tool are:

- Adult day service settings (adult day care)
- Children's day services settings (CLTS waiver providers only)
- Day habilitation service settings (day center services)
- Prevocational service settings
- Group supported employment service settings

Nonresidential self-assessments will:

- Assess current provider operations in comparison to the nonresidential settings requirements.

- Determine capacity building and technical assistance needs.
- Identify site changes needed to achieve compliance with the settings rule.

Wisconsin used a single standardized tool to conduct a provider self-assessment of all nonresidential settings serving adult HCBS waiver participants. The tool was deployed in the summer of 2016. Nonresidential providers responded to the assessment for each location when the provider operated multiple sites. Providers are required to produce documentation of the accuracy of their responses upon request of the SMA contracted entity.

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

Two meetings were scheduled for feedback on the tool to make recommendations for revisions. One meeting was held with a group of nonresidential providers and their associations and the second meeting was with advocacy agencies and parent groups. These two meetings provided feedback that was incorporated into the tool to build a more robust set of questions to gain more knowledge of the status of our nonresidential provider's compliance with the HCBS settings.

The nonresidential self-assessment tool asks 50 quantitative and qualitative yes and no questions. It provides definitions to words in the questions to assist the respondent with response accuracy and clarity. Each question offers an "other" choice to allow respondents to indicate what they are doing in regard to the specific question. Each question also offers a "comments" section to explain their answers as well. These comments will be compiled and reviewed by SMA to develop the validation tool. Providers were not asked to attach documentation to the self-assessment, but were informed that follow-up could include a request for such documentation.

The SMA explored several methods to ensure that all covered nonresidential providers received information about the self-assessment. Waiver agency provider lists (managed care organizations, county and tribal waiver agencies, IRIS agencies) were collected and compiled to create a comprehensive list. The SMA has furnished information to provider associations to share with their members and has continued this communication as the self-assessment is implemented. The SMA called non-responding providers to ensure they were aware of the tool and their need to complete it. The SMA took opportunities to present at provider meetings and conferences to share the tool and its purpose. The development of the validation tool will use aggregate information taken from the nonresidential provider self-assessment tool responses to set benchmarks.

Entities that do not currently provide waiver services are encouraged to complete the self-assessment if the provider anticipates delivering HCBS waiver services in the future. If such a provider does not complete the self-assessment during the transition period, they will be subject to an assessment before they can deliver waiver services. Providers must complete the self-assessment for each site that they operate and for each service that they deliver in the site (e.g., prevocational services and adult day services), but will only need to complete the self-assessment once for a given site and service combination, even when they serve participants in more than one waiver program or from more than one waiver agency in the setting.

IV. Review and validation of self-assessment

The SMA will review each submitted self-assessment—both residential and nonresidential—to make a preliminary determination as to whether compliance criteria were met or not met. A representative sample of residential and nonresidential settings that submit self-assessments will receive an on-site validation review. Beginning in June 2016, the SMA, using contracted staff under the direction of the SMA, has been conducting the site visits to a stratified representative sample of settings. The SMA contracted for staff through a third party with no affiliation with providers and is working with the DQA, Wisconsin's designated state survey agency that regulates most residential and health care settings, to oversee the site visit and validation process for both residential and nonresidential settings.

The sample selected for on-site review is stratified to ensure that it is representative of settings. The factors that are considered in the stratification process include:

- Setting type
- Geographic distribution

The results of the self-assessment review may also identify specific concerns that will prompt a site visit. For example, a self-assessment that indicates multiple unmet criteria across several areas will prompt a closer review and a potential site visit. In addition to the settings randomly selected for a review, any current waiver provider that fails to submit a self-assessment for a setting will receive a site visit by the SMA or its contractor. If management of a setting refuses to cooperate with the site visit personnel, the setting may be determined noncompliant and subject to either relocation of all program participants or loss of Medicaid waiver funding in the case of nonresidential settings. The SMA will work with providers and waiver agencies to ensure that providers understand the process and the requirement to participate in the process before making any final determination. When appropriate, the SMA will use the existing statutory process for facilities that choose to downsize or close as a result of the HCBS rule requirements.

Personnel conducting site visits to validate whether the residential and nonresidential provider meets the HCBS settings rule criteria are using standardized review tools developed by the SMA.

These tools include site observations, review of supporting documents provided by the provider, and interviews with staff and with people residing in or attending programs in the setting. The validation tools are written specifically for residential, nonresidential, and child settings.

The reviewers will conduct site visits using the validation tool appropriate for the setting and create a report for each setting with the observed findings of “meets” or “does not meet” the HCBS settings criteria. For settings that do not meet the criteria, this report will generate a letter to the provider describing the areas that need to be addressed to meet HCBS settings.

For settings found by the reviewers to meet criteria, a sample of reports will be reviewed by SMA staff for consistency and providers will be notified of the outcome of the review. The SMA will compile a list of providers that are determined, based on responses to the self-assessment and/or validation by the state, to comply with the regulations for HCBS settings. The SMA will also identify settings that are determined to need remediation and require these providers to submit remediation plans or evidence of remediation to the SMA. Providers that submit remediation plans will be actively monitored by the SMA and/or its contractors to ensure full compliance to the HCBS settings rule within the timeframe identified in the plan. For those providers that do not reach full compliance, or do not wish to comply, waiver participant members will be transitioned to an HCBS-compliant setting in accordance with the SMA’s plan to relocate residents.

The SMA, using SMA or contracted staff under the direction of the SMA, will determine provider compliance designations. These designations are as follows:

- Yes—setting meets HCBS settings rule criteria.
- Not Yet—setting currently does not meet HCBS settings rule criteria but may, with remediation.
- No—setting cannot meet HCBS settings rule criteria; setting cannot or will not conform, setting is presumptively institutional, and/or state determines setting is incompatible with the HCBS final rule (setting may request review and consideration by SMA for submission to CMS for heightened scrutiny).

Upon completion of the self-assessment and validation process, the SMA will estimate the number of compliant settings and provide the number to CMS.

The SMA will inform providers and waiver agencies of the preliminary assessed compliance designation. The providers’ notice for those who do not yet meet the HCBS characteristics will indicate that the setting is at risk of noncompliance and that a remediation plan must be submitted in order to become compliant. The notice to settings that fall in the group that are presumptively institutional will include information about the provisions of the rule regarding

heightened scrutiny. The SMA will issue a public report of compliant and noncompliant providers after providers have the opportunity to remediate.

Remediation of individual settings: For settings that the SMA finds, during the assessment process, do not meet the HCBS waiver settings standards, the SMA will request providers that desire to come into compliance to develop and submit remediation plans. Providers that choose to not attempt to come into compliance will be informed of their ineligibility to participate in providing HCBS waiver services. The SMA will provide direction and, as appropriate, will refer providers to waiver agencies for additional guidance on steps needed to revise their practices to comply with the regulation. The SMA will collaborate with provider associations and advocacy organizations to distribute information. Compliance will be re-assessed upon notification by the provider that the remediation plan has been implemented and validated through review of evidence submitted by the provider or during a follow-up site visit.

The process for remediation will proceed as follows:

- Provider is notified that setting does not fully meet the HCBS settings rule criteria. Notification includes description of areas of criteria not met. Notifications will occur as individual site reviews and self-assessment reviews are completed.
- Provider is required to remediate any areas of criteria not met and submit evidence of remediation to the SMA based on a timeframe specified in the notification. The reviewers contracted by the SMA are reviewing this evidence based on guidance provided by the SMA. When the reviewer determines that the provider has achieved compliance, the determination will be sent to the SMA and follow the process described above.
- If remediation is complex and requires additional time, the provider will be required to submit a remediation plan that identifies the remediation steps and timeline proposed by the provider.
    - SMA will review plans for response to areas of concern and advise provider of any issues.
    - Remediation plans must identify remediation steps that will be completed per the dates identified in the timeline on pages 19-20. A provider may request a compliance review as soon as it has implemented the plan.
- SMA conducts a follow-up validation review of evidence submitted by the provider or a site visit, if deemed necessary, and determines whether the setting now meets the HCBS settings rule criteria.
- Upon notice of unmet HCBS settings rule criteria, a provider who does not wish to comply may notify the SMA at any point in the assessment and remediation process. When a provider makes this notification to the SMA, the SMA will contact any waiver agencies that use the provider to begin the process of relocating waiver participants from residential settings or identifying alternate day activities or funding sources for

nonresidential settings, including providing each individual with choices of other HCBS-compliant settings.

This overall process will have a clear start and end date to allow for participant transitions, but the determination of compliance or continued noncompliance may occur at any time during the process. The SMA will maintain a log of findings of provider compliance and noncompliance.

Report of findings: After review of all remediation plans and final determination of compliance, the SMA will issue a report identifying settings determined to comply with the HCBS settings rule. This report will be provided to all waiver agencies and will be readily available to the public, including program participants, families, and providers.

V. Ongoing assessment and monitoring of settings

Wisconsin will use several methods for ongoing assessment and monitoring of settings, as follows:

Build into regulatory monitoring: Licensed settings and settings that are certified by the state licensing authority (DQA) (CBRFs, 3-4 bed AFHs, RCACs, and adult day care providers) are subject to periodic compliance site visits by DQA. Sites found to have deficiencies in licensing or certification requirements are required to implement corrective actions and can lose their license or certification when noncompliance continues or is egregious. Any provider that loses its license or certification cannot continue to be a qualified waiver service provider regardless of HCBS compliance status. As part of these periodic licensing or certification reviews, DQA will also review the setting for continued HCBS compliance. Providers will be required to address any HCBS rule deficiencies. Failure to adequately remediate will result in removal as an HCBS waiver provider. New providers who are licensed or certified by DQA will be reviewed for HCBS compliance if they intend to serve HCBS waiver participants. The HCBS compliance will be noted on the DQA directories of licensed or certified providers.

Certified 1-2 bed AFHs can be certified by waiver agencies, counties, or third-party contractors under contract to the SMA. The HCBS requirements will be incorporated into the current 1-2 bed AFH standards and the entities that do the certification will be required to review compliance with those standards for any setting that intends to service HCBS waiver participants.

Engage a third party or use state oversight staff to monitor compliance: For the self-directed IRIS program, the IRIS consultant agency is required to conduct visits with the participant and can alert the SMA to issues, but is not responsible for contracting with the provider. In this program, the SMA may use a third-party entity to review and verify compliance beyond that

documented by the regulatory entities described above. The SMA may also use state oversight staff or engage a third party for monitoring of entities that are not currently regulated.

Incorporate monitoring into person-centered planning and required waiver monitoring visits: Waiver agencies operating Wisconsin's HCBS waiver programs are charged with the continuous evaluation of services and settings as they fulfill their care management responsibilities—including the development of person-centered plans. Compliant settings will be observed by care management teams during the regular waiver monitoring process to ensure continuing compliance. This does not replace monitoring and compliance determination by the credentialing authority, but provides an important supplemental check on compliance. In the event a setting appears to no longer be compliant with the HCBS settings rule, the waiver agency will inform the SMA and make a formal request to the credentialing authority who will conduct a site visit to determine compliance with the rule.

Systems development to document compliance: The SMA will develop a state-level data repository for initial and ongoing determinations of compliance with the HCBS settings rule. The repository will include determinations made by the state licensing agency and those made by waiver agencies during certification. The SMA will be able to record the compliance designation for each setting in that repository. Waiver agencies will have access to the information in that system to verify compliance. In the future, the SMA expects to leverage the functionality of the Wisconsin Provider Management (WPM) system that is currently under development.

VI. Heightened scrutiny process

The SMA estimates that up to 150 settings meet criteria that make them presumed to be a setting that has the qualities of an institution per the HCBS settings rule. Many of these settings are expected to be able to document to the SMA that they meet the requirements of the rule. These settings include:

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

All settings that meet presumptions one or two above will be assumed to be "institution-like" unless otherwise documented through the heightened scrutiny process. Other settings that demonstrate characteristics that serve to isolate as documented in the provider self-assessment will be further reviewed by the SMA to determine if those characteristics are accurately portrayed in the self-assessment or during a site visit.

All settings that serve waiver participants are expected to complete a provider self-assessment to determine whether they meet the "institution-like" presumption in the rule. The SMA will identify settings that are presumed to have the qualities of an institution through the self-assessment process, as well as the review of records of the state licensing agency, and site visits. The SMA will mail a written notice to settings that they are determined to need heightened scrutiny. The SMA will provide information about the federal heightened scrutiny process and the guidance that has been provided by CMS. The SMA will provide guidance regarding the materials needed for the review and the process for submitting the materials, but it will be the responsibility of the setting to request that the SMA review the facility for possible submission to CMS for heightened scrutiny consideration.

The SMA will assign HCBS reviewers to review the documentation provided by each setting, make follow-up contacts to the setting for clarifications and additional information, and conduct an on-site assessment. The SMA will publish the name and address of each setting being considered for heightened scrutiny to allow for public comment. A committee of SMA staff will consider the findings of the reviewers and any public comments and make a recommendation on each setting. The decision to submit evidence to the Secretary of the Department of Health and Human Services (DHHS) will be made by the Secretary of the Department of Health Services (SMA) based on the recommendations of the committee. Settings that request heightened scrutiny will be updated on decisions made during the process. Only those settings that are determined to have satisfied the SMA heightened scrutiny review process will be submitted to Secretary of DHHS for federal review.

Plan to relocate participants or discontinue waiver funding: The SMA does not currently have an estimate of the number of people who will be impacted by provider compliance with the HCBS waiver rule and will make every effort to minimize the impact. The SMA will only relocate HCBS waiver program participants after all attempts to assist providers to become compliant with the settings requirement have been exhausted, or the provider has declined to make changes to come into compliance. In the case of nonresidential settings, continued participation by waiver participants will depend on the ability of the provider or participant to identify alternative funding. The SMA timeline includes completing its assessment and remediation activities in a timely manner to allow people sufficient opportunity to choose a new setting and relocate before the CMS deadline for full statewide compliance. When appropriate, the SMA will use the state's existing statutory process under Wis. Stat. ch. 50 for facilities that choose to downsize or close as a result of the HCBS rule requirements.

People who will be affected by the noncompliance of a provider will be issued written notice and ensured due process. The process will be as follows:

- A minimum of 30 days in advance of a transition, the waiver agency will issue each participant or legal representative written notice, in language specified by the SMA, and

including notice of the right to due process, that the person will need to transition due to noncompliance by the provider.

- The notice will be provided as soon as the waiver agency is aware that the setting has not successfully met the HCBS waiver requirements, or has chosen not to comply, but not later than June 30, 2018, to allow time for due process and the identification of a compliant setting that meets the needs and preferences of the participant.
- At the same time, the waiver agency will notify the provider in writing of the intent to transition a participant from the setting or the intent to discontinue waiver funding.
- The waiver agency will utilize the person-centered planning process to identify other compliant settings for affected individuals. Care managers and interdisciplinary teams will work with each person affected and their families or guardians to provide a choice of compliant settings, including settings that are not disability specific.
- The waiver agency will meet all required person-centered care planning and care plan development processes and practices and provide all necessary supports to the person who will transition.
- If a person chooses not to move, the waiver agency will help the person to understand the consequences of remaining in the noncompliant setting, including potential loss of waiver eligibility.

Timeframe and milestones: The SMA established timeframes with the following priorities:

- Minimize avoidable member transitions.
- Maximize the amount of time for providers to come into compliance.
- Provide enough time for the SMA to diligently conduct on-site provider assessments.
- Provide enough time for any necessary participant transitions to occur in a planned, person-centered manner allowing for due process for each affected participant.

Wisconsin Statewide Transition Plan
Milestones and Projected Timeline

Milestone	Program(s)	Target Start Date	Target End Date
Regulation and Policy Review Process			
Preliminary assessment of waiver services and settings	All adult programs	June 2014	October 2014
Preliminary assessment of waiver services and settings	CLTS		June 2015
Regulatory/policy assessment of adult residential settings	All		March 2015
Regulatory/policy assessment of children's residential and nonresidential settings	CLTS		July 2015
Regulatory/policy assessment of adult nonresidential settings	All		September 2015
Analysis of service descriptions, policies, waiver language, program regulations, waiver provider agreements, contracts, manuals, handbooks, and other materials for compliance with HCBS settings requirements	All		June 2016
Individual Provider Assessment Process			
Development of adult residential provider self-assessment tool	All adult programs[4]	October 2014	January 2015
Conduct residential provider self-assessment	All adult programs	May 2015	November 2015
Development of nonresidential provider self-assessment tool	All programs	June 2015	June 2016
Conduct nonresidential provider self-assessment	All programs	June 2016	April 2017
Provider validation—all provider types	All programs	May 2016	October 2017
Preliminary results of provider Self-assessment/validation process analyzed	All programs	November 2016	November 2017
Provider compliance notification	All programs	July 2017	March 2019
Individual Remediation - Residential			
Provider remediation plans submitted as required	All programs	August 2016	November 2017

[4] CLTS program participants age 18 years and older are able to live in adult settings. Those settings are assessed along with providers used by the adult programs.

Milestone	Program(s)	Target Start Date	Target End Date
Provider remediation activities occur	All programs	August 2016	December 2017
Validation of provider remediation	All programs	As providers implement plans	January 2018
Report of compliance findings (periodically)	All programs	March 2017	March 2019
Individual Remediation – Nonresidential			
Provider remediation plans submitted as required	All programs	July 2017	November 2017
Provider remediation activities occur	All programs	July 2017	July 2018
Validation of provider remediation	All programs	As providers implement plans	August 2018
Report of compliance findings (periodically)	All programs	August 2017	March 2019
Systemic Remediation			
Revisions made to service descriptions, waiver language, program regulations, contracts, manuals, and handbooks to ensure compliance with HCBS settings requirements	All programs	Changes to coincide with new contract years, waiver years, etc. as applicable	No later than March 17, 2019
Heightened Scrutiny			
Identify settings that are subject to heightened scrutiny	All programs	September 2016	June 2017
Send communication to settings identified as needing heightened scrutiny	All programs	July 2017	By November 2017
Receive materials from settings	All programs	September 2017	By January 2018
Review materials and make preliminary determination	All programs	October 2017	February 2018
Solicit public comment (periodically)	All programs	October 2017	February 2018
Submit materials to DHHS (periodically)	All programs	November 2017	March 2018
Transition			
Participant transition or loss of waiver funding	All programs	As soon as waiver agencies are aware that a given provider will not comply	September 30, 2018
Full compliance achieved	All programs		March 17, 2019

VII. Public Input

The SMA, in accordance with federal requirements, solicited public comments on its Statewide Transition Plan for Compliance with the Medicaid Home and Community-Based Setting Requirements of the Medicaid Home and Community-Based Services Final Regulation at CMS 2249-F/2296-F. On March 1, 2017, the revised draft plan was posted on the SMA website for public review and comment (www.dhs.wisconsin.gov/hcbs/index.htm). Comments were accepted through April 3, 2017. Notice of the review and comment period was published in 16 major newspapers throughout the state. A paper copy of the Statewide Transition Plan was mailed to 46 parties upon request by phone or mail.

The plan, originally posted on November 26, 2014, was reposted to provide opportunity to comment on changes made to the document in response to federal feedback and to address issues expressed by CMS with the initial posting. CMS expressed concern that the SMA did not explicitly provide an avenue for people to have access to a paper copy of the plan and that the web address for the plan posted for comment differed from the web address for the plan that was submitted to CMS. Those concerns were addressed in this posting period.

The public was able to submit comments by email at dhsltcpubliccomment@dhs.wisconsin.gov.

Written comments were also accepted when mailed to the address below:

Department of Health Services
Statewide Transition Plan - Comment
P.O. Box 7851
1 W. Wilson St., Room 518
Madison, WI 53707-7851

Summary of public comments and SMA response:
During the 30-day review and comment period for the Wisconsin statewide transition plan, the SMA received comments from 34 individuals and organizations. Comments are categorized into themes or types of commenters.

- **Comments in support of prevocational settings and maintaining choice**—Nine people (program participants and family members/supporters) made comments that reflected this theme. The range of these comments is reflected in the points summarized below.
  - Some people with disabilities will not be successful in a job in the community, but still want to be able to engage in work in a prevocational setting.
  - The time limits established for prevocational services result in people going into non-work day settings if they do not have integrated community employment as a goal.

- The most appropriate work setting for a person is not always community-based employment. Person-centered planning should reflect this.
- There is concern that the site reviewers could show bias in determining whether a setting is isolating. They should remember that CMS has stated that "congregate settings alone do not violate the settings rule." (two comments)
- Commenters objected to the term "fixed-site" in describing nonresidential settings. That term has a negative connotation. (three comments)
- The prevocational setting provides good services to the commenter's daughter and, although, given the choice to work elsewhere, she prefers to stay there. People with disabilities should be given a choice.
- The prevocational setting providing services to the commenter's daughter that are essential to her daughter and give her a good quality of life.
- The prevocational setting provides activity for the commenter's son during the times when he is not participating in his supported employment job. Many workplaces cannot offer the support that he needs on a full-time basis.
- The commenter's daughter was able to get a job in the community as the result of a prevocational setting, but the writer supports the continuation of an array of employment and residential settings to meet individual needs. Choice should be maintained.
- The commenter's daughter has grown and matured thanks to the assistance of staff from the setting. She has meaningful employment and other services. This model should continue.

SMA response: The SMA acknowledges that many individuals are satisfied with the services they are receiving in the existing nonresidential settings. The process being used by the SMA to assess settings will be objective and will fairly assess each setting individually. The intent is to ensure that settings include a range of options and opportunities to people who receive services.

While the SMA appreciates concerns with negative connotations, the term "fixed-site" is an understandable and generally accepted term used to describe a physical setting where a number of people receive day services. It is used throughout descriptions in HCBS waiver policies and contracts and no suitable substitute could be identified. No connotation, negative or positive, is intended by the use of this term.

- **Concerns regarding impact of new requirements on residential settings**—The SMA received comments from nine residential providers ranging from operators of individual small settings to operators of multiple settings across the state. The comments are summarized below along with the SMA responses in bold type.
  - Wisconsin lease laws do not provide as much protection as the federal regulation envisions. **The SMA believes that the agreements that are currently required in residential regulations and standards provide the protections anticipated in the rule.**

- Some CBRFs do not receive Medicaid HCBS funds because of the target groups they serve, such as mental health crisis, substance use and corrections, and should not be subject to the rule. **This rule will apply to these settings if a person who is receiving Medicaid HCBS services lives in the setting, otherwise they are not impacted.**
- A number of commenters expressed concerns regarding the lock requirement:
    - Requiring locks for residents who are cognitively unable to understand the consequences could endanger the residents.
    - Could sleeping or living unit be interpreted to mean the entrance door to the home? This is more like a family home setting and in line with the intent [per commenter].
    - The lock requirement is not needed in a homelike environment. The residents are comfortable and do not see a need to lock their doors. The addition of rules makes these settings more institution-like.
    - There are concerns about the cost of adding locks for which providers will not be reimbursed.

  CMS has been clear in their guidance regarding the lock requirement as it pertains to individual units. The SMA has provided guidance to settings regarding the utilization of locks that allow for easy exit from a room with just the turn of a door knob or lever and the use of master keys for ease of staff access in emergencies. The SMA has also provided guidance on the implementation of exceptions to the locking door requirement through the person-centered plan in cases where health and safety would be at risk.
- CMS issued guidance that says, "Include lockable doors on each individual's room unless the resident's person-centered plan documents that such an arrangement is unsafe." The language in the statewide transition plan seems to be in agreement with that. Providers are being told that locks must be installed on all rooms and disengaged if justified in the individual's person-centered plan. The commenter would like the SMA to confirm that, per the CMS guidance, locks do not need to be installed if the person's plan indicates that the lock is not safe. **The SMA in Wisconsin has chosen to require that locks be installed on all doors and that exceptions are implemented by disengaging individual locks. This standard is clearer to monitor and enforce and does not create a visible difference between the rooms of people who are able to manage keys and those who cannot. The language in the statewide transition plan has been modified to clarify this expectation. (pp. 56, 65, and 78)**
- One commenter raised several issues related to residential settings including:
    - MCOs seem to move people out of residential settings to reduce costs. There is no effort to hold a place in a setting when the person is hospitalized.
    - State licensing regulations suppress innovation by providers, such as use of technology.

- The provider believes that members, families, and providers are not part of the decision-making.
- There is no appeal process for providers in contract negotiations with MCOs.
- Providers have experienced rate reductions. Rate methodologies used by MCOs are flawed.

The SMA is concerned about ensuring that person-centered planning is occurring at the MCO level for all individuals and will explore the concerns raised regarding choice. Other concerns raised are beyond the scope of the statewide transition plan.

- **Heightened scrutiny**—LeadingAge Wisconsin submitted several comments related to heightened scrutiny. The SMA comments are provided in bold type for each comment.
  - The SMA should clarify that nursing homes are not facilities providing inpatient treatment for purposes of heightened scrutiny. **All materials provided by CMS and all SMA conversations with CMS have indicated that skilled nursing facilities and intermediate care facilities for individuals with intellectual disabilities are considered settings that provide inpatient treatment. The SMA has no justification to make the statement as requested.**
  - The institution-like presumption regarding settings on the grounds of or adjacent to a public institution is flawed. The SMA should affirm its support for campuses that offer a continuum of care. **The SMA must look at each setting based on the CMS criteria and will make determinations individually based on the qualities of the setting.**
  - The SMA should provide examples of settings that have the effect of isolating individuals from the broader community. It is questionable whether the SMA can determine what is isolating to an individual who freely chose the setting. Consideration should be given for rural communities. **CMS has provided some examples of these settings in their guidance. The SMA must look at each setting based on the CMS criteria and will make determinations individually based on the qualities of the setting. Settings in rural areas will be considered in the context of the community.**
  - After notifying settings that they need to request heightened scrutiny, the SMA should provide continued correspondence to update the setting throughout the process. DHS should immediately contact these providers and begin working with them to address concerns. **The SMA expects to be contacting providers in the near future. The SMA intends to maintain contact with settings that submit documentation for heightened scrutiny. If the SMA has questions or requires additional documentation, SMA staff will follow up with the setting for clarification or any additional materials. Language to this effect is added to the statewide transition plan (p.** 17**).**
  - The SMA should indicate who will be on the heightened scrutiny committee. The provider should have the right to be part of the process, including representation by legal counsel. **The SMA will use contracted staff to review the materials submitted and conduct site visits, but the final decisions will be made by the Secretary of DHS or**

designee based on the recommendations of a committee of SMA staff. The review will focus on whether the setting provided adequate evidence to overcome the institutional presumption and meets all other HCBS requirements and whether public comment supports this evidence. The SMA will offer a setting the opportunity to submit additional evidence or clarification based on questions from the committee. CMS has indicated that the decision to submit an application for heightened scrutiny consideration by DHHS rests with the SMA. Provider participation in the committee would be inappropriate. The language in the statewide transition plan was revised to clarify this process. (p. 17)

- What settings will have their evidence submitted to DHHS for heightened scrutiny review—all settings or just those that are determined to be institution-like? **The process outlined by CMS indicates that the setting provides evidence to the SMA, the SMA reviews that evidence as well as any public input submitted during a public comment period, and the SMA makes a determination whether the setting has provided evidence to counter the institutional presumption. Only those settings for which the evidence and public input satisfies the SMA and approval from the Secretary of the SMA or designee will have evidence submitted to DHHS for review and approval. The language in the statewide transition plan was revised to clarify this process. (p. 17)**
- The plan should outline provider's rights to contest a determination of "institution-like." **CMS has indicated that the decision to submit an application for heightened scrutiny consideration by DHHS rests with the SMA. The Secretary of DHHS will make the final determination. The federal regulations do not provide for an appeal process.**

➢ **Questions and concerns raised by managed care organizations**—The Wisconsin Family Care Association and one individual managed care organization provided the following comments and questions. The SMA response is provided in bold type.

- The plan says the parental home is considered home and community-based. Are certified owner-occupied adult family homes in which the owner's child resides covered? **Yes, all certified adult family homes are subject to the requirements of the rule.**
- Several of the MCO's comments or questions address the need for more specific guidance in order to carry out the responsibilities that are assigned to them in the plan. They have requested timelines for and information on these policy changes. **The SMA has provided MCOs with ongoing updates on the implementation of the settings requirements and will provide additional criteria and guidance as Wisconsin moves into the ongoing compliance phase. MCOs will be notified in advance of policy changes that are required for full implementation of the settings rule as they are incorporated into contracts and policies.**

- MCOs are concerned about the additional administrative costs they may incur to meet the new requirements of the settings rule. **The SMA anticipates that the ongoing review of settings can occur during the contacts with members that are currently required of MCOs and in conjunction with other provider network qualification activities. The SMA does not envision a full compliance review every time a care team visits a member, but any indications of potential noncompliance should be noted and reported to the SMA. This is clarified in the statewide transition plan. (p. 16)**
- Do standards for fixed-site day habilitation services apply to on-site day services provided by residential facilities? **All of the requirements of the rule apply to residential settings, including the requirement to offer the opportunity to participate in activities outside of the setting. Residents must be given the choice not to participate in organized activities in the setting and must also be given the opportunity to be in the broader community.**
- Providers who are being required to remediate noncompliance issues are coming to the MCO for information. The MCOs are referring them to the reviewers. Will the SMA be providing assistance to providers? **The reviewers and staff at the SMA are providing information to providers and answering their questions regarding remediation. MCOs should continue to refer providers back to the contacts provided in the remediation letters**.
- The reference to Chapter 50 in regard to residential closures only applies to larger settings. What guidance will MCOs get regarding the closure of smaller settings? The notification date in the plan does not allow for moves to occur by the target date of September 30, 2018. **If a provider is found to be noncompliant and chooses not to remediate, any waiver participants must be relocated. The intent of the SMA is to provide MCOs with as much time as possible to work with members to identify compliant settings. The experience so far with provider reviews is that the vast majority of providers will be able to make their settings compliant through remediation. The dates in the statewide transition plan have been adjusted to allow sufficient time for relocations to occur timely. (p. 20)**
- Will MCOs be notified of heightened scrutiny settings? **As settings subject to heightened scrutiny are identified and submit materials for review, the SMA is required to provide public notice that those settings are being reviewed. MCOs will be able to provide comments during the public comment period.**
- The MCO comments identified a discrepancy in the timeline for transitions. **The comment correctly notes that the dates provided in the plan do not align. The dates are modified in the statewide transition plan. (p. 20)**
- Will an individual's choice to remain in a noncompliant residential result in disenrollment from the waiver or a loss of funding for the residential setting? **Since one criterion for 1915(c) waiver eligibility is that the person is living in an allowable setting, a participant who refuses to move from a noncompliant setting must be**

disenrolled from the waiver program. A waiver participant, however, may continue to receive services in a noncompliant nonresidential setting if another source of funding is used to pay for the services.

- If a person chooses to have a private room, can providers charge the person for the additional cost of the room? **Per the language of the rule, "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." If a participant does not have the resources to pay the additional cost of a private room, the setting does not need to provide one.**
- If language must be added to policies regarding access to food at any time, could the language provide for exceptions when medically appropriate? **The settings rule already accounts for possible exceptions. Any exceptions to the requirements of the rule that apply to residential settings must be developed pursuant to 42 C.F.R. § 441.301(c)(4)(vi)(F) and reflected in the individual's person-centered plan. This language is found in the 2016 DHS-MCO contract, Article V, C.**
- If adult family homes cannot have house rules will any limitations needed by an individual be included in the person-centered plan? **The settings rule already accounts for possible exceptions. Any exceptions to the requirements of the rule that apply to residential settings must be developed pursuant to 42 C.F.R. § 441.301(c)(4)(vi)(F) and reflected in the individual's person-centered plan. This language is found in the 2016 DHS-MCO contract, Article V, C.**
- Residential providers are responsible for furnishing resident rooms when the resident is not able to do so. Is it possible to further define "to the extent feasible" with regards to the furnishing and decorating in a 3-4 bed AFH. **This language is not intended to eliminate the responsibility of the setting to provide adequate furnishing. It is intended to ensure that people have the choice to contribute to the furnishings or décor within limits that are defined in the agreement. The language is clarified in the statewide transition plan. (p. 67)**
- How will the SMA ensure that all providers will be reviewed? **The SMA will continue to communicate with waiver agencies to ensure that providers are not overlooked. This is added to the statewide transition plan. (p. 9)**

➢ **Comments from Advocacy Organizations**—Three major state-level organizations that advocate for people with disabilities provided comments. These organizations are the Board for People with Developmental Disabilities, the Survival Coalition, and Disability Rights Wisconsin. Comments that were common across the organizations are combined. The SMA response is provided in bold type for each comment.

- Community supported living and community-integrated employment should be the first and preferred outcomes for people with disabilities and older adults. **The SMA supports providing opportunities for community integration for program participants, but**

must also honor the preferences of many program participants to use other service models.

- Day services should be integrated. **The SMA supports providing opportunities for community integration for program participants. Day services programs will be required to provide opportunities for activities in the community, but must also honor the preferences of many program participants to use other service models.**
- The SMA has deferred too much responsibility for compliance to contractors [waiver agencies]. The SMA should use an independent assessor for ongoing compliance. **The SMA plan for ongoing compliance includes both independent assessment of compliance by DQA and one or more other third-party assessors in addition to the day-to-day responsibilities of the waiver agencies for compliance with state and federal program requirements. Clarifying language is added to the statewide transition plan. (p. 15)**
- Self-assessments and consumer surveys should not be considered sufficient to assess compliance. **The process described in the statewide transition plan does not rely solely on self-assessments and consumer surveys.**
- The plan does not indicate an ongoing monitoring and improvement process. **Section 5 beginning on page 15 identifies Wisconsin's plan for ongoing compliance.**
- How will the state ensure that non-disability specific settings are available throughout the state? **While the SMA agrees that all participants should have access to non-disability specific settings and supports the creation of additional options, the development of these settings is beyond the scope of the statewide transition plan.**
- SMA should define community-integrated employment consistent with the Workforce Innovation Opportunity Act and include a crosswalk in the plan. **This is beyond the scope of the statewide transition plan.**
- The trigger for heightened scrutiny should apply whenever there is a campus model. **The SMA will review settings for heightened scrutiny based on the final rule and guidance provided by CMS. The SMA will look at each setting based on the CMS criteria and will make determinations individually based on the qualities of the setting. The public will be given the opportunity to comment on heightened scrutiny requests.**
- Replace the word "may" with "should" in statements on pages 38 and 89 of the plan posted for comment. **The SMA believes that the word "may" is the appropriate word for the context in which it is used. The word "may" was not found on page 89.**
- The SMA does not say what the content of the remediation plan will be. Who is reviewing remediation plans and deciding if the plans are adequate? **Each remediation plan will be directly related to the HCBS criteria not being met by the setting. The reviewers who have been hired through a contract and are being directed by the SMA are reviewing the remediation plans based on guidance from the SMA. If the setting can immediately make the changes needed in order to meet the HCBS**

criteria, they can submit evidence of that action. This is described in the statewide transition plan on page 14.

- Providers seem to be given too much power since they can decide that they will not become compliant and a notice of action would only allow 30 days for the participant to appeal. **Since full compliance is not required until March 17, 2019, any participant who is receiving services from a provider who chooses not to become compliant will have ample time for the appeal process and to work with the waiver agency to find another provider. The SMA would rather have providers self-identify now as choosing not to continue as an HCBS provider than to wait until the final compliance date.**
- Will providers or participants be able to appeal a ruling of noncompliance? Will there be due process? **Providers currently have limited appeal rights in Medicaid programs. The SMA would be receptive to reviewing additional evidence from a provider, but there is no formal appeal process. Program participants can appeal any action and can request support from the Ombudsman. This process is described in the statewide transition plan on pages 17 and 18.**
- Policies in support of the rule should be included in documents that are legally enforceable. **The SMA will ensure that key language will be included in contracts and that any policy or guidance documents that support the rule are included in those contracts by reference.**
- Does the SMA intend to make changes to the plan based on public comment? **The SMA has made changes to the statewide transition plan based on the public comment.**
- All working age participants in waiver programs should have a community-employment goal by 2019 and require providers to assess progress toward this goal. Establish other payment mechanisms to incentivize the move to integrated employment. **This is beyond the scope of the statewide transition plan.**
- Establish a preference for community supported living, including bonuses for waiver agencies and support housing activities with Medicaid funds. **This is beyond the scope of the statewide transition plan.**
- Establish pilots to develop integrated community day programs. **This is beyond the scope of the statewide transition plan.**
- The SMA should have a strong oversight role to ensure outcomes and performance including routine audits of service providers and MCOs. These audits should include interviews with stakeholders and should be similar to institutional provider audits. **For all of its waiver programs, the SMA has a process for care plan reviews using either external quality review agencies or state quality staff. Review of person-centered planning as it relates to HCBS settings requirements will be incorporated into these reviews.**
- The SMA should use quality of life metrics such as the National Core Indicators (NCI). **The SMA uses outcome metrics like the NCI to assess outcomes broadly for the**

program, but these tools do not provide sufficient information to assess at the provider or setting level.

- The plan does not indicate what will happen if, as part of an individual person-centered planning process, a setting or delivery of a service is found to be noncompliant. **The SMA has clarified this in the statewide transition plan. (p. 15)**
- The plan should mandate that all participants be given, at minimum, the choice of at least one community integrated provider for each service in the participant's plan. Failure to identify such a provider should result in a finding the process has failed. **Waiver agencies are already required to identify non-disability specific settings to individuals through the person-centered planning process. This requirement might not pertain to all services.**
- Person-centered planning should not be used to undermine the rule. The SMA should set up a system to monitor waiver agencies to ensure that the documentation in the plan meets the requirements of the rule. **For all of its waiver programs, the SMA has a process for care plan reviews using either external quality review agencies or state quality staff. Review of person-centered planning as it relates to HCBS settings requirements will be incorporated into these reviews.**
- The services authorization methodology for Family Care should be reviewed and modified/clarified to reinforce the community integration requirements of the rule. **The SMA will make changes to its policies and processes to support compliance with the rule. The detail of these changes is still under review.**
- What does the SMA consider a representative sample size? What will happen if a significant number of the sampled providers are not compliant? Will a larger sample be selected? **The overall sample size is determined in order to provide significance at the 95% confidence level with a 5% margin of error. Additional detail is provided in the statewide transition plan. The SMA is tracking the remediation identified for both those settings that have a site visit and those that are receiving a desk review of the self-assessment. If there is a significant difference between the two groups, the SMA will make adjustments as necessary.**
- The plan to monitor IRIS compliance is not articulated definitively in the statewide transition plan. **This is further clarified in the statewide transition plan. (p. 15)**
- Consumers need to be part of ongoing compliance. The plan should provide for consumer education, use of focus groups and a process to file complaints. **The SMA will develop or modify materials to communicate HCBS requirements to consumers. The SMA takes advantage of available opportunities to communicate with advocacy and self-advocacy groups. Consumers already have well developed processes to file grievances and appeals related to concerns about services and providers. It would be confusing to consumers to set up a separate process for HCBS.**
- There is a concern about the clustering of residential settings in a given neighborhood. The SMA should identify these settings and do a closer review. **The settings reviewers**

are instructed to bring concerns regarding isolation in settings to the attention of the SMA.

- The plan is vague about how the SMA will address the issue of prevocational settings that do not support people to work in integrated jobs in the community. Defunding these settings without significantly improving supported employment opportunities will further isolate people. **The SMA is still in the process of evaluating and validating the self-assessments provided by prevocational settings. A better understanding of the extent to which these settings provide options for integrated employment or other involvement in the greater community will assist the SMA to determine the changes needed to ensure compliance.**

➢ **Additional comments**—The following comments could not be grouped with others received. The responses of the SMA are provided in bold type.

- The rule denies people choice of where they want to work and live. Their choices are limited because CMS has decided what is best for them. **The intent of the SMA is to ensure that choices are maintained within the requirements of the HCBS settings rule.**
- People with disabilities should live in small, normalized settings and should be active, involved citizens with accessible transportation and community jobs. **The SMA supports these goals but must also honor the preferences of many program participants to choose other settings and models.**
- Caregivers need better pay, benefits and other supports. **This is beyond of the scope of the statewide transition plan.**
- Medicaid should not be block granted. **This is beyond of the scope of the statewide transition plan.**
- The cost of enforcing this requirement through the hiring of special staff is wasteful. Providers have not gotten increases in rates. Funds could be better spent on services and measuring outcomes. (Three commenters) **The SMA is required to take action to implement the rule. Provider rates are not within the scope of the statewide transition plan.**
- The commenter is supportive of continuation of the IRIS program. **This is beyond of the scope of the statewide transition plan.**
- Client rights per s. 51.61 of the statutes should be observed under the new rules. **The provisions of the new rules do not conflict with client rights.**
- Adult day services are not regulated, what standards were used to review these services? **The SMA used the definitions of nonregulated services as found in waivers, contracts, and waiver manuals to understand how the rule related to those settings.**
- How will information be shared with providers and participants? **The SMA has done extensive outreach to provider organizations, including participating in training sessions and conferences sponsored by provider groups. Background on the HCBS**

settings rule was included in the materials that notified providers of the self-assessment process. Background information is also posted on the SMA's website. The SMA will develop or modify materials to communicate HCBS requirements to consumers. The SMA takes advantage of available opportunities to communicate with advocacy and self-advocacy groups.

- What types of assistance will be available to providers to assist them to become compliant? **Providers are also given telephone numbers and email addresses that they can use to ask questions regarding the process and requirements. The SMA is developing technical assistance documents and online training opportunities to assist providers with common issues.**
- A person's private or parental home or one-on-one community-based support can be as isolating as being in a setting with other people with disabilities. **The SMA agrees that there is a need to ensure that people with disabilities living in any setting should have access to a variety of community activities. Although those home settings will not undergo systemic monitoring, waiver agencies are responsible for ensuring that people living in private homes have opportunities for integration in the broader community.**
- The plan indicates that all remediation must be completed by December 31, 2017, but some providers have not been notified of remediation needs. Providers should be given a year or more to come into compliance. The SMA should have deadlines for their activities. **The statewide transition plan is modified to clarify that residential providers will need to be compliant by December 31, 2017. The process for nonresidential providers is on a separate timeline. The statewide transition plan will be modified to indicate that the remediation date for nonresidential settings is July 1, 2018.**
- The plan references person-centered planning, but it is not person-centered if certain options are denied. Care managers discourage individuals and families from choosing center-based service options. **The SMA is concerned about ensuring that person-centered planning is occurring at the MCO level for all individuals and will explore the concerns raised regarding choice.**

APPENDIX 1

Acronyms Used in Statewide Transition Plan

DHS	Department of Health Services, State of Wisconsin
SMA	State Medicaid Agency
CMS	Centers for Medicare and Medicaid Services
HCBS	Home and Community-Based Services
COP	Community Option Program
CIP	Community Integration Program
CLTS	Children's Long-Term Support
IRIS	Include, Respect, I Self-Direct program
MCO	Managed Care Organization
C.F.R.	Code of Federal Regulations
DHHS	Federal Department of Health and Human Services

APPENDIX 2

Summary of Wisconsin Waiver Services[5] and Typical Service Delivery Settings

Services—included in all waivers unless specified (CIP, COP, CLTS, IRIS, Family Care)	**Service Delivery Settings**
Adaptive aids	Not applicable (N/A)
Adult day care	Fixed-site facilities or private residences (not provided in the participant's residence)
Adult day services	Fixed-site facility(ies) and/or natural settings in the community at large (not provided in the participant's residence)
Adult family homes (1-2 bed resident certified settings and 3-4 bed resident licensed settings)	Houses, apartments, or other residential structures owned or leased by provider
Care management/support and service coordination/IRIS consultant services	Various locations as convenient for the participant —residence, site(s) of day activities, program offices, etc.
Child day care (CLTS)	Centers, private residences
Child foster care homes (CLTS)	Private family residences in the community
Children's day services settings (CLTS)	Fixed-site facilities and/or natural settings in the community at large (not provided in the participant's residence)
Assistive technology/communication aids (includes interpreter service)	N/A
Community-based residential facilities (5 or more residents)	Fixed-site facilities
Community supported living	This is a service option that combines or helps to coordinate many of the services listed elsewhere in this document. **Persons receiving community supported living cannot live in a provider owned or controlled setting.**
Consultative clinical and therapeutic services for caregivers (Family Care)	Various locations as relevant to type of services—participant's residence, site(s) of day activities, natural community locations, professional offices, etc. **Service is provided to caregivers, not program participants.**
Consumer/family directed supports (CIP and CLTS only)	This is a specific self-directed service option that includes many of the services listed elsewhere in this document.

[5] Individual waivers may have slightly different names for particular services, but they are grouped here when they are essentially the same service.

Services—included in all waivers unless specified (CIP, COP, CLTS, IRIS, Family Care)	**Service Delivery Settings**
Consumer education and training	Various locations as relevant to skills being developed—residence, site(s) of other day activities, natural community locations, program offices, etc.
Counseling and therapeutic resources	Various locations as convenient for the participant—residence, site(s) of day activities, professional offices, etc.
Customized goods and services	Various locations as relevant to goods or services—residence, site(s) of other day activities, natural community locations, program offices, etc.
Daily living skills training	Various locations as relevant to skills being developed—residence, site(s) of other day activities, natural community locations, program offices, etc.
Environmental accessibility adaptations (home modifications)	N/A
Financial management services/fiscal employer agent services	Most financial management services do not involve regular contact with the participant, but in cases where that is needed, it would occur in various locations as convenient for the participant—residence, site(s) of day activities, program offices, etc.
Home-delivered meals	Residence
Housing counseling	Various locations as convenient for the participant—residence, site(s) of day activities, program offices, etc.
Housing start-up	N/A
Live-in caregiver (CIP and IRIS)	Residence
Personal emergency response system (PERS)	N/A
Prevocational services	Fixed-site facilities and/or natural settings in the community. Prevocational services may be furnished in a variety of locations in the community and are not limited to fixed-site facilities.
Relocation housing start-up and related utility costs	N/A
Residential care apartment complexes (IRIS, COP, Family Care)	Residential structures consisting of independent apartments with living, sleeping, and cooking facilities
Respite care services	Private residences (controlled by participant or provider), licensed or certified residential settings, institutional settings as allowed per

Services—included in all waivers unless specified (CIP, COP, CLTS, IRIS, Family Care)	**Service Delivery Settings**
	approved waivers. Respite in institutional settings will be limited to 30 days. This clarification will be made in waivers as well as contracts and policies.
Self-directed personal care (Family Care)	Residence and to enable access to the community
Level 5 exceptional treatment foster home (CLTS)	Private residences in the community
Skilled nursing (not covered by state plan)	Various non-clinical locations as appropriate to the service being provided—residence, site(s) of day activities, etc.
Specialized medical equipment and supplies	N/A
Specialized transportation—community transportation	N/A
Specialized transportation—other (self-directed non-emergency medical transportation) (IRIS, Family Care)	N/A
Support broker (IRIS, Family Care)	Various locations as convenient for the participant—residence, site(s) of day activities, program offices, etc.
Supported employment—individual and small group support services	Regular business or industry work settings and other sites of employment in the community. Not facility-based.
Supportive home care	Residence and to enable access to the community
Training services for unpaid caregivers (Family Care)	Various locations as relevant to type of training being provided—participant's residence, site(s) of day activities, natural community locations, professional offices, etc. **Service is provided to caregivers, not program participants.**
Vocational futures planning and support	Various locations as convenient for the participant—residence, site(s) of day activities, places of participant employment, professional offices, etc.

APPENDIX 3

Crosswalk for Systemic Assessment for HCBS Statewide Transition Plan

Waiver policies that apply across settings: Wisconsin has language in its contracts and/or program-specific policies that apply across all waiver services and settings, including policies addressing person-centered planning and choice of services, settings, providers, and participant rights. These policies are found in the following documents and are cited as they apply to specific HCBS settings rule requirements.
DHS-MCO Contract (All references in this document are to the 2016 contract.)
Medicaid Waivers Manual
IRIS Policy Manual
IRIS Work Instructions
IRIS Service Definition Manual
Being a Full Partner (Family Care member booklet)

Participant rights protection that applies across settings: All waiver programs must comply with Wis. Stat. ch. 51 and Wis. Admin. Code ch. DHS 94 addressing participant rights and the use of isolation, seclusion, or physical restraint. All waiver agencies must comply with these requirements pursuant to language and references in contracts and waiver policy documents.
http://docs.legis.wisconsin.gov/statutes/statutes/51.pdf
http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/94.pdf
https://www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf

Crosswalk Table 1: Cross-Cutting Requirements

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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	**Person-Centered Planning** ***Family Care:*** "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 seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community. j) The plan to sustain, maintain and/or enhance the member's existing natural supports and community supports and for coordinating services the member receives from such supports." (DHS-MCO contract, Article V, C)	Compliant for Family Care

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
degree of access as individuals not receiving Medicaid HCBS.	***CIP/COP/CLTS:*** "The Medicaid waiver programs are built upon a foundation of primary program values. These values support individual choice, the enhancement of relationships, the building of accessible, flexible service systems, the achievement of optimum physical and mental health for the participant, and the promotion of presence, participation and optimal social functioning in the community. The program values further seek to ensure that participants are treated with respect and assure that service systems empower the individual, build on their strengths, enhance individual self worth and supply the tools necessary to achieve maximum independence and community participation." (Medicaid Waivers Manual, 1.01) ***IRIS:*** IRIS is a fully self-directed program. IRIS participants make their own decisions regarding: • "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 goods, supports, and services are provided, as well as decisions on the provider of these services." (IRIS Policy Manual, 1.1C)	Language in both the Medicaid Waivers Manual and the IRIS Policy Manual is consistent with settings rule, but the following language will be added to those documents. It will be inserted in an appropriate section and numbered per the format of the document. "The plan shall document at least the following: a) 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. b) The plan to sustain, maintain and/or enhance the member's existing natural supports and community supports and for coordinating services the member receives from such supports."
§ 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	**Person-Centered Planning:** Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers,	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.	waiver-specific contracts, and policy documents—see links at the beginning of this table.) ***Family Care*** – "The MCP shall document at least the following: e) 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;" (DHS-MCO contract, Article V, C) "As a member, you have the right and responsibility to be a full partner in deciding what you need for your health and long-term support services, and in planning how those services will be provided to you. Being a full partner in your care plan means you have the right to: • Participate in decisions that affect your own care. • Choose to involve family members or other people that are important to you. • Describe your most important support needs, and what you want your life to be like. • Know the different services and supports that are available and how much they cost. You can also suggest other services or supports that you think would meet your needs. • Get help from your MCO to make choices about your services and supports. As a full partner, you also have the responsibility to: • Meet with your care team face-to-face to discuss your needs, outcomes and preferences. • Choose among the cost-effective options that are available to meet your needs. • Identify the support your family and friends currently provide, and what they can continue to provide." (Being a Full Partner, member-focused document) ***CIP/COP/CLTS:*** "All Medicaid waiver participants must be given a choice of qualified service providers when the person first applies for waiver services and upon request, at any time while the participant is receiving waiver services. Waiver participants must be informed of their right to choose from any willing and qualified providers during any review of the individual service plan. Information provided to waiver applicants and participants must include a description of all qualified providers available for the waiver-covered services they are authorized to receive." (Medicaid Waivers Manual,	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	4.03) ***COP-W:*** Before waiver funding can be used for a community-based residential facility (CBRF) of up to 20 beds, four criteria must be met. For CBRFs with more than 20 beds or structurally connected to a nursing home, the waiver agency must request a variance from the DHS on a case-by-case basis. The basic criteria include: "a. A determination that in-home care services are infeasible, b. A determination that the CBRF is the person's preferred residence, c. A determination that the CBRF provides a quality environment and quality care services, d. A determination that the CBRF is cost-effective when compared to other residential options." In the case of a variance, the additional criteria include: "a. The environment is non-institutional and the facility operates in a manner that enhances resident dignity and independence, and b. The facility is the preferred residence of the applicant/participant or his/her, legal representative." (Medicaid Waivers Manual, Chapter 5) ***CIP-W:*** Waiver funds may not be used for a setting in excess of eight beds. (Summarized from Medicaid Waivers Manual, Chapter 5) ***CLTS:*** CLTS waiver funds may only be used for adult family homes (1-2 bed or 3-4 bed). (Summarized from Medicaid Waivers Manual, Chapter 5) **IRIS:** IRIS is a fully self-directed program. IRIS participants make their own decisions regarding: • "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 goods, supports, and services are provided, as well as decisions on the provider of these services." (IRIS Policy Manual, 1.1C)	
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Restraints:** Use of isolation, seclusion, or physical restraint in community settings is closely scrutinized per state statute and administrative code. While the statute and code apply to "any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency," DHS applies it to all	**Compliant**—policies support limitations on the use of restraints in all community settings. In all programs, the approved restrictive

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	waiver participants. (Quoted language from Wis. Stat. § 51.61(1)) State Statute: Individuals shall "have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible." (Wis. Stat. § 51.61(1)(i)1) Administrative Code: "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) Department policy: 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 ***Family Care:*** "Use of Isolation, Seclusion and Restrictive Measures The MCO shall comply with, and as needed, provide training for its providers in compliance with the following requirements: a. The MCO shall review and approve each request for restrictive measures involving any one or more of its members prior to submission of the request to the designated state level approving entity. b. The MCO and its subcontracted providers shall follow the Department's written guidelines and procedures on the use of isolation, seclusion and restrictive measures in community settings, and follow the required process for approval of such measures (www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf). c. The use of isolation, seclusion and restrictive measures in licensed facilities in Wisconsin is regulated	measure or restraint must be incorporated into the overall behavior plan and is considered a key component of the person's individual plan. See setting specific - sections in regard to individual rights and freedom from coercion.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	by the Department's Division of Quality Assurance. When subcontracted providers of the MCO are subject to such regulation, the MCO shall not interfere with the procedures of the Division of Quality Assurance. d. The MCO and its subcontracted providers shall comply with Wis. Stat. §§ 51.61(1)(i) and 46.90(1)(i) and Wis. Admin. Code § DHS 94.10 in any use of isolation, seclusion and restrictive measures." (DHS-MCO contract, Article V, J.) "Subcontract Language: 9. Restrictive Measures The MCO must require its subcontractors to adhere to regulatory requirements and standards set by the MCO relative to restrictive measures including any type of restraint, isolation, seclusion, protective equipment, or medical restraint as required in Article V.J.4. Use of Isolation, Seclusion and Restrictive Measures, page 67." (DHS-MCO Contract Article VIII) ***CIP/COP/CLTS:*** "Wisconsin's community-based long term support system is based on the principles of respect, dignity, community integration, consumer participation and choice. The waiver gives people the opportunity to live in the community, including people who may exhibit dangerous and challenging behavior or who may have complex medical needs. The Medicaid Waivers covered in this Manual support and promote these principles by providing community living opportunities that are safe and free from the use of restrictive measures to the extent possible. Most of the participants who are served by the waiver are covered by the provisions in s.51.61 Wis. Statutes giving people the right to be free of restraints. Others not covered by that statute are protected by the Wisconsin elder-adults/adults-at-risk laws (Wis. Stats s.46.90 (1) (a) 5.) which provides protection from the use of unreasonable confinement or restraint by including restraint under the definition of abuse. "Unreasonable confinement or restraint" includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	confinement and restraint. For a waiver participant covered by s.51.61 Wis. Stats and HFS 94 including HFS 94.10, information and materials on the application and approval process for the use of restrictive measures are provided in Appendix R. Separate guidelines have been developed for different target groups." (Medicaid Waivers Manual, 8.05) ***IRIS:*** "The use of restraints requires written approval by the Department of Health Services (DHS) prior to implementation." (IRIS Policy Manual, 4.3) "4.3A.1 Restrictive Measures Business Rules 1. The Department of Health Services (DHS) does not permit the unapproved use of restrictive measures except in the case of an emergency. The emergency (unapproved) use of restrictive measures is only permitted when the following conditions are present: • An emergency exists; • A participant's behavior poses an immediate threat of harm to self or others; • There is no approved behavior support plan for that participant that includes the planned use of restraint, isolation, or protective equipment intended to address this behavior or there is an approved plan but it has been found to be ineffective; • The behavior in question has either not occurred previously or could not have been reasonably foreseen to occur based on observations of the participant's behavior. 2. The IRIS Consultant Agency (ICA) must complete and submit an Incident Report – Medicaid Waiver Programs (F-22541) each time unauthorized or emergency restrictive measures are used. 3. The IRIS Consultant is responsible to provide the participant or legal representative with education on the restrictive measures . 4. Each ICA is responsible to ensure that its IRIS Consultants receive Department-approved training encompassing the following information during the orientation process and annually: • Utilizing the Long Term Care Functional Screen and other parts of the participant's record as tools to identify behaviors; • Identifying behaviors in the home and	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	community; • Developing strategies to support behaviors in the least restrictive way possible; • Developing communication skills related to discussing behaviors with families; • Identifying restrictive measures; • Following the guidelines and requirements for the use of restrictive measures and these work instructions; and • Developing strategies to replace challenging behaviors with positive behaviors. 5. The IRIS Consultant must discuss the effectiveness of the restrictive measures plan at every contact with the participant and/or legal representative whether by phone or email, or in person. These discussions must be documented in detail in the case notes." (IRIS Work Instructions)	
§ 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.	***Family Care:*** "As a member, you have the right and responsibility to be a full partner in deciding what you need for your health and long-term support services, and in planning how those services will be provided to you. Being a full partner in your care plan means you have the right to: • Participate in decisions that affect your own care. • Choose to involve family members or other people that are important to you. • Describe your most important support needs, and what you want your life to be like. • Know the different services and supports that are available and how much they cost. You can also suggest other services or supports that you think would meet your needs. • Get help from your MCO to make choices about your services and supports. As a full partner, you also have the responsibility to: • Meet with your care team face-to-face to discuss your needs, outcomes and preferences. • Choose among the cost-effective options that are available to meet your needs. • Identify the support your family and friends currently provide, and what they can continue to provide." (Being a Full Partner-member focused document) ***COP/CIP/CLTS:*** "1. You have a right to be treated with dignity and	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	respect. This includes the right to free association to see whom you want, when you want unless a court order states otherwise. 2. You have a right to control your life and the services you get as much as you are able. You have the right to choose where you live, if you live alone or with others and with whom you will live. You have the right to be told that if you choose to live in certain settings, you may lose your eligibility for funding under the Medicaid Waiver. 3. You have a right not to be hurt or threatened. You have the right to be free from abuse and neglect. You have a right to be free from restrictive measures and all unreasonable restraints. You have the right to refuse to take drugs you do not want to take unless ordered to do so by a court of law. 4. You have the right to privacy. Your right to privacy includes having information that is said or written about you kept confidential, the right to receive and open your own mail, to make and receive private phone calls and to have visitors in your private areas including your bedroom and have the door closed. 5. You have a right to see your file, have it corrected, and to get copies of reports in it. 6. You have the right to direct you own services within the rules of the waiver in which you are enrolled. You have the right to have the self-directed service option explained to you and made available. 7. You have the right to know what other rights apply to you. You may have rights because of where you live (e.g. in a group home (CBRF)), because a court was involved in your services, or because of the nature of your disability. Waiver agency staff are responsible for telling you about these rights and for making sure you are adequately informed about them." www.dhs.wisconsin.gov/waivermanual/appndx-m2.pdf ***IRIS:*** "1.2A Participant: The essential leadership role of participants in planning and purchasing goods, supports, and services is recognized within the IRIS program structures. The participant is the eligible individual who chooses IRIS as the program for needed publicly funded long-term care supports and services. In this manual, 'participant' means: • The participant acting independently on their own, or with the assistance of a person designated by the participant; or • A legal representative when the representative has	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	authority to make pertinent decisions on behalf of the participant (e.g., guardian). The IRIS participant has three key roles in self-directing their goods, supports, and services in IRIS, as well as responsibilities related to those roles. 1.2A.1 Decision-Making: Participants in the IRIS program have made a choice to self-direct all of their long-term care services and supports. This provides participants a high degree of choice and control over services and supports delivered. Participants develop their support and service plans, within their individual budget range, and direct the services and supports identified on their plans. Participants are responsible to work with their IRIS Consultant, the IRIS consultant agency and the IRIS fiscal employer agent to implement their plans. 1.2A.2 Participant Budget Authority: Participants manage and direct an individual service budget. The person's plan defines the goods and services that will be paid to meet their long-term care needs consistent with their approved support and service plan. Participants do not set the level of funds they have available; however, they do exercise choice over how those funds are spent. Participants are accountable for the use of IRIS funds consistent with their long-term care support and service plan, established policies and procedures, and the federal waiver authority for IRIS. Payment for authorized services and supports is made through the FEA. Participants do not receive the funds in their budget; rather payment is made through these third parties for authorized expenditures. 1.2A.3 Participant Employer Authority: Participants may hire, manage and direct their paid workers or care providers. There are two ways in which IRIS participants can carry out their employer role. One is as a common law employer, and the other is as a co-employer with an agency. A common law employer role occurs when a participant serves as the employer of record and engages in all typical employer responsibilities. These responsibilities include recruiting and hiring workers; training, scheduling and directing workers; and reviewing and approving timesheets and other documentation. If the participant chooses to be a co-employer then the responsibility of the employer tasks is shared with a qualified agency, and that agency serves as the employer of record." (IRIS Policy Manual)	
§ 441.301(c)(4)(v)	**Person-Centered Planning:** Person-centered planning is	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
Facilitates individual choice regarding services and supports, and who provides them.	supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability-specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents.) ***Family Care:*** "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." (DHS-MCO Contract, Article VIII) ***CIP/COP/CLTS:*** "All Medicaid waiver participants must be given a choice of qualified service providers when the person first applies for waiver services and upon request, at any time while the participant is receiving waiver services. Waiver participants must be informed of their right to choose from any willing and qualified providers during any review of the individual service plan. Information provided to waiver applicants and participants must include a description of all qualified providers available for the waiver-covered services they are authorized to receive." (Medicaid Waivers Manual) ***IRIS:*** IRIS is a fully self-directed program. IRIS participants make their own decisions regarding: • "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 goods, supports, and services are provided, as well as decisions on the provider of these services." (IRIS Policy Manual, 1.1C)	
§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS		
§ 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	See setting-specific tables.	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.		
§ 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.	See setting-specific tables.	
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	**Person-Centered Planning:** See all references above to person-centered planning. Additional reference: ***Family Care:*** Provider Network: "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)	**Compliant**
§ 441.301(c)(4)(vi)(B) 3: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	See setting-specific tables.	
§ 441.301(c)(4)(vi)(C) Individuals have the freedom and support to control their own schedules	See setting-specific tables.	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
and activities, and have access to food at any time.		
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	See setting-specific tables.	
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	MCOs must ensure that the provider network includes: "Services that are physically accessible and available on a timely basis." (DHS-MCO contract, Article VIII)	
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 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**	**Person-Centered Planning:** 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 settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents.) ***Family Care:*** "The MCP shall document at least the following: e) For members residing in a provider-owned or controlled residential setting, the MCP must document that any modification of the standards listed under 42 C.F.R. § 441.301(4)(vi) A through D are supported by a specific assessed need and justified in the MCP. Specifically, this documentation must include: (1) the identification of a specific and individualized assessed need; (2) the positive interventions and supports used prior to any modifications to the MCP; (3) the less intrusive methods of meeting the need that have been tried but did not work; (4) a clear description of the condition that is directly proportionate to the specific assessed need; (5) the regular collection and review of data to measure the ongoing effectiveness of the modification; (6) the established time limits for periodic; reviews to determine if the modification is still necessary or can be terminated; (7) the informed consent of the individual and (8) an assurance that interventions and supports will cause no harm to the individual." (DHS-MCO contract, Article V, C) ***IRIS:*** "On an annual basis, participants and IRIS consultants reassess the needs and long-term care outcomes of the participant by evaluating the results of the annual LTC FS, the behavior assessment (when required), and the participant's progress on the outcomes identified on the previous year's ISSP. The participant and IRIS consultant collaborate to ensure the	**Compliant** While we believe that the IRIS language complies with the rule, the language that is in the Family Care contract will be added to the IRIS Policy Manual with modifications that are consistent with the language used in IRIS. "The plan shall document at least the following: a) For participants residing in a provider-owned or controlled residential setting, the plan must document that any modification of the standards listed under 42 C.F.R. § 441.301(4)(vi) A through D are supported by a specific assessed need and justified in the plan. Specifically, this documentation must include: (1) the identification of a specific and individualized assessed need; (2) the positive interventions and supports used prior to any modifications to the plan; (3) the less intrusive methods of

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
consent of the individual. 8: Include an assurance that interventions and supports will cause no harm to the individual.	new ISSP is an accurate and current reflection of the participant's needs and the ISSP adequately supports the participant's long-term care outcomes with IRIS – funded services used as a last resort." (IRIS Policy Manual, 4.2)	meeting the need that have been tried but did not work; (4) a clear description of the condition that is directly proportionate to the specific assessed need; (5) the regular collection and review of data to measure the ongoing effectiveness of the modification; (6) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated; (7) the informed consent of the individual; and (8) an assurance that interventions and supports will cause no harm to the individual."

Residential Settings: Adult

Note regarding adult residential settings: The regulatory standards for 3-4 bed adult family homes, community-based residential facilities, and residential care apartment complexes do not prohibit them from being located in an institution or on the grounds of, or adjacent to, a public institution, but may include special criteria to be taken into account when community-based settings are collocated with institutional settings. The extent to which these criteria and other factors regarding specific settings comply with the rule will be evaluated as part of the heightened scrutiny process and are not assessed in the crosswalk tables.

Certified Adult Family Home (AFH): DHS Standards and Administrative Code

- Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes
- http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/82

Definitions

Certified 1-2 Bed Adult Family Home: A place where one or two adults reside and receive care, treatment, or services that are above the level of room and board. The AFH may be the primary domicile of the sponsor or certificate holder or may be operated by an agency using staff that may or may not live in the home.

Adult Family Home Certified Under Wis. Admin. Code ch. DHS 82: "'Adult family home'" or 'home' means a private residence in which care and maintenance above the level of room and board, but not including nursing care provided by the sponsor, are provided to developmentally disabled adults by a person whose primary domicile is that residence, provided that both of the following conditions apply:
(a) The residence was licensed under s. 48.62, Stats., and Chapter DCF 56 as a foster home and all current adult residents resided in the residence at least 12 months before they reached 18 years of age or replaced former adult residents who resided in the residence sometime during the previous 12 months and who left the residence on a permanent basis; and
(b) There are 3 or 4 developmentally disabled residents, or more than 4 if all are siblings, or the sponsor is currently licensed as a foster home for children and there is a combined total of no more than 4 developmentally disabled adults and children residing there, or more than 4 if all adults or all children are siblings."

Crosswalk Table 2: One-Two Bed Adult Family Home

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated	**Physical Requirements:** "A 1-2 bed AFH may be located anywhere residences are permitted in the community, but should be located in anticipation of resident needs to get to employment opportunities or access community activities and supportive services. Considerations for location should minimize clustering numerous AFHs in close proximity." (Standards, Article V)	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.	"Residents of Adult Family Homes retain all of their civil, legal and human rights. This includes their right to be served by the same governmental services as others in the community such as police, fire, rescue, building inspection, public health, protective services and other services. Sponsors, placing agencies, certifying agencies, guardians, family members and others should use these services when appropriate." (Standards, Article X) **Person-Centered Planning:** Placement decisions and person-centered plan must address how the home will provide opportunities for interactions with the community, including friends and other associates, and access to activities. (Summarized from Standards, Article IX) **Rights:** Residents have the right to manage personal finances or choose a separate service provider to assist. The resident must have freedom to have and use his or her own possessions and have a secure place to store them. (Summarized from Standards, Article X) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Person-Centered Planning:** Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Physical Requirements:** The home environment must provide adequate space and features to allow for privacy. A resident's bedroom may not be used by others for access to other areas in the home. The bedroom must be fully enclosed by floor to ceiling walls and a rigid door that shall have a lock if	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	requested by the resident. (Summarized from Standards, Article V) **Rights:** A resident of an adult family home has the right to be free from physical, sexual, verbal, or emotional abuse or neglect; to be treated with courtesy, dignity, and respect; to have physical and personal privacy; to have records treated confidentially, and to be free from seclusion and restraints unless approved by DHS pursuant to the guidelines governing the use of such measures published by DHS. Use of restrictive measures under emergency conditions as defined in these guidelines shall be reported to the certifying agency by the next business day. (Summarized from Standards, Article X) "Any form of coercion to discourage or prevent a resident or the resident's guardian, if any, from exercising any of the rights under this section, including the right to file a grievance, is prohibited. Any form of coercion or retaliation by the sponsor, operator, staff, personnel from the sponsoring agency or any other agent of the Adult Family Home against a resident or the resident's guardian for exercising any of the rights in this section is prohibited. This includes a prohibition against coercion or retaliation against a service provider who assists a resident or the resident's guardian in exercising any of the residents' rights in this section. Violation of this provision may be grounds for termination of certification of the adult Family Home or the contract with the certification/funding agency." (Standards, Article X) "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	restraints and isolation are found at: www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf and www.dhs.wisconsin.gov/dqa/memos/15-003.pdf See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Physical Requirements:** "The sponsor or operator shall provide a safe, emotionally stable, homelike and humane environment which encourages maximum resident self-direction, independence and autonomy." (Standards, Article IX) **Person-Centered Planning:** Placement decisions and the person-centered plan that are developed by the case management agency must address how the home will provide opportunities for interactions with the community, including friends and relatives, and access to activities. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) "The sponsor or operator shall implement the service plan and assist each resident to plan and execute activities that address individual needs and preference. The sponsor or operator shall also provide residents opportunities for community presence and participation consistent with the resident's overall service plan developed by the placement agency. These may include participation in cultural, religious, political, social and intellectual activities of the resident's choice within the Adult Family Home and in the community. The sponsor or operator shall allow a resident to participate in any activities that the resident selects unless the activity involves an unacceptable risk of harm or is contrary to the resident's Adult Family Home service plan. Residents shall not be required or coerced to participate in any religious or other activities." (Standards, Article IX) **Rights:** A resident of an adult family home shall have the right: "To have the opportunity to make decisions relating to services, activities and other aspects of life in the Adult Family Home and community. No curfew, rule or other restrictions on a resident's self-determination may be imposed unless specifically identified in the service agreement or the resident's Adult Family Home service plan;"	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	"To have private visitors and have adequate time and private space for visits and to meet with people of the resident's choosing and choose social and community activities in which to participate;" "To participate or to decline to participate in religious activities of the resident's choosing. No resident shall be required to engage in any religious activity;" "Each resident shall be provided the least restrictive conditions which allow the maximum amount of personal and physical freedom;" (Standards, Article X) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning:** Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS		
§ 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 that the document	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 for sleeping, storage and any other uses," the agreed upon rate, a statement of the resident's rights and the terms of termination, including timeframes. The agreement is updated annually. (Summarized from Standards, Article IX)	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.		
§ 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.	**Physical Requirements:** "The Adult Family Home shall provide space and adequate physical features such as doors and adequate interior sound control so residents can have privacy when the resident wishes to be alone and/or undisturbed." A resident's bedroom may not be used by others for access to other areas in the home. The bedroom must be fully enclosed by floor to ceiling walls and a rigid door that, if requested by the resident, shall have a lock that can be locked from the inside, and able to be opened from the outside in an emergency. (Summarized from Standards, Article V) Rights: A resident has the right "To have physical and personal privacy when receiving treatment and services, in the living arrangement, in caring for personal needs, including toileting, bathing and dressing and when he or she desires time alone." (Standards, Article X)	**Partially Compliant** Settings are only required to provide a lock at the request of the resident and the lock only needs to be lockable from inside the room. **Remediation:** The 1-2 bed AFH provider standards will be revised to require the presence of locks on the doors to all living units. The locks must be operational unless contraindicated based on a person-centered plan. The standards will specify that only authorized staff have keys to the doors. •
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	**Person-Centered Planning:** "Residents shall not be required to share a bedroom," but if a shared bedroom is preferred, it must be agreed to by all parties. (Summarized from Standards, Article V)	**Compliant**
§ 441.301(c)(4)(vi)(B) 3: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	**Physical Requirements:** "To the extent that space allows, residents shall be allowed to bring their own bedroom furnishings and accessories and to personalize/individualize their room." (Standards, Article V)	**Compliant**
§ 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.	**Rights:** A resident of an adult family home shall "… have the opportunity to make decisions relating to services, activities and other aspects of life in the Adult Family Home and community. No curfew, rule or other restrictions on a resident's self-determination may be imposed unless specifically identified in the service agreement or the resident's Adult Family Home service plan." (Standards, Article X)	**Partially Compliant** Standards indicate that the service agreement can identify curfews or restrictions. Language does not specify access to food at any time. **Remediation:** The 1-2 bed AFH provider

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	The resident must "… be permitted reasonable access to a telephone to make and receive a reasonable number of telephone calls. The number and duration of the calls may be limited for legitimate management reasons, but the Adult Family Home shall provide every resident the opportunity to make at least one private, personal telephone call per day." "The sponsor shall provide each resident with a quantity and variety of foods sufficient to meet the resident's nutritional needs and preferences and to maintain his or her health. The sponsor shall provide or assure that each resident receives three (3) nutritious meals each day. Residents will have access to all foods and liquids unless otherwise specified in a behavior support plan or an approved DHS restrictive measures plan. The sponsor shall accommodate the dietary needs of those residents with a physical/medical condition requiring more or less frequent meals." (Standards, Article IX)	standards will be revised to specify that the service agreement cannot include any restrictions unless identified in a person-centered plan, and that the individual has access to food at any time. The standards will be revised to clarify what is considered reasonable access to the phone.
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	**Rights:** A resident may "… have private visitors and have adequate time and private space for visits and to meet with people of the resident's choosing and choose social and community activities in which to participate. No curfew, rule or other restrictions on a resident's self-determination may be imposed unless specifically identified in the service agreement or the resident's Adult Family Home service plan." (Standards, Article X)	**Partially Compliant** Standards indicate that residents have "adequate time" for visitors and that the service agreement can identify curfews or restrictions. **Remediation:** The 1-2 bed AFH provider standards will be revised to require that residents may have visitors at any time and that the service agreement cannot include any restrictions unless identified in a person-centered plan.
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	**Physical Requirements:** "The Adult Family Home shall be physically accessible to all residents placed there and to prospective residents considering placement there. Residents shall be able to enter, exit and move about in the Adult Family Home and get to their bedrooms, bathrooms, common living and dining areas, and kitchen without difficulty. Non-ambulatory residents placed in the Adult Family Home shall have	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	access to all common areas including living rooms and dining areas. Home modifications such as ramps, grab bars, widened doorways, etc. provided to address the non-ambulatory resident's assessed needs must be installed in the Adult Family Home prior to and as a condition of that resident's placement. Failure to provide such modifications or adaptations may be grounds for termination of a placement." (Standards, Article V)	
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 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**	**Person-Centered Planning:** 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 settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
interventions and supports will cause no harm to the individual.		

3-4 Bed Adult Family Home (AFH): Statute and Administrative Code

- http://docs.legis.wisconsin.gov/statutes/statutes/50
- http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88

Definition: A place where three or four adults who are not related to the operator reside and receive care, treatment, or services that are above the level of room and board and that may include up to seven hours per week of nursing care per resident.

Crosswalk Table 3: Three-Four Bed Adult Family Home

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Physical Requirements:** "An adult family home shall be located so that residents can easily get to community activities and supportive services by walking or by means of convenient private or public transportation or the licensee shall ensure that residents receive the assistance necessary to enable them to get to those activities and services. The home shall be located in a residential area which is typical of residential areas in that community." (Wis. Admin. Code § DHS 88.05) **Person-Centered Planning:** Each resident must have an individual service plan that is developed in conjunction with the resident. Service plans must include how the provider will enable the resident "to participate in cultural, religious, political, social and intellectual activities within the home and community" and allow for services to be provided by other agencies. (Summarized from Wis. Admin. Code §§ DHS 88.05 and 88.06) "Services shall be directed to the goal of assisting, teaching and supporting the resident to promote his or her health, well-being, self-esteem, independence and quality of life." These goals should include participation in leisure and recreational activities, employment, and other activities. (Summarized from Wis. Admin. Code § DHS 88.07) **Rights:** Residents have the right to manage their own financial affairs, to retain and use personal clothing and effects, and have private visitors. (Summarized from Wis. Admin. Code § DHS 88.10)	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 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.	**Person-Centered Planning:** Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Physical Requirements:** "The licensee shall provide a safe, emotionally stable, homelike and humane environment for residents. …The licensee shall encourage resident's autonomy, respect a resident's need for physical and emotional privacy and take a resident's preferences, choices and status as an adult into consideration while providing care, supervision and training." (Wis. Admin. Code § DHS 88.07) **Rights:** A resident shall have the right to be treated with courtesy, respect, and dignity; to physical and emotional privacy; to have records treated confidentially; to be free from physical, sexual, or mental abuse, neglect, and financial exploitation, or misappropriation of property; and to be free from seclusion and restraints unless approved by DHS pursuant to the guidelines governing use of restrictive measures. (Summarized from Wis. Admin. Code § DHS 88.10) "Any form of coercion to discourage or prevent a resident or the resident's guardian or designated representative from exercising any of the rights under this section is prohibited. Any form of coercion or retaliation against a resident or the resident's guardian or designated representative for exercising any of the rights in this section, or against a service provider who assists a resident or the resident's guardian or designated representative in exercising any of the resident's rights in this section, is prohibited." (Wis. Admin. Code § DHS 88.10)	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	"For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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 See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Physical Requirements:** "The licensee shall provide a safe, emotionally stable, homelike and humane environment for residents. The licensee shall encourage resident's autonomy, respect a resident's need for physical and emotional privacy and take a resident's preferences, choices and status as an adult into consideration while providing care, supervision and training." (Wis. Admin. Code § DHS 88.07) **Person-Centered Planning:** "The licensee shall encourage a resident's autonomy, respect a resident's need for physical and emotional privacy and take a resident's preferences, choices and status as an adult into consideration while providing care, supervision and training. The licensee shall plan activities and services with the residents to accommodate individual resident needs and preferences and shall	**Partially Compliant** The program statement serves an important purpose of describing the home and its capacity to serve individuals. In the event that the program statement includes "house rules" that conflict with the HCBS settings rule, clarification will be necessary for waiver agencies when helping members select a setting. **Remediation:** Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require the

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	provide opportunities for each resident to participate in cultural, religious, political, social and intellectual activities within the home and community. A resident may not be compelled to participate in these activities. The licensee shall allow a resident to participate in all activities that the resident selects unless contrary to the resident's individualized service plan or the home's program statement." (Wis. Admin. Code § DHS 88.07) **Rights:** The resident "… shall have opportunities to make decisions relating to care, activities and other aspects of life in the adult family home. No curfew, rule or other restrictions on a resident's freedom of choice shall be imposed unless specifically identified in the home's program statement or the resident's individual service plan. An adult family home shall help any resident who expresses a preference for more independent living to contact any agency needed to arrange for it." (Summarized from DHS 88.10) The resident has the right to "… meet with and participate in social and community activities at the resident's own discretion" and "to participate in religious activities of the resident's choice. No resident may be required to engage in any religious activity." The resident shall be allowed to "have private visitors and have adequate time and private space for visits." (Summarized from DHS 88.10) **Clarification Regarding the AFH Program Statement:** "A home's program statement shall describe the number and types of individuals the applicant is willing to accept into the home and whether the home is accessible to individuals with mobility problems. It shall also provide a brief description of the home, its location, the services available, who provides them and community resources available to residents who live within the home. A home shall follow its program statement. If a home makes any change in its program, the home shall revise its program statement and submit it to the licensing agency for approval 30 days before	waiver agency to review the program statement for each three-four bed adult family home they consider contracting with to ensure that the program statement is compliant with the HCBS settings rule. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO Contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	implementing the change." (Wis. Admin. Code § DHS 88.03) As part of the initial licensing and ongoing survey process, Bureau of Assisted Living staff review the facility's program statement to ensure it complies with the regulations, and also to ensure that any house rules, or other restrictions listed, do not violate a resident's rights. Wisconsin Admin. Code § DHS 88.10(3) is clear that residents of an adult family home, except correctional clients, have basic rights that they do not lose when they enter an adult family home. Although Wis. Admin. Code § DHS 88.07 allows for some level of restriction, the restriction is typically within an individually developed care plan based on an assessed need with the appropriate level of approval. The Bureau of Assisted Living has not approved a program statement that violates a resident's rights.	
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning:** Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals. The individual service plan for the 3-4 bed AFH shall identify any services that are to be provided by outside agencies. (Summarized from Wis. Admin. Code § DHS 88.06) **Rights:** The resident of a 3-4 bed AFH has a right "…to exercise complete choice of providers of physical health care, mental health care and pharmaceutical services." (Wis. Admin. Code § DHS 88.10)	**Compliant**
§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS		
§ 441.301(c)(4)(vi)(A) The unit or dwelling is a specific physical place that can be owned,	"An adult family home shall have a service agreement with each person to be admitted to the home except a person being admitted for	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	respite care." (Wis. Admin. Code § DHS 88.06) "The service agreement shall be dated and signed by the licensee and the person being admitted or that person's guardian or designated representative." The service agreement shall specify the parties to the agreement, services to be provided, charges for room, board and services, the terms of payments, the conditions for transfer or discharge, and a statement of resident rights and grievance procedures. (Summarized from Wis. Admin. Code § DHS 88.06) "A licensee may terminate a resident's placement only after giving the resident, the resident's guardian, if any, the resident's service coordinator, the placing agency, if any, and the designated representative, if any, 30 days written notice. The termination of a placement shall be consistent with the service agreement under s. DHS 88.06(2)(c)7. The 30 day notice is not required for an emergency termination necessary to prevent harm to the resident or other household members." (Wis. Admin. Code § DHS 88.08)	
§ 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.	**Physical Requirements:** A resident's bedroom shall provide comfort and privacy, shall be enclosed by full height walls, and shall have a rigid door that the resident can open and close. A resident's bedroom may not be used by anyone else to get to any other part of the home. Persons of the opposite sex shall not be required to occupy the same sleeping room. Accommodations shall be made for couples who wish to share a sleeping room. (Summarized from Wis. Admin. Code § DHS 88.05) **Rights:** The resident has the right to "have physical and emotional privacy in treatment, living arrangements and in caring for personal needs, including toileting, bathing and dressing." (Wis. Admin. Code § DHS 88.10)	**Silent:** The rule is silent regarding the provision of locking doors on sleeping units. **Remediation:** Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be revised to require the presence of locks on the doors to all living units. The locks must be operational unless contraindicated based on a person-centered plan. The standards will specify that only appropriate staff have keys to the doors. These standards will be

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	"Persons of the opposite sex shall not be required to occupy the same sleeping room. Accommodations shall be made for couples who wish to share a sleeping room." (Wis. Admin. Code § DHS 88.05) **Person-Centered Planning:** ***Family Care*** Provider Network: "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)	**Silent:** The rule is silent on the opportunity for choice of roommates, but personal preference for roommates and ability to choose a different setting if the individual is not satisfied with any potential roommates in a 3-4 bed setting, are the responsibility of the waiver agency in the person-centered planning process. **Remediation:** Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be revised to ensure that the waiver agency is notified if no roommate who is acceptable to the participant is currently living in the setting so that the person-centered plan can be modified. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership,

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 441.301(c)(4)(vi)(B) 3: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	**Rights:** The resident 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." (Wis. Admin. Code § DHS 88.10)	**Partially Compliant** Rule does not specifically address furnishings and décor—just personal possessions. **Remediation:** Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be revised to ensure that residents are given the option to furnish or decorate sleeping and living units to the extent feasible within the terms of the agreement. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 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.	**Physical Requirements:** "The licensee shall provide a safe, emotionally stable, homelike and humane environment for residents." (Wis. Admin. Code § DHS 88.07) "A home shall provide a non-pay telephone for residents to make and receive telephone calls. The home may require that long distance calls	**Partially Compliant** The program statement serves an important purpose of describing the home and its capacity to serve individuals. In the event that the program statement includes "house

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	be made at a resident's own expense. Emergency telephone numbers, including numbers for the fire department, police, hospital, physician, poison control center and ambulance, shall be located on or near each telephone." (Wis. Admin. Code § DHS 88.04) Residents are allowed to "make and receive a reasonable number of telephone calls of reasonable duration and in privacy." (Wis. Admin. Code § DHS 88.10) **Person-Centered Planning:** "The licensee shall encourage a resident's autonomy, respect a resident's need for physical and emotional privacy and take a resident's preferences, choices and status as an adult into consideration while providing care, supervision and training. "The licensee shall plan activities and services with the residents to accommodate individual resident needs and preferences and shall provide opportunities for each resident to participate in cultural, religious, political, social and intellectual activities within the home and community. A resident may not be compelled to participate in these activities." "The licensee shall allow a resident to participate in all activities that the resident selects unless contrary to the resident's individualized service plan or the home's program statement." (Wis. Admin. Code § DHS 88.07) **Resident Care**: "A licensee shall provide each resident with a food sufficient to meet the resident's nutritional needs and preferences and to maintain the resident's health." "The licensee shall provide to each resident or ensure that each resident receives 3 nutritious meals each day and snacks that are typical in a family setting." (Wis. Admin. Code § DHS 88.07) **Clarification Regarding the AFH Program Statement**: "A home's program statement shall describe	rules" that conflict with the HCBS settings rule, clarification will be necessary for waiver agencies when helping members select a setting. Language does not specify access to food at any time. **Remediation:** Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require the waiver agency to review the program statement for each three-four bed adult family home they consider contracting with to ensure that the program statement is compliant with the HCBS settings rule. Standards will identify that the person has access to food at any time. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definition manual.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	the number and types of individuals the applicant is willing to accept into the home and whether the home is accessible to individuals with mobility problems. It shall also provide a brief description of the home, its location, the services available, who provides them and community resources available to residents who live within the home. A home shall follow its program statement. If a home makes any change in its program, the home shall revise its program statement and submit it to the licensing agency for approval 30 days before implementing the change." (Wis. Admin. Code § DHS 88.03) As part of the initial licensing and ongoing survey process, Bureau of Assisted Living staff review the facility's program statement to ensure it complies with the regulations, and also to ensure that any house rules, or other restrictions listed, do not violate a resident's rights. Wisconsin Admin. Code § DHS 88.10(3) is clear that residents of an adult family home, except correctional clients, have basic rights that they do not lose when they enter an adult family home. Although Wis. Admin. Code § DHS 88.07 allows for some level of restriction, the restriction is typically within an individually developed care plan based on an assessed need with the appropriate level of approval. The Bureau of Assisted Living has not approved a program statement that violates a resident's rights.	
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	**Rights:** A resident has the right to "have private visitors and have adequate time and private space for visits." (Wis. Admin. Code § DHS 88.10)	**Partially Compliant** The rule indicates that residents have "adequate time" for visitors. **Remediation**: Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require that residents may have visitors at any time unless identified in a person-centered plan.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	**Physical Requirements:** "An adult family home shall be physically accessible to all residents of the home. Residents shall be able to easily enter and exit the home, to easily get to their sleeping rooms, a bathroom, the kitchen and all common living areas in the home, and to easily move about in the home. Additional accessibility features shall be provided, if needed to accommodate the physical limitations of a resident or if specified in the resident's individual service plan." (Wis. Admin. Code § DHS 88.05)	**Compliant**
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 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**	**Person-Centered Planning** – Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any modifications that are to be applied to the conditions defined in the settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.**		

Community-Based Residential Facility (CBRF): Statute and Administrative Code

- http://docs.legis.wisconsin.gov/statutes/statutes/50
- http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83.pdf

Definition: A place where five or more adults who are not related to the operator or administrator and who do not require care above intermediate-level nursing care reside and receive care, treatment, or services that are above the level of room and board but that include no more than three hours of nursing care per week per resident.

Crosswalk Table 4: Community-Based Residential Facility

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**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) **Rights:** 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." (Wis. Stat. § 50.09) 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, which enhance the resident's self-reliance and support the resident's autonomy and decision-making. (Summarized from Wis. Admin. Code § DHS 83.32)	**Compliant**
§ 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	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.	settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Physical Requirements:** "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." Bedrooms must have "floor to ceiling walls with rigid construction swing-type doors… that open directly into a corridor, the resident's private living area or common living space." (Wis. Admin. Code § DHS 83.54) Bathrooms must have floor to ceiling walls and have locks that operate from both sides, except for bathrooms that are accessible from a bedroom occupied only by one person. (Summarized from Wis. Admin. Code § DHS 83.55) **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 receive and send sealed, unopened correspondence without delay or censorship; reasonable access to a telephone for private communications and the opportunity for private visits. (Summarized from Wis. Stat. § 50.09) 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." (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	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	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. (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." (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. (Summarized from Wis. Admin. Code § DHS 83.32) "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) DHS prohibits the use of restraint or seclusion	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	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 See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Physical Requirements**: "Bedrooms shall be designed and equipped to allow the highest level of independent functioning and shall be accessible to the resident." (Wis. Admin. Code § DHS 83.54) "Common dining and living space shall be internally accessible to all residents." (Wis. Admin. Code § DHS 83.52) **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) "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. (Summarized from Wis. Admin. Code § DHS 83.38) **Rights**: Residents have the right to make decisions relating to care, activities, daily	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	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. (Summarized from Wis. Admin. Code § DHS 83.32) Residents shall not be required to perform services for the facility unless serving a therapeutic purpose in the resident's care plan. Residents have the right to meet with, and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contraindicated in the resident's medical record. (Summarized from Wis. Stat. § 50.09)	
441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) "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, any entrance fees, assessment fees, and security deposit." The information must include an accurate description of the basic services provided, the rate charged for those services, and the method of payment and information about all additional services offered but not included in the basic services. The CBRF shall provide a written statement of the fees charged for each of these services. (Summarized from Wis. Admin. Code § DHS 83.29) **Rights**: Residents have the right to "participate in the planning of care and treatment, be fully	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	informed of care and treatment options and have the right to refuse any form of care or treatment unless the care or treatment has been ordered by a court." (Wis. Admin. Code § DHS 83.32) 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) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS		
§ 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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	"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)	**Compliant**
§ 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.	**Physical Requirements**: "Bedrooms must be designed and equipped to allow the highest level of independent functioning and shall be fully accessible to the resident." Bedrooms must have floor to ceiling walls with rigid construction swing-type doors that open directly into a corridor, the resident's private	**Silent:** Regulations do not require that sleeping or living units are lockable. The standards will specify that only appropriate staff have keys to the doors.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	living area or common living space. (Summarized from Wis. Admin. Code § DHS 83.54) Bathrooms must have floor to ceiling walls and have locks that operate from both sides, except for bathrooms that are accessible from a bedroom occupied only by one person. (Summarized from Wis. Admin. Code § DHS 83.55)	Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require the presence of locks on the doors to all living units. The locks must be operational unless contraindicated based on a person-centered plan and that only appropriate staff will have keys. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	"Resident bedrooms shall accommodate no more than 2 residents per room." (Wis. Admin. Code § DHS 83.54) **Person-Centered Planning**: ***Family Care*** Provider Network: "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)	**Silent**: The rule is silent on the opportunity for choice of roommates, but personal preference for roommates, and ability to choose a different setting if the individual is not satisfied with any potential roommates in the setting, are the responsibility of the waiver agency in the person-centered planning process. **Remediation:** Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be revised to ensure that the

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		waiver agency is notified if no roommate who is acceptable to the participant is currently living in the setting so that the person-centered plan can be modified. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 441.301(c)(4)(vi)(B) 3: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	**Physical Requirements:** 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) If a resident does not provide the resident's own bedroom furnishings, the CBRF shall provide appropriate furnishings to meet the needs of the resident. (Summarized from Wis. Admin. Code § DHS 83.43)	**Compliant**
§ 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.	**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) 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	**Partially Compliant** Language does not specify access to food at any time. **Remediation**: Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to specify that the individual has access to food at any time. These standards will be

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	and unrestricted communications includes the right to receive and send sealed, unopened correspondence without delay or censorship; reasonable access to a telephone for private communications; and the opportunity for private visits. (Summarized from Wis. Stat. § 50.09) 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)	incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definition manual.
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	**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 receive and send sealed, unopened correspondence without delay or censorship; reasonable access to a telephone for private communications; and the opportunity for private visits. (Summarized from Wis. Stat. § 50.09)	**Compliant**
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	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) "The minimum common dining and living space shall be 60 square feet per ambulatory or semi-ambulatory resident or other occupant, and 90 square feet per non-ambulatory resident or other occupant." (Wis. Admin. Code § DHS 83.52) 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,	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	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) Toilet rooms and bathing areas shall be accessible and available to residents on each floor in facilities that service people at a specified level of need for assistance. (Summarized from Wis. Admin. Code § DHS 83.55)	
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 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.**	**Person-Centered Planning**: 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 settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals. "Assessment, individual service plan and evaluations. (1) ASSESSMENT. (a) Scope. The CBRF shall assess each resident's needs, abilities, and physical and mental condition before admitting the person to the CBRF, when there is a change in needs, abilities or condition, and at least annually. The assessment shall include all areas listed under par. (c). This requirement includes individuals receiving respite care in the CBRF. For emergency admissions the CBRF shall conduct the assessment within 5 days after admission. (b) Information gathering. The CBRF shall base the assessment on the current diagnostic, medical and social history obtained from the person's health care providers, case manager and other service providers. Other service providers may include a psychiatrist, psychologist, licensed therapist, counselor,	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
7: Include the informed consent of the individual. **8: Include an assurance that interventions and supports will cause no harm to the individual.**	occupational therapist, physical therapist, pharmacist or registered nurse. The administrator or designee shall hold a face−to−face interview with the person and the person's legal representative, if any, and family members, as appropriate, to determine what the person views as his or her needs, abilities, interests, and expectations. (c) Areas of assessment. The assessment, at a minimum, shall include all of the following areas applicable to the resident: 1. Physical health, including identification of chronic, short−term and recurring illnesses, oral health, physical disabilities, mobility status and the need for any restorative or rehabilitative care. 2. Medications the resident takes and the resident's ability to control and self−administer medications. 3. Presence and intensity of pain. 4. Nursing procedures the resident needs and the number of hours per week of nursing care the resident needs. 5. Mental and emotional health, including the resident's self−concept, motivation and attitudes, symptoms of mental illness and participation in treatment and programming. 6. Behavior patterns that are or may be harmful to the resident or other persons, including destruction of property. 7. Risks, including, choking, falling, and elopement. 8. Capacity for self−care, including the need for any personal care services, adaptive equipment or training. 9. Capacity for self−direction, including the ability to make decisions, to act independently and to make wants or needs known. 10. Social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts and vocational needs. (d) Assessment documentation. The CBRF shall prepare a written report of the results of the assessment and shall retain the assessment in the resident's record. (2) TEMPORARY SERVICE PLAN. Upon admission, the CBRF shall prepare and implement a written temporary service plan to	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	meet the immediate needs of the resident, including persons admitted for respite care, until the individual service plan under sub. (3) is developed and implemented. (3) COMPREHENSIVE INDIVIDUAL SERVICE PLAN. (a) Scope. Within 30 days after admission and based on the assessment under sub. (1), the CBRF shall develop a comprehensive individual service plan for each resident. The individual service plan shall include all of the following: 1. Identify the resident's needs and desired outcomes. 2. Identify the program services, frequency and approaches under s. DHS 83.38 (1) the CBRF will provide. 3. Establish measurable goals with specific time limits for attainment. 4. Specify methods for delivering needed care and who is responsible for delivering the care. (b) Development. The CBRF shall involve the resident and the resident's legal representative, as appropriate, in developing the individual service plan and the resident or the resident's legal representative shall sign the plan acknowledging their involvement in, understanding of and agreement with the plan. If a resident has a medical prognosis of terminal illness, a hospice program or home health care agency, as identified in s. DHS 83.38 (2) shall, in cooperation with the CBRF, coordinate the development of the individual service plan and its approval under s. DHS 83.38 (2)(b). The resident's case manager, if any, and any health care providers, shall be invited to participate in the development of the service plan. (c) Implementation. The CBRF shall implement and follow the individual service plan as written." (Wis. Admin. Code § DHS 83.35)	

Residential Care Apartment Complex (RCAC): Statute and Administrative Code

- http://docs.legis.wisconsin.gov/statutes/statutes/50
- http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89

Definition: A place where five or more adults reside that 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, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal, and nursing services.

Crosswalk Table 5: Residential Care Apartment Complex

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Physical Requirements**: 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) "'Residential care apartment complex' or 'facility' means a place where 5 or more adults reside that 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, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services." (Wis. Admin. Code § DHS 89.13) **Rights:** The tenant has the right to choose services and the right to refuse services. The tenant has the right to receive visitors, meet	**Compliant**

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	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) 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; 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). "These rights in no way limit or restrict any other rights of the individual under the U.S. Constitution, civil rights legislation or any other applicable statute, rule or regulation." (Summarized from Wis. Admin. Code § DHS 89.34)	
§ 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.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Physical Requirements**: "'Residential care apartment complex' or 'facility' means a place where 5 or more adults reside that 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, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services." (Wis. Admin. Code § DHS 89.13) **Rights**: A tenant has the right "to have privacy in his or her independent apartment and when	**Compliant** Although the RCAC regulations are silent on the subject of restraint, other Wisconsin and DHS policies related to restraint apply to waiver participants who live in RCACs and constitute compliance with the regulation.

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	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) Because RCACs consist of independent apartments, the rule is based on the assumption that the tenant would not be subject to restraints or other restrictions. Although Wis. Admin. Code ch. DHS 89 is silent on the use of isolation or restrain, but for all community placements, "the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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 See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not	**Physical Requirements**: "'Residential care apartment complex' or 'facility' means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen,	**Compliant**

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
limited to, daily activities, physical environment, and with whom to interact.	including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services." (Wis. Admin. Code § DHS 89.13) **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 in maintaining. (Summarized from Wis. Admin. Code §§ DHS 89.26 and 89.27) **Rights**: 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) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS		
§ 441.301(c)(4)(vi)(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a	"'Contract' means all written agreements between the tenant and the residential care apartment complex, including the service agreement, the risk agreement and any rental	**Compliant**

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	or sales contract." (Wis. Admin. Code § DHS 89.13) 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. (Summarized from Wis. Admin. Code § DHS 89.27)	
§ 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.	**Physical Requirements:** 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)	**Silent:** Regulations do not specify that only appropriate staff have keys to the doors. Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require that only appropriate staff have keys. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	"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)	**Compliant**
§ 441.301(c)(4)(vi)(B) 3: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	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." (Wis. Admin. Code § DHS 89.34)	**Compliant**
§ 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.	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 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) "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)	**Compliant**

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	**Rights:** Tenants have the right "to receive visitors, meet with groups or participate in activities of the tenant's choice, including organizing and participating in tenant or family councils or groups provided that the health or safety of the other tenants is not endangered." (Wis. Admin. Code § DHS 89.34)	**Compliant**
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	"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) "All public and common use areas of a residential care apartment complex shall be accessible to and useable by tenants who use a wheelchair or other mobility aid consistent with the accessibility standards contained in ch. SPS 362. All areas for tenant use within the facility shall be accessible from indoors." (Wis. Admin. Code § DHS 89.22)	**Compliant**
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 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**	**Person-Centered Planning**: 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 settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.**		

Residential Settings: Child

Foster Care Homes: Statute and Administrative Code

- http://docs.legis.wisconsin.gov/statutes/statutes/48.pdf
- http://docs.legis.wisconsin.gov/code/admin_code/dcf/021_099/56.pdf

Definition: "Foster care" means care and maintenance provided to a child in a foster home pursuant to a court order, voluntary placement agreement, or voluntary transition-to-independent-living agreement.

Crosswalk Table 6: Foster Care Homes

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Principles of Nurturing Care:** The foster parent shall provide nurturing care that: • "Socializes the child into family living and teaches social and community living skills, including accepting tasks and responsibilities." • "Increases the child's opportunities to develop decision-making skills and to make informed choices." • "Gives the child room to grow and the maximum of personal and physical freedom appropriate to the child's age and maturity." • "Increases the child's independence in performing tasks and activities by teaching skills that reduce dependence on caretakers." • "Lets the child participate in community activities of the child's choice, including sports and activities of school, community, social and religious groups, with this participation restricted only by reasonable curfew hours, cost considerations, a court order or for a reason agreed upon by the foster parent and the licensing and supervising agencies." • "Increases the child's opportunities to interact with diverse community populations." • "Gives the child reasonable opportunity to voluntarily participate or not participate in religious practices, activities, and services of the child's choice or the choice of the child's parents. Any discrepancy between the child's choice and the choice of the child's parents shall be resolved by the child's	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	caseworker." • "Teaches the child life skills in situations where the skills are used." • "Provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child's case plan, permanency plan, or treatment plan." (Summarized from Wis. Admin. Code § DCF 56.09) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability-specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Principles of Nurturing Care:** The foster parent shall provide nurturing care that: • "Ensures the child is provided a humane physical and psychological environment." • "Is respectful of the child as a person." • "Does not discriminate against the child because of the child's race or cultural identification, sex, age, sexual orientation, color, creed, ancestry, national origin or disability." • "Promotes cultural understanding and sensitivity in the child and respects the cultural traditions of the child's family." (Summarized from Wis. Admin. Code § DCF 56.09) **Physical Requirements:** Each bedroom occupied by a foster child must have a door for privacy and cannot be used for passage by others to another room, nor can it only be accessible through another occupied sleeping room. No more than four children may regularly occupy one bedroom. The door to each	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	bathroom shall have a lock that can be opened from the outside in an emergency. (Summarized from Wis. Admin. Code § DCF 56.07) **"Physical Restraint.** **(a)** A foster parent may not use any type of physical restraint on a foster child unless the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe. **(b)** A foster parent shall attempt other feasible alternatives to de-escalate a child and situation before using physical restraint. **(c)** A foster parent may not use physical restraint as disciplinary action, for the convenience of the foster parent, or for therapeutic purposes. " **(d)** If physical restraint is necessary, a foster parent may only use the physical restraint in the following manner: 1. With the least amount of force necessary and in the least restrictive manner to manage the imminent danger of harm to self or others. 2. That lasts only for the duration of time that there is an imminent danger of harm to self or others. 3. That does not include any of the following: a. Any maneuver or technique that does not give adequate attention and care to protection of the child's head. b. Any maneuver that places pressure or weight on the child's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression. c. Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the child's head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as straddling or sitting on the child's torso.	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	d. Any type of choke hold. e. Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance. f. Any technique that involves pushing on or into a child's mouth, nose, or eyes, or covering the child's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding." (Wis. Admin. Code § DCF 56.09) **Child's Treatment Plan:** "The foster care provided for a child with a level of need of 3 or higher in a foster home with a certification of Level 3 to 5 shall do all of the following: **(a)** Use a family-based and community-based approach to treatment for a child with physical, mental, medical, substance abuse, cognitive, intellectual, behavioral, developmental, or similar problems. **(b)** Make efforts to change the behavior or ameliorate the condition that, in whole or in part, resulted in the child's separation from his or her family. **(c)** Use specially selected and specifically trained foster parents who are the primary change agents in the treatment process and who have shared responsibility for implementing the child's treatment plan with other treatment team members." (Wis. Admin. Code § DCF 56.13) DCF 56.09 (1G) specifically prohibits the use of restrictive measures with children in foster care unless 'the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe.' Under DCF 56.02 (2)(a), licensing agencies are prohibited from granting exceptions to the use of restrictive measures. 56.02 (2)(b) defines the Department exceptions panel, which reviews Restrictive Measures applications for children who reside in foster. The panel includes members from DCF and DHS to jointly review all	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	requests for exceptions. The DCF exceptions panel adheres to the DHS Restrictive Measures Guidelines (below) and also prescribes the use of DHS Restrictive Measures application forms. Applications are jointly reviewed and approved/denied by the DCF Exceptions Panel. "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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 See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Principles of Nurturing Care:** The foster parent shall provide nurturing care that: • "Socializes the child into family living and teaches social and community living skills, including accepting tasks and responsibilities." • "Is respectful of the child as a person." • "Increases the child's opportunities to develop decision-making skills and to make informed choices." • "Gives the child room to grow and the maximum of personal and physical freedom appropriate to the child's age and maturity." • "Increases the child's independence in	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	performing tasks and activities by teaching skills that reduce dependence on caretakers." • "Lets the child participate in community activities of the child's choice, including sports and activities of school, community, social and religious groups, with this participation restricted only by reasonable curfew hours, cost considerations, a court order or for a reason agreed upon by the foster parent and the licensing and supervising agencies." • "Increases the child's opportunities to interact with diverse community populations." • "Gives the child reasonable opportunity to voluntarily participate or not participate in religious practices, activities, and services of the child's choice or the choice of the child's parents. Any discrepancy between the child's choice and the choice of the child's parents shall be resolved by the child's caseworker." • "Teaches the child life skills in situations where the skills are used." • "Provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child's case plan, permanency plan, or treatment plan." (Summarized from Wis. Admin. Code § DCF 56.09) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability-specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS		
§ 441.301(c)(4)(vi)(A) The unit	Not applicable to minor children who have been	**Not applicable**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	court ordered to be placed in a licensed foster home by an established licensing agency.	
§ 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.**	**Physical Requirements:** Each bedroom occupied by a foster child shall have a door for privacy, a window that allows natural light to enter, and adequate ventilation. A sleeping room that someone must pass through to get to another part of the building may not be used for a foster child. A foster child may not regularly sleep in a room to which access can be gained only through another occupied sleeping room. (Summarized from Wis. Admin. Code § DCF 56.07)	**Silent:** Requirement is not fully applicable to children under 12 years who are court ordered to be placed into foster care.
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	**Sleeping Arrangements:** • "Each foster child shall be provided with a separate bed, except 2 related children of the same sex over the age of one and under 12 years of age may share a double or larger bed." • "Each infant child, birth to 12 months of age, shall sleep alone in a crib, bassinet, or playpen." • "No foster child one year of age or older may regularly share a bedroom with an adult unless a physician determines that it is medically necessary and the licensing agency	**Partially Compliant** Requirement not fully applicable to children under age 12 years who are court ordered to be placed into foster care.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	approves." • "No foster child 6 years of age or older may regularly share a bedroom with another child of the opposite sex." • "No more than four children may regularly occupy one bedroom." (Summarized from Wis. Admin. Code § DCF 56.07)	
§ 441.301(c)(4)(vi)(B) 3: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	**Care of Foster Children:** The foster home provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child's case plan, permanency plan, or treatment plan. Children must be allowed access to clothing and written and recorded materials and other items appropriate to the child's age and comprehension. A foster child's personal belongings may not be damaged or destroyed. (Summarized from Wis. Admin. Code § DCF 56.09)	**Compliant**
§ 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.	**Care of Foster Children:** "The foster home provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child's case plan, permanency plan, or treatment plan." (Wis. Admin. Code § DCF 56.09) **Principles of Nurturing Care:** The foster parent shall provide nurturing care that: • "Increases the child's opportunities to develop decision-making skills and to make informed choices." • "Gives the child room to grow and the maximum of personal and physical freedom appropriate to the child's age and maturity." • "Increases the child's independence in performing tasks and activities by teaching skills that reduce dependence on caretakers." • "Lets the child participate in community activities of the child's choice, including sports and activities of school, community, social and religious groups, with this participation restricted only by reasonable curfew hours, cost considerations, a court	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	order or for a reason agreed upon by the foster parent and the licensing and supervising agencies." • "Increases the child's opportunities to interact with diverse community populations." (Summarized from Wis. Admin. Code § DCF 56.09) **Food**: • "The foster parent shall ensure that each foster child receives at least 3 meals a day. Meals a child receives as part of a meals program at school may be counted. A school-age foster child who does not participate in a school lunch program shall be provided a sack lunch or be provided lunch at the foster home or shall otherwise have lunch arranged for by or with the approval of the foster parent." • "The foster parent shall ensure that each foster child is provided a quantity and variety of foods sufficient to meet the child's nutritional needs and to maintain his or her health and growth." • "No foster child may be forced to eat against his or her wishes except by order of and under the supervision of a physician." (Summarized from Wis. Admin. Code § DCF 56.09)	
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	"Permits a child to receive mail, to make and to receive a reasonable number of telephone calls and to visit with family, friends and others unless a visit is contraindicated by the child's case plan, by a court order or by another controlling document." (Wis. Admin. Code § DCF 56.09)	**Compliant**
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	**Physical Environment/Exterior Access: "**If necessary for a child to access the foster home where the child is placed, at least one entrance to the foster home shall be level or ramped in accordance with ch. SPS 362 and in a manner that provides safe access for the child." "Doorways and passageways to the common rooms of the foster home, a complete bathroom, and the child's bedroom shall meet standards relating to accessibility in ch. SPS 362	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	if either of the following apply: 1. The child uses a wheelchair. 2. The child has significant mobility limitations and is too big to be safely carried." If the home serves a child with mobility impairment, the child cannot: be required to sleep in the top level of a bunk bed or sleep in finished basement bedroom or second floor. At least one bathroom shall be constructed in conformity with Wis. Admin. Code § SPS 362. (Summarized from Wis. Admin. Code § DCF 56.07)	
§ 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 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**	"A licensing agency may impose additional safety conditions upon a licensee if the licensee cares for a child under one year of age or a child with mental or physical disabilities when the age, impaired judgment, or mobility of the child creates additional safety risks." (Wis. Admin. Code § DCF 56.08) **Assessment:** "A placing agency shall assess each foster child before placement in a foster home or within 30 days after the child's placement. A placing agency shall assess each foster parent within 30 days after the child's placement in the foster home." (Wis. Admin. Code § DCF 56.22) **Standardized Assessment Tool:** "The standardized assessment tool shall include a list of items that may have a direct impact on service planning for the child and the child's foster parent. The list of items included in the standardized assessment tool shall assist with evaluation of all of the following: 1. The child's functioning, including all of the following: a. The impact of trauma on the child. b. Life functioning, including physical, mental, and dental health; relationships with family members; and social skills. c. Functioning in a child care or school setting. d. Behavioral and emotional needs. e. Risk behaviors. f. Strengths. g. The effect of the culture of the child and the child's family on service provision." (Wis. Admin. Code § DCF 56.22)	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
of the individual. **8: Include an assurance that interventions and supports will cause no harm to the individual.**	**Reassessment Every Six Months:** "A placing agency shall reassess each foster child and the child's foster parent within 6 months after the child's last assessment or reassessment. The placing agency, licensing agency, or foster parent may request a reassessment more frequently." (Wis. Admin. Code § DCF 56.22) **Child's Treatment Plan:** "The foster care provided for a child with a level of need of 3 or higher in a foster home with a certification of Level 3 to 5 shall do all of the following: (a) Use a family-based and community-based approach to treatment for a child with physical, mental, medical, substance abuse, cognitive, intellectual, behavioral, developmental, or similar problems. (b) Make efforts to change the behavior or ameliorate the condition that, in whole or in part, resulted in the child's separation from his or her family. (c) Use specially selected and specifically trained foster parents who are the primary change agents in the treatment process and who have shared responsibility for implementing the child's treatment plan with other treatment team members." (Wis. Admin. Code § DCF 56.13(8)) See Crosswalk Table 1 for references to contracts and waiver manuals.	

Nonresidential Settings: Adult

Note: The regulatory standards for adult day care do not prohibit adult day care centers from being located in an institution or on the grounds of, or adjacent to, a public institution, but includes special criteria to be taken into account when adult day care is collocated with institutional settings. The extent to which these criteria and other factors regarding specific settings comply with the rule will be evaluated as part of the heightened scrutiny process and are not assessed in the crosswalk tables.

Adult Day Care (ADC): DHS Standards (https://www.dhs.wisconsin.gov/forms1/f6/f60947.docx)

Definition: A day program that provides the elderly and other adults with services when their caregivers are at work or need relief. Only those adult day care programs seeking to serve one or more participants with waiver funding are required to be certified.

Crosswalk Table 7: Adult Day Care

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Physical Requirements**: "The adult day care setting is typical of or strongly resembles the locations where adults in that community customarily congregate for social, recreational or association activities (e.g., clubs, church halls, private homes, lodges, and restaurants). The building is consistent with the environment in terms of size, architectural style and type (urban vs. rural) and would be attractive and inviting to members of that community. The setting, programs and physical environment will enhance the dignity and individual respect of participants." (Standards, Section IV.) **Person-Centered Planning**: Participants should be involved in the planning and implementation of indoor and outdoor activities, including access and involvement in the general community. (Summarized from ADC Standards, Section I.D.) **Rights**: A participant at an adult day care has the right to participate in the development of one's service plan and to refuse to participate in any particular activity. (Summarized from ADC Standards, Section 1.A.(5))	**Compliant** While the SMA thinks that the standards for adult day care are compliant, the SMA will revise service provider standards in HCBS waivers and the accompanying contracts and other guidance to require that adult day care centers provide informational resources and referrals for anyone who is interested in employment or other activities in the community. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		instructions, and service definitions.
§ 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.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Rights**: "A participant at an Adult Day Care has the rights to be treated with respect and dignity; to be free from physical or verbal abuse, to participate in the development of one's service plan; to refuse to participate in any particular activity, and to privacy and confidentiality." (Standards, Section 1.A.(5)) "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Physical Requirements:** "The facility shall be designed in such a way that it is accessible and functional in meeting the identified needs of the adult population it serves. At least 50 square feet of usable floor space for each participant exclusive of passageways, bathrooms, lockers, office, storage areas, staff room, furnace rooms, and parts of rooms occupied by stationary equipment must be provided. Sufficient furniture and equipment for use by participants that provides comfort and safety, and is appropriate for an adult population with physical disabilities, visual and mobility limitations, and cognitive impairments." (Standards, Section III.D.) **Person-Centered Planning**: Adult day care programs must have an assessment to get to know the individual and create an individualized service plan to meet the individual's needs and choices. Plans must be reviewed and updated every six months. (Summarized from ADC Standards, Section I.C.) **Rights**: A participant at an adult day care has the rights to participate in the development of one's service plan and to refuse to participate in any particular activity." (Summarized from ADC Standards, Section 1.A.(5))	**Compliant**
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: ***Program Level:*** Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals. ***Setting Level***: Adult day care program's must specify program services, support, and providers of each when conducting participant assessments, creating service plans, and	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	developing individualized program services. (Summarized from ADC Standards, Section I.C. and Section I.D.)	

Family Adult Day Care (Family ADC): Department Standards

Family Adult Day Care Certification Standards

Definition: Care provided for part of a day for small groups of no more than six adults in a home of a provider.

Crosswalk Table 8: Family Adult Day Care

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Physical Requirements:** The family adult day care is certified in a provider's home and reflects the community setting of the family home. "The conditions of the home shall be such that participants are cared for in a safe, sanitary and comfortable environment with adequate space and equipment to accommodate a program of activities and rest that meets the needs of the participants." (Standards, Section III.A.) **Person-Centered Planning**: "Participants should have opportunities to attend appropriate community activities." (Standards, Section I.C.) **Rights**: A participant at a family adult day care program has the rights to participate in the development of one's service plan and to refuse to participate in any particular activity. (Summarized from Family ADC Standards, Section 1.A.(2))	**Compliant** While the SMA thinks that the standards for Family Adult Day Care are compliant, the SMA will revised service provider standards in HCBS waivers and the accompanying contracts and other guidance to require that Family Adult Dare Care sites provide informational resources and referrals for anyone who is interested in employment or other activities in the community. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 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	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.	waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Rights**: A participant at an Adult Day Care has the rights to be treated with respect and dignity; to be free from physical or verbal abuse, to participate in the development of one's service plan; to refuse to participate in any particular activity, and to privacy and confidentiality. (Summarized from Family ADC Standards, Section 1.A.(2)) "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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 See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 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 Requirements**: The Family Adult Day Care must have adequate space and equipment for activities and rest that meets the needs of the participants; table space and sufficient seating for each participant shall be provided. (Summarized from Family ADC Standards,	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
physical environment, and with whom to interact.	Section III.A.) **Person-Centered Planning**: Family adult day care program's must have an assessment to get to know the individual and create an individualized service plan to meet the individual's needs and interests within 30 days of admission. Plans must be reviewed and updated annually or more often if changes in a participant warrant. (Summarized from Family ADC Standards, Section I.B.(3)) **Rights**: A participant at a family adult day care has the rights to participate in the development of one's service plan and to refuse to participate in any particular activity." (Summarized from Family ADC Standards, Section 1.A.(2))	
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: ***Program Level***: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals. ***Setting Level***: A family adult day care program must specify program services and daily charges, including additional services and fees; such as transportation, baths, personal cares, etc. Family adult day care standards note that additional services may be arranged for or provided by the program including transportation, social services, personal cares, medication administration, nursing services, health monitoring, physical therapy, etc." (Summarized from Family ADC Standards, Section I.A.(1))	**Compliant**

Day Habilitation Service Settings: Waiver Service Standards

Definition: Day habilitation services are the provision of regularly scheduled activities in a nonresidential setting, separate from the member's private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that enhance social development and develop skills in performing activities of daily living and full community citizenship.

Crosswalk Table 9: Day Habilitation

Federal Regulation (Title 42 C.F.R.(	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Physical Requirements**: "Day habilitation may be furnished in a variety of settings in the community except for the member's residence. Day habilitation services are not limited to fixed-site facilities but may take place in stores, restaurants, libraries, parks, recreational facilities, community centers or any other place in the community." (Language is from DHS-MCO contract, Addendum IX; policy documents for other waivers contain similar language) **Person-Centered Planning**: "Day habilitation services are the provision of regularly scheduled activities in a nonresidential setting, separate from the member's private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills that enhance social development and develop skills in performing activities of daily living and full community citizenship. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, greater independence and personal choice." (DHS-MCO Contract, Addendum IX) "Day habilitation services focus on enabling the member to attain or maintain his or her maximum potential and shall be coordinated with any needed therapies in the member's person-centered services and support plan, such as physical, occupational, or speech therapy." (DHS-MCO Contract, Addendum IX) "Day habilitation may not provide for the payment of services that are vocational in	**Silent**: The waiver standards do not address the fixed-site settings in which day habilitation services are provided. **Remediation**: The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site day habilitation services. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.

Federal Regulation (Title 42 C.F.R.(	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	nature (i.e., for the primary purpose of producing goods or performing services)." (DHS-MCO contract, Addendum IX; policy documents for other waivers contain similar language)	
§ 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.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Contracts with Providers:** "The subcontractor agrees otherwise to preserve the full confidentiality of records, in accordance with Article XIII.A., Member Records, page 188, and protect from unauthorized disclosure all information, records, and data collected under the subcontract. Access to this information shall be limited to persons who, or agencies such as the Department and CMS which, require information in order to perform their duties related to this contract." (DHS-MCO contract, Article VIII) **Rights:** Waiver agencies "must have written policies regarding the enrollee rights specified in this section, including but not limited to: 1. Being treated with respect and with due consideration for his/her dignity and privacy. 2. Receiving information on available treatment options and alternatives, presented in a manner appropriate to the enrollee's condition and ability to understand. 3. Participating in decisions regarding health and long-term care, including the right to refuse treatment and the right to request a second opinion. 4. Being free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation. 5. Being able to request and receive a copy of his/her medical records, and to request that	**Compliant**

Federal Regulation (Title 42 C.F.R.(	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	they be amended or corrected, as specified in 45 C.F.R. § 164." (DHS-MCO contract, Article X) "An exploration with the member of the member's preferences in regard to privacy, services, caregivers, and daily routine, including, if appropriate, an evaluation of the member's need and interest in acquiring skills to perform activities of daily living to increase his/her capacity to live independently in the most integrated setting." (DHS-MCO contract, Article V) ***COP/CIP/CLTS*** "1. You have a right to be treated with dignity and respect. This includes the right to free association to see whom you want, when you want unless a court order states otherwise. 2. You have a right to control your life and the services you get as much as you are able. You have the right to choose where you live, if you live alone or with others and with whom you will live. You have the right to be told that if you choose to live in certain settings, you may lose your eligibility for funding under the Medicaid Waiver. 3. You have a right not to be hurt or threatened. You have the right to be free from abuse and neglect. You have a right to be free from restrictive measures and all unreasonable restraints. You have the right to refuse to take drugs you do not want to take unless ordered to do so by a court of law. 4. You have the right to privacy. Your right to privacy includes having information that is said or written about you kept confidential, the right to receive and open your own mail, to make and receive private phone calls and to have visitors in your private areas including your bedroom and have the door closed. 5. You have a right to see your file, have it corrected, and to get copies of reports in it. 6. You have the right to direct you own services within the rules of the waiver in which you are enrolled. You have the right to have the self-directed service option explained to you and made available. 7. You have the right to know what other rights apply to you. You may have rights because of	

Federal Regulation (Title 42 C.F.R.(	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	where you live (e.g., in a group home (CBRF), because a court was involved in your services, or because of the nature of your disability. Waiver agency staff are responsible for telling you about these rights and for making sure you are adequately informed about them." www.dhs.wisconsin.gov/waivermanual/appndx-m2.pdf Providers must acknowledge that they are subject to state and federal laws and regulations, and must understand and abide by applicable standards as a condition of participation in home and community-based services under the Medicaid program. ***IRIS*** Item 8: "Medicaid Confidentiality Policies and Procedures: To maintain the confidentiality of all records or other information relating to each participant's status as a waiver participant and items or services the participant receives from the Provider." "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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	

Federal Regulation (Title 42 C.F.R.(	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Person-Centered Planning**: Waiver agency: Placement decisions and person-centered plans that are developed by the case management agency must address how the activities of the day will provide opportunities for interactions with the community, including friends and relatives, and access to activities. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals. Service setting: "Day habilitation services provide assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills that enhance social development and develop skills in performing activities of daily living and full community citizenship. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, greater independence and personal choice. "Day habilitation services focus on enabling the member to attain or maintain his or her maximum potential and shall be coordinated with any needed therapies in the member's person-centered services and support plan, such as physical, occupational, or speech therapy. "Day habilitation may not provide for the payment of services that are vocational in nature (i.e., for the primary purpose of producing goods or performing services). But an individual may also receive educational, supported employment and prevocational services." (DHS-MCO contract, Addendum IX)	**Silent**: The waiver standards do not address the fixed-site settings in which day habilitation services are provided. **Remediation**: The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site day habilitation services. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS	**Silent**: The waiver standards do not address the fixed-site settings in which day habilitation services are provided. **Remediation**: The SMA will

Federal Regulation (Title 42 C.F.R.(	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site day habilitation services. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.

Prevocational Services: Waiver Service Definition

Definition: Prevocational services are designed to create a path to integrated community-based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

Crosswalk Table 10: Prevocational Services

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Physical Requirements**: "Prevocational services are designed to create a path to integrated community based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Prevocational services involve the provision of learning and work experiences where a member can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated, community settings. Services are expected to occur over a defined period of time as determined by the member and his/her care planning team in the ongoing member-centered planning process. Services are expected to specifically involve strategies that enhance a member's employability in integrated, community settings." "Prevocational services may be delivered in a variety of locations in the community and are not limited to fixed-site facilities. "Prevocational services, regardless of how and where they are delivered, are expected to help people make reasonable and continued progress toward participation in at least part-time, integrated employment." "Participation in prevocational services is not a pre-requisite for individual or small group supported employment services. Members who receive prevocational services may also receive educational, supported employment and/or day services. A member's care plan may include two or more types of nonresidential services."	**Silent**: The waiver standards do not address the fixed-site settings in which prevocational services are provided. **Remediation**: The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site prevocational service settings. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	(Language is from DHS-MCO contract, Addendum IX; policy documents for other waivers contain similar language) See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Contracts with Providers:** "The subcontractor agrees otherwise to preserve the full confidentiality of records, in accordance with Article XIII.A., Member Records, page 188, and protect from unauthorized disclosure all information, records, and data collected under the subcontract. Access to this information shall be limited to persons who, or agencies such as the Department and CMS which, require information in order to perform their duties related to this contract." (DHS-MCO contract, Article VIII) **Rights:** "The MCO must have written policies regarding the enrollee rights specified in this section, including but not limited to: 1. Being treated with respect and with due consideration for his/her dignity and privacy. 2. Receiving information on available treatment options and alternatives, presented in a manner appropriate to the enrollee's condition and ability to understand. 3. Participating in decisions regarding health and long-term care, including the right to refuse treatment and the right to request a second opinion. 4. Being free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation. 5. Being able to request and receive a copy of	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	his/her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. § 164." (DHS-MCO contract, Article X) "An exploration with the member of the member's preferences in regard to privacy, services, caregivers, and daily routine, including, if appropriate, an evaluation of the member's need and interest in acquiring skills to perform activities of daily living to increase his/her capacity to live independently in the most integrated setting." (DHS-MCO contract, Article V) ***COP/CIP/CLTS*** "1. You have a right to be treated with dignity and respect. This includes the right to free association to see whom you want, when you want unless a court order states otherwise. 2. You have a right to control your life and the services you get as much as you are able. You have the right to choose where you live, if you live alone or with others and with whom you will live. You have the right to be told that if you choose to live in certain settings, you may lose your eligibility for funding under the Medicaid Waiver. 3. You have a right not to be hurt or threatened. You have the right to be free from abuse and neglect. You have a right to be free from restrictive measures and all unreasonable restraints. You have the right to refuse to take drugs you do not want to take unless ordered to do so by a court of law. 4. You have the right to privacy. Your right to privacy includes having information that is said or written about you kept confidential, the right to receive and open your own mail, to make and receive private phone calls and to have visitors in your private areas including your bedroom and have the door closed. 5. You have a right to see your file, have it corrected, and to get copies of reports in it. 6. You have the right to direct you own services within the rules of the waiver in which you are enrolled. You have the right to have the self-directed service option explained to you and made available. 7. You have the right to know what other rights	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	apply to you. You may have rights because of where you live (e.g., in a group home (CBRF)), because a court was involved in your services, or because of the nature of your disability. Waiver agency staff are responsible for telling you about these rights and for making sure you are adequately informed about them" (www.dhs.wisconsin.gov/waivermanual/appndx-m2.pdf) Providers must acknowledge that they are subject to state and federal laws and regulations, and must understand and abide by applicable standards as a condition of participation in home and community-based services under the Medicaid program. ***IRIS:*** Item 8: "Medicaid Confidentiality Policies and Procedures: To maintain the confidentiality of all records or other information relating to each participant's status as a waiver participant and items or services the participant receives from the Provider." "For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10) 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	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 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.	"Prevocational services are designed to create a path to integrated community based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Prevocational services involve the provision of learning and work experiences where a member can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated, community settings. Services are expected to occur over a defined period of time as determined by the member and his/her care planning team in the ongoing member-centered planning process. Services are expected to specifically involve strategies that enhance a member's employability in integrated, community settings." (DHS-MCO Contract, Addendum IX) **Person-Centered Planning:** Placement decisions and person-centered plan that are developed by the case management agency must address how the activities of the day will provide opportunities for interactions with the community, including friends and relatives, and access to activities. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Silent**: The waiver standards do not address the fixed-site settings in which prevocational services are provided. **Remediation**: The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site prevocational service settings. These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include: • DHS-MCO contract for Family Care, Partnership, and PACE. • The Medicaid Waivers Manual for CIP, COP, and CLTS waivers. • IRIS policies, work instructions, and service definitions.
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) See Crosswalk Table 1 for references to contracts and waiver manuals.	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	"Personal care provided to a member during the receipt of prevocational services may be included in the reimbursement paid to the prevocational services provider, or may be covered and reimbursed under another waiver service so long as there is no duplication of payment." (DHS-MCO contract. Addendum IX)	

Nonresidential Settings: Child

Children Day Services—Licensed Family Child Care: Statute and Administrative Code

https://docs.legis.wisconsin.gov/code/admin_code/dcf/201_252/250

Definition: A facility where a person provides care and supervision for less than 24 hours a day for at least four and not more than eight children who are not related to the provider.

Crosswalk Table 11: Licensed Family Child Care

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	"This chapter is promulgated under the authority of s. 48.67, Stats., to carry out licensing requirements under s. 48.65, Stats., for family child care centers. The purpose of the chapter is to protect the health, safety and welfare of children being cared for in family child care centers." (Wis. Admin. Code § DCF 250.01) **Physical Requirements:** "Family child care centers located in a building that is not a one or two-story family dwelling shall conform to the applicable Wisconsin commercial building codes. A copy of a building inspection report evidencing compliance with the applicable building codes shall be submitted to the department prior to the department's issuance of a license." (Wis. Admin. Code § DCF 250.06) **Program Planning and Scheduling: "**A provider shall plan activities so that each child may be or do all of the following: 1. Be successful and feel good about himself or herself. 2. Use and develop language. 3. Use large and small muscles. 4. Use materials and take part in activities that encourage creativity. 5. Learn new ideas and skills. 6. Participate in imaginative play. 7. Be exposed to a variety of cultures. 8. Develop literacy skills." (Wis. Admin. Code § DCF 250.07)	**Compliant**
§ 441.301(c)(4)(ii) The setting is selected by the individual from among setting options including non-disability specific settings	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.	settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) "The center shall permit parents to visit and observe at any time during the center's hours of operation, unless access is prohibited or restricted by court order." (Wis. Admin. Code § DCF 250.04)	
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Confidentiality:** "The licensee shall ensure that all of the following occur: • Persons having access to children's records do not discuss or disclose personal information regarding the children and facts learned about the children and their relatives. This subdivision does not apply to any of the following: o The parent or person authorized in writing by the parent to receive the information. o Any agency assisting in planning for the child when informed written parental consent has been given. o Agencies authorized under Wis. Stat. § 48.78. • A parent, upon request, has access to all records and reports maintained on his or her child." (Wis. Admin. Code § DCF 250.05) **Reporting Child Abuse: "**A licensee or provider who knows or has reasonable cause to suspect that a child has been abused or neglected as defined in ss. 48.02 (1) and 48.981 (1), Stats., shall immediately contact the county department of social services or human services or local law enforcement agency in compliance with s. 48.981, Stats." (Wis. Admin. Code § DCF 250.04) "The licensee shall document that each provider and substitute has received training at least every 2 years in all of the following: 1. Child abuse and neglect laws. 2. How to identify children who have been abused or neglected. 3. The procedure for ensuring that all known or suspected cases of child abuse or neglect are immediately reported to the proper	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	authorities." (Wis. Admin. Code § DCF 250.04) **Child Guidance:** "(a) Each family child care center shall provide positive guidance and redirection for the children and shall set clearly specified limits for the children. A provider shall help each child develop self-control, self-esteem and respect for the rights of others. (b) If a provider uses time-out periods to deal with unacceptable behavior, time-out periods may not exceed 5 minutes or be used for children under age 3. Time-out procedures shall be included in the center's written child guidance policy. (c) Actions that may be psychologically, emotionally or physically painful, discomforting, dangerous or potentially injurious are prohibited. Examples of prohibited actions include all of the following: 1. Spanking, hitting, pinching, shaking, slapping, twisting, throwing, or inflicting any other form of corporal punishment on the child. 2. Verbal abuse, threats or derogatory remarks about the child or the child's family. 3. Physical restraint, binding or tying the child to restrict the child's movement or enclosing the child in a confined space such as a closet, locked room, box or similar cubicle. 4. Withholding or forcing meals, snacks or naps. 5. Actions that are cruel, aversive, humiliating or frightening to the child. (d) A child may not be punished for lapses in toilet training." (Wis. Admin. Code § DCF 250.07)	
§ 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.	**Program Planning and Scheduling: "**A provider shall plan activities so that each child may be or do all of the following: 1. Be successful and feel good about himself or herself. 2. Use and develop language. 3. Use large and small muscles. 4. Use materials and take part in activities that encourage creativity. 5. Learn new ideas and skills. 6. Participate in imaginative play. 7. Be exposed to a variety of cultures. 8. Develop literacy skills." (Wis. Admin. Code § DCF 250.07)	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	"(b) A provider shall plan daily activities according to the age and developmental level of each child in care and shall include a flexible balance of all of the following: 1. Daily indoor and outdoor activities when a child is in care for more than 3 hours except that outdoor activities are not required during inclement weather or when not advisable for health reasons. 2. Active and quiet play. 3. Protection from excess fatigue and over stimulation. 4. Individual and group activities. (c)Television, including videotapes and DVDs, may be used only to supplement the daily plan for children. No child may be required to watch television." (Wis. Admin. Code § DCF 250.07)	
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)	**Compliant**

Children Day Services—Licensed Group Child Care Center: Statutes and Administrative Code

https://docs.legis.wisconsin.gov/code/admin_code/dcf/201_252/251

Definition: A facility where a person for less than 24 hours a day provides care and supervision for nine or more children who are not related to the provider.

Crosswalk Table 12: Licensed Group Child Care Center

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4) Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan.		
§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.	**Program Planning and Scheduling:** "Each group child care center shall have a written program of activities which are suitable for the developmental level of each child and each group of children. The program shall provide each child with experiences which will promote all of the following: 1. Self-esteem and positive self-image. 2. Social interaction. 3. Self-expression and communication skills. 4. Creative expression. 5. Large and small muscle development. 6. Intellectual growth. 7. Literacy." (Wis. Admin. Code § DCF 251.07)	**Compliant**
§ 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.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) "(b) The center shall permit parents to visit and observe at any time during the center's hours of operation, unless access is prohibited or restricted by court order. (c) The center shall make opportunities available at least twice each year for parent and staff communication regarding the child's adjustment to the program, and the child's growth and development. (d) If religious training is part of the center program, reference to the religious component shall be included in any publicity and in the education policy. This information shall be shared with parents.	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	(e) The center shall provide a summary of this chapter to the parents of each child upon the child's enrollment. (f) A copy of this chapter shall be posted or available in an area of the center where parents are likely to see it. (g) A copy of the child care policies of the center shall be made available to the parents in an area of the center accessible to parents. Personnel policies need not be included." (Wis. Admin. Code § DCF 251.04)	
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**Confidentiality:** "(a) The licensee shall ensure that: (a) persons having access to children's records do not discuss or disclose personal information regarding the children and facts learned about the children and their relatives. This does not apply to: 1. The parent or a person authorized in writing by the parent to receive the information. 2. Any agency assisting in planning for the child when informed written parental consent has been given. 3. Agencies authorized under Wis. Stat. § 48.78. (b) A parent, upon request, has access to all records and reports maintained on his or her child." (Wis. Admin. Code § DCF 251.04) **Reporting Child Abuse:** "(a) A licensee, employee or volunteer at a child care center who knows or has reasonable cause to suspect that a child has been abused or neglected, shall immediately contact the county department of social services or human services or a local law enforcement agency, as required by Wis. Stat. § 48.981. (b) The licensee, shall ensure that every employee and volunteer who comes in contact with the children at the child care center has received training every 2 years in all of the following: 1. Child abuse and neglect law. 2. How to identify children who have been abused or neglected. 3. The procedure for ensuring that known or suspected cases of child abuse or neglect are immediately reported to the proper authorities. (Wis. Admin. Code § DCF 251.04) **Child Guidance: "**(b) Each child care center shall	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	a written policy which provides for positive guidance, redirection and the setting of clear-cut limits for the children. The policy shall be designed to help a child develop self−control, self−esteem and respect for the rights of others. (c) If a center uses time-out periods to deal with unacceptable behavior, time-out periods may not exceed 5 minutes and the procedure shall be included in the center's child guidance policy. (d) Use of time-out periods is prohibited for children under 3 years of age. (e) Actions that may be psychologically, emotionally or physically painful, discomforting, dangerous or potentially injurious are prohibited. Examples of prohibited actions include all of the following: 1. Spanking, hitting, pinching, shaking, slapping, twisting, throwing, or inflicting any other form of corporal punishment. 2. Verbal abuse, threats or derogatory remarks about the child or the child's family. 3. Physical restraint, binding or tying the child to restrict the child's movement or enclosing the child in a confined space such as a closet, locked room, box or similar cubicle. 4. Withholding or forcing meals, snacks or naps. 5. Actions that are cruel, aversive, humiliating or frightening to the child. (f) A child may not be punished for lapses in toilet training." (Wis. Admin. Code § DCF 251.07)	
§ 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.	**Program Planning and Scheduling:** "(a)Each group child care center shall have a written program of activities which are suitable for the developmental level of each child and each group of children. The program shall provide each child with experiences which will promote all of the following: 1. Self−esteem and positive self−image. 2. Social interaction. 3. Self−expression and communication skills. 4. Creative expression. 5. Large and small muscle development. 6. Intellectual growth. 7. Literacy. (b) The program schedule shall be planned to provide a flexible balance each day of: 1. Active and quiet activities. 2. Individual and group activities. 3. Indoor and if the center is in operation more	**Compliant**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	than 3 hours per day, outdoor activities. (c) Television may be used only to supplement the daily plan for children. No child may be required to watch television. Other activities shall be available. (d) Routines such as toileting and eating and intervals between activities shall be planned to avoid keeping children waiting in lines or assembled in large groups. (e) The program shall provide all of the following: 1. Reasonable regularity in eating, napping and other routines. 2. Daily periods when a variety of experiences are concurrently available for the children to select their own activities. 3. Protection from excess fatigue and over stimulation. 4. If a center is in operation for more than 3 hours per day, daily outdoor activities except during inclement weather or when not advisable for health reasons. (f) Child care workers shall give children individual attention. (g) A center that is open in the early morning and late afternoon shall have a written plan for activities which meet the individual needs of the children during those time periods. The plan shall include: 1. Provision of opportunities for the children to rest and eat. 2. Use of materials and engagement in activities which for the most part do not duplicate materials or activities planned for the major part of the program." (Wis. Admin. Code § DCF 251.07) A center shall provide equipment and supplies according to the following criteria: 1. Child development shall be fostered through selection of a variety of equipment that will: a. Provide large muscle development. b. Provide construction activities and for development of manipulative skills. c. Encourage social interaction. d. Provide intellectual stimulation. e. Encourage creative expression. 2. A center shall provide sufficient indoor play equipment to allow each child a choice of at	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	least 3 activities involving equipment when all children are using equipment. 3. A center shall provide sufficient outdoor play equipment to allow each child at least one activity involving equipment when all children are using equipment. (Wis. Admin. Code § DCF 251.07)	
§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	**Person-Centered Planning**: Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents) "A center serving school-age children shall have a planned program which provides a change from the routine of school through provision of: 1. Rest and quiet areas. 2. Recreational activities, including outdoor and active play. 3. Freedom for children to select and plan their own activities." (Wis. Admin. Code § DCF 251.095)	**Compliant**