

**HOME AND COMMUNITY-BASED SERVICES (HCBS) SETTINGS RULE  
 BENCHMARKS: 1-2 BED ADULT FAMILY HOMES (AFH)**

The HCBS settings rule was published in 2014 by the Centers for Medicare & Medicaid Services (CMS). The federal requirements define the qualities of settings eligible for reimbursement for Medicaid home and community-based services. Under these requirements, the Wisconsin Department of Health Services (DHS) must ensure that 1-2 bed adult family home providers meet and remain in compliance with the HCBS settings rule requirements. These benchmarks ensure DHS is assessing HCBS settings rule compliance consistently across Medicaid programs.

<b>Heightened Scrutiny</b>		<b>Reference in 1-2 Bed AFH Standards</b>
<p><b>42 C.F.R. § 441.301(c)(5)(v): Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.</b></p>		
<b>A.</b>	<p>When the setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (<i>skilled nursing facility (SNF), intermediate care facility for individuals with intellectual disabilities (ICF/IID), institute for mental disease (IMD), hospital</i>), the setting must have a heightened scrutiny review, overcome the presumption of institutionalization, and meet the additional <a href="#">Home and Community-Based Setting Rule Benchmarks: Heightened Scrutiny for Nonresidential Providers and 1-2 Bed Adult Family Homes</a>.</p>	Article VIII.C.

<p><b>B.</b></p>	<p>When the setting is in a building on the grounds of, or immediately adjacent to, a public institution that provides inpatient institutional treatment, the setting must have a heightened scrutiny review, overcome the presumption of institutionalization, and meet the additional <a href="#">Home and Community-Based Setting Rule Benchmarks: Heightened Scrutiny for Nonresidential Providers and 1-2 Bed Adult Family Homes</a>. <i>"Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. For purposes of this regulation, a public institution is an inpatient facility that is financed and operated by a county, state, municipality, or other unit of government. A privately owned nursing facility is not a public institution.</i></p>	<p>Article VIII.C.</p>
<p><b>42 C.F.R. § 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:</b></p>		<p><b>Reference in 1-2 Bed AFH Standards</b></p>
<p><b>1.</b></p>	<p>Setting staff responds to the needs and preferences of residents receiving HCBS, as identified in their AFH and long-term care person-centered service and support plans, in a timely manner.</p>	<p>Article IX.D.7.</p>
<p><b>42 C.F.R. § 441.301(c)(4)(i): The setting is integrated in and supports full access of people 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 people not receiving Medicaid HCBS.</b></p>		<p><b>Reference in 1-2 Bed AFH Standards</b></p>
<p><b>2.</b></p>	<p>Setting supports access to a variety of community<sup>1</sup>-based activities that provide psycho-social value to residents based on their person-centered assessments and plans. Examples of where such activities can take place may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Parks</li> <li>• Schools and/or colleges/universities</li> <li>• Library</li> <li>• Community center</li> <li>• Job center</li> <li>• Restaurants</li> <li>• Stores</li> </ul>	<p>Article IV.A.</p>

<sup>1</sup> In these benchmarks, “community” means the community available to an individual in the resident’s geographic area who is not receiving Medicaid HCBS. It does not refer to the campus or grounds of the residential setting.

3.	Setting supports opportunities for interaction inside and outside the setting with people from the broader community who do not have a disability and are not paid to provide support.	Article VII.C.1.g.
4.	Setting provides residents the same degree of access to the community as people not receiving HCBS, including staff and household members.	Article IV.A.
5.	<p>Setting provides or supports resident access to transportation between the setting and the broader community, including to paid employment in all the following ways:</p> <ul style="list-style-type: none"> <li>• The setting provides and supports access to accessible public transportation, when available.</li> <li>• If the setting provides its own transportation, the setting provides transportation when requested by the resident within the established setting parameters.</li> <li>• The setting provides information on and supports access to additional transportation options.</li> </ul>	Article VII.G.3.
6.	<p>Setting provides:</p> <ul style="list-style-type: none"> <li>• A secure place for residents receiving HCBS to store their personal belongings.</li> <li>• Opportunity for residents receiving HCBS to choose where they keep their monetary resources in the same ways as people not receiving HCBS. A setting may not require access to, or control of, resident funds.</li> <li>• Unrestricted access to personal funds held by the setting.</li> <li>• Decision-making opportunities for spending one’s own money.</li> </ul>	Article IV.C.5. Article IX.D.10.
7.	For residents who want to work or are working, setting supports the resident’s opportunities to seek and maintain competitive integrated employment. <sup>2</sup>	Article IV.A. Article VII.A. Article VII.C.1.f. Article IX.D.21.
<p><b>42 C.F.R. § 441.301I(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</b></p>		<p><b>Reference in 1-2 Bed AFH Standards</b></p>

<sup>2</sup> [Department of Health Services and Department of Workforce Development Competitive Integrated Employment \(CIE\) Definition](#)

<b>the individual's needs, preferences, and, for residential settings, resources available for room and board.</b>		
<b>8.</b>	<p>Setting has a process for notifying managed care organization (MCO) care manager or Include, Respect, I Self Direct (IRIS) consultant if resident expresses desire to consider other setting options.</p> <p>Note: The MCO or IRIS Consultant Agency (ICA) is responsible for informing the individual and legal decision-maker of residential options and documenting them in the long-term care person-centered service and support plan.</p>	Article VII.C.
<b>9.</b>	Setting allows prospective residents the opportunity to tour the setting.	Article VII.C.3.
<b>42 C.F.R. § 441.301(c)(4)(iii): Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint</b>		<b>Reference in 1-2 Bed AFH Standards</b>
<b>10.</b>	<p>Setting ensures:</p> <ul style="list-style-type: none"> <li>All information about residents receiving HCBS services is kept private and confidential.</li> <li>Staff receive training on privacy and confidentiality upon hire and annually thereafter.</li> </ul>	<p>Article V.H.1.h.          Article V.H.2.h.          Article IX.D.4.</p>
<b>11.</b>	Setting ensures AFH and long-term care person-centered service and support plans, including behavior support plans, are implemented in such a way as to not impede the rights of other residents.	Article VII.D.
<b>12.</b>	<p>Setting ensures staff remain discreet and respectful at all times, including:</p> <ul style="list-style-type: none"> <li>Addressing residents in the way they would like to be addressed including resident's preferred pronouns, name, nickname, and title.</li> <li>Not talking about a resident receiving services in the presence of others.</li> <li>Not discussing residents as if they were not present.</li> </ul>	Article IX.D.2.

13.	Settings using restraints or restrictive measures must: <ul style="list-style-type: none"> <li>• Use them in accordance with Wisconsin <a href="#">Restrictive Measures Guidelines and Standards, P-02572</a>.</li> <li>• Report any unapproved or emergency use of restrictive measures to the applicable resident's MCO or ICA.</li> </ul>	Article II.A.2.b.2.k. Article VI.D.5.b.
14.	Setting notifies residents of their rights orally and in writing upon initial placement and annually.	Article VII.D.3.c.5. Article IX.B.
<b>42 C.F.R. § 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.</b>		<b>Reference in 1-2 Bed AFH Standards</b>
15.	Setting offers opportunities to experience activities that promote new learning related to areas of interest identified by the resident receiving HCBS.	Article VII.C.1.f. Article VII.D.1.b.6) Article VII.F.
16.	Setting provides and supports age-appropriate tasks and activities both inside and outside the setting that are comparable to tasks and activities for people of similar ages, skills, abilities, and desires, who do not receive HCBS. Supports include using adaptive aids, technology, communication approaches, and accommodations.	Article VII.F.
17.	Residents receiving HCBS can decline to participate in activities.	Article IX.D.6. Article IX.D.16. Article IX.D.29.
18.	Setting ensures that residents who receive HCBS make meaningful informed choices in their daily activities, which align with their personal goals, interests, and needs. Meaningful choices may be reflected in a variety of ways including: <ul style="list-style-type: none"> <li>• Person-centered assessments</li> </ul>	Article VII.D.

	<ul style="list-style-type: none"> <li>• Formal interviews</li> <li>• Informal discussion with residents receiving HCBS</li> <li>• Consideration of input from legal decision-maker or others as identified by the resident.</li> </ul>	
<b>42 C.F.R. § 441.301(c)(4)(v): Facilitates individual choice regarding services and supports, and who provides them.</b>		<b>Reference in 1-2 Bed AFH Standards</b>
<b>19.</b>	<p>Residents who receive HCBS may choose to receive services and supports in the same places as others without disabilities and are not mandated to use services provided or suggested by the setting. This includes:</p> <ul style="list-style-type: none"> <li>• Medical treatments and therapies</li> <li>• Other preferred services, such as hair care, nails care, etc.</li> <li>• Religious services and activities</li> <li>• Day habilitation services and other services</li> </ul>	<p>Article VII. F.                  Article IX.D.31.</p>
<h3>HCBS Settings Rule Modifications</h3> <p>The Centers for Medicare and Medicaid Services (CMS) has issued Home and Community-Based Setting (HCBS) rules allowing modifications to specific setting rules in certain circumstances. <b>The benchmarks with a + (plus sign) may have a HCBS Settings Rule Modification.</b> These are the only HCBS requirements to which modifications may be applied. When implementing a HCBS Settings Rule Modification, requirements (1)-(8) listed below must be documented in the individuals long-term care and AFH person-centered services and support plans. The benchmarks with an * require an approved exception request before an HCBS Settings Rule Modification may be implemented by the AFH.</p>		
<p><b>42 C.F.R. § 441.301(c)(4)(vi)(F) Any modification of the additional conditions, under <u>§ 441.301(c)(4)(vi)(A) through (D)</u>, 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:</b></p> <ol style="list-style-type: none"> <li><b>(1) Identify a specific and individualized assessed need.</b></li> <li><b>(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</b></li> <li><b>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</b></li> </ol>		

<p><b>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</b>  <b>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</b>  <b>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</b>  <b>(7) Include the informed consent of the individual.</b>  <b>(8) Include an assurance that interventions and supports will cause no harm to the individual.</b></p>		
20.	If a resident needs an HCBS Settings Rule Modification, the modification is based on the resident's individualized, assessed needs and is documented in the resident's long-term care and AFH person-centered service plans in accordance with 1-8 above.	Article VIII.B.
21.	If a resident has an HCBS Settings Rule Modification documented in the resident's long-term care person centered services plan, the setting implements the HCBS modification as outlined.	Article VIII.B.
<p><b>42 C.F.R. § 441.301(c)(4)(vi):In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:</b></p>		
<p><b>42 C.F.R. § 441.301(c)(4)(vi)(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</b></p>		Reference in 1-2 Bed AFH Standards
22.	The setting must ensure that each resident has a signed service agreement following the requirements outlined in Article VII.D.3. Reasons and notice requirements for involuntary discharge listed on the service agreement must align with Article VII.E.	Article VII.D.3. Article VII.E.
<p><b>42 C.F.R. § 441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit:</b>  <b>42 C.F.R. § 441.301(c)(4)(vi)(B)(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>		Reference in 1-2 Bed AFH Standards

<p><b><i>The benchmarks with a + (plus sign) may have a HCBS Settings Rule Modification. The benchmarks with an * (asterisk) require an approved exception request before an HCBS Settings Rule Modification may be implemented by the AFH.</i></b></p>		
23.	<p>+*Residents have privacy in their sleeping or living unit. Setting ensures:</p> <ul style="list-style-type: none"> <li>• Residents receiving HCBS have privacy when receiving assistance with personal cares.</li> <li>• Residents are afforded privacy in communications with others including phone calls, video calls, messages, mail, email, etc.</li> </ul> <p>It does not utilize electronic monitoring in resident rooms, bathrooms, or other areas where services and supports are provided, or common areas including living and dining areas. Electronic monitoring must align with IV.C. 2.</p>	<p>Article IV.C.1.          Article IV.C.2.          Article IV.E.8.          Article IX.D.3.</p>
24.	<p>+*Each resident’s bedroom has a:</p> <ul style="list-style-type: none"> <li>• Lockable entrance door that can be utilized by the resident.</li> <li>• Key that has been provided to the resident.</li> </ul>	<p>Article IV.E.7.a.          Article IV.E.7.b.</p>
25.	<p>+Setting staff knock and receive permission before entering a resident’s bedroom except in the case of an emergency.</p>	<p>Article IX.D.3.</p>
26.	<p>+Setting maintains and implements a list of which staff have access to resident or master keys to the resident’s living and sleeping unit.</p>	<p>Article IV.E.7.c.</p>
<p><b>42 C.F.R. § 441.301(c)(4)(vi)(B)(2) Individuals sharing units have a choice of roommates in that setting.</b></p>		<p><b>Reference in 1-2 Bed AFH Standards</b></p>
27.	<p>+A resident sharing their bedroom must have a choice of roommates.</p>	<p>Article IV.E.6.b.</p>
<p><b>42 C.F.R. § 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.</b></p>		<p><b>Reference in 1-2 Bed AFH Standards</b></p>

28.	+Setting allows residents to furnish and decorate their bedroom within the bounds of the lease or service agreement. The lease or service agreement cannot fully restrict the residents right to furnish and decorate their bedroom.	Article IV.E.7.e.
<b>42 C.F.R. § 441.301(c)(4)(C) Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.</b>		<b>Reference in 1-2 Bed AFH Standards</b>
29.	+Setting allows residents full access to the kitchen with cooking facilities, dining area, the laundry room, and furniture that meets the physical needs of the residents in shared areas.	Article IV.B. Article IV.C.10.
30.	+Setting provides residents access to food and drink at any time and ensures a dignified, age-appropriate dining experience. This includes: <ul style="list-style-type: none"> <li>• A resident’s ability to choose when and where they eat including a private option for dining.</li> <li>• A resident’s access to food and drink at any time.</li> <li>• No restrictions to the type or frequency of food or drink consumed by the resident.</li> </ul>	Article VII.J.1. Article VII.J.2. Article IX.D.30
31.	+Setting allows residents to choose and control their schedule and activities including: <ul style="list-style-type: none"> <li>• When they wake up, eat, and go to bed. Residents are not required to mirror the setting schedule.</li> <li>• When they leave and return to the setting. The setting will accommodate scheduled and unscheduled activities and will not impose a setting-wide curfew.</li> <li>• When and for how long they access personal electronic devices including computers, tablets, cell phones, and other personal communication devices.</li> <li>• Who they interact with and for how long. Residents may spend as much of their free time as they like with whomever they choose.</li> <li>• Community-based and setting-based options for where services and activities take place.</li> <li>• An immediate and independent access method of entrance to the home.</li> </ul>	Article IV.C.15. Article VII.J. Article IX.D.15. Article IX.D.29.
32.	+Setting does not have rules to restrict freedom of movement inside or outside the setting that can be considered different than people not receiving HCBS.	Article IV.C.15. Article IX.D.19.

<b>42 C.F.R. § 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.</b>		<b>Reference in 1-2 Bed AFH Standards</b>
<b>33.</b>	+Setting allows residents to have visitors of their choosing whenever they wish. <ul style="list-style-type: none"> <li>• The setting does not have suggested or recommended visiting hours.</li> <li>• The setting does not prohibit overnight guests in the resident's bedroom. No guest may remain for more than two weeks without written consent of setting, which will not be unreasonably withheld.</li> </ul>	Article IX.D.15.
<b>34.</b>	+Setting provides: <ul style="list-style-type: none"> <li>• A private, unsupervised place to meet visitors and</li> <li>• Allows residents to meet with visitors in their bedroom.</li> </ul>	Article IX.D.15.
<b>42 C.F.R. § 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.</b>		<b>Reference in 1-2 Bed AFH Standards</b>
<b>35.</b>	Setting must be physically accessible to all current residents and to prospective residents accepted for placement in the home.	Article IV.B. Article IV.C.15

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**Additional Resources for Medicaid Home and Community-Based Services (HCBS)**

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HCBS Rule and Requirements for Residential Providers:

<https://www.dhs.wisconsin.gov/hcbs/residential.htm>

Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes:

<https://www.dhs.wisconsin.gov/regulations/afh/1-2bed/index.htm>

Please contact the HCBS review staff with questions at 608-261-6393 or by email at [dhshcbsreview@dhs.wisconsin.gov](mailto:dhshcbsreview@dhs.wisconsin.gov)