

Benchmark Guide for Adult Residential Settings: Home and Community-Based Services (HCBS) Settings Rule

This guide provides justification to support determination of compliance. It is intended to be used as a reference of state benchmarks for compliance with the federal HCBS settings rule.

HCBS requirements from the Code of Federal Regulations (C.F.R.) are cited in blue throughout this document.

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:

Suggested Questions to Understand Area of Compliance	Intent and DHS Benchmark for Compliancy
<p>42 C.F.R. § 441.301(c)(4)(i): The setting is integrated and supports full access of individuals to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. This includes opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community.</p>	
<p><input type="checkbox"/> Does the facility offer options for residents to receive services in the community rather than at the facility?</p>	<p>Benchmark: Yes, the facility offers options.</p> <p>Intent: Residents have a choice of service locations in addition to the facility. Choices mirror what is available to the broader community.</p>
<p><input type="checkbox"/> Residents make independent choices that are not contingent upon other residents going to the same activities in the following community activities.</p> <p>For example: shop in the community, attend religious services, schedule and attend appointments, or visit with family and friends in the community.</p>	<p>Benchmark: At least one type of activity must be available in the community (for example: shop in the community, attend religious services).</p> <p>Intent: Residents have a choice of activities, not just those at the facility. Choices mirror what is available to the broader community.</p>
<p><input type="checkbox"/> Are resources other than public transportation available for residents to access the broader community?</p>	<p>Benchmark: Yes, resources other than public transportation are available.</p> <p>Intent: Resources mirror community options and access.</p> <p>Examples of alternatives: Residents have access to rides from family, friends, MCO, waiver agency, facility-provided transportation, private companies, volunteers, etc.</p>

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<ul style="list-style-type: none"> <input type="checkbox"/> Is public transportation available near the facility? <input type="checkbox"/> If yes, do residents have access to it? <input type="checkbox"/> Is assistance or training in the use of public transportation offered to residents? <input type="checkbox"/> If rural community, what alternatives exist, and how do residents access them? 	<p>Benchmark: This is based on the community:</p> <ul style="list-style-type: none"> • If public transportation (train, bus, taxi) is available, residents must have access. • If public transport is available, residents must be offered assistance or training. • If no public transportation is available, the facility must have a plan to ensure residents are provided transportation that allows them access to the community.
<ul style="list-style-type: none"> <input type="checkbox"/> Are residents dependent on facility staff for transportation options? <input type="checkbox"/> If staff is unavailable, how is transportation provided? 	<p>Benchmark: No, residents are not dependent on facility staff for transportation options.</p> <p>Residents must receive assistance from facility staff for transportation needs when requested.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Are residents required to sign over their employment paychecks to the facility? <input type="checkbox"/> Have residents or legal guardians granted consent to the facility for managing funds? <input type="checkbox"/> Is there a central location at the facility where residents' personal finances are held? 	<p>Benchmark: No, residents are not required to sign over their paychecks to the facility.</p> <p>Intent: Providers may only receive signed-over checks to facilitate resident access.</p> <p>Resident funds are managed by the facility only for security or recordkeeping purposes, and this does not impact resident access. Residents or legal guardians must agree to facility managing funds.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Does the facility restrict when residents can access their personal funds? <input type="checkbox"/> Does the facility restrict the amounts of personal funds residents can access? 	<p>Benchmark: No, the facility does not impose restrictions in either case.</p> <p>Intent: There are no policy restrictions. Amounts are not limited unless the legal guardian or ISP specifies. Residents have access to all of their money held by the facility.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Is personal-fund access dependent on facility staff being present? 	<p>Benchmark: No, this will only apply if the person requests funds be held; staff must be readily available to provide access to funds in accordance with resident agreement with the provider.</p> <p>Intent: Residents must be able to access their personal funds and resources to the extent of their functional capability, in a manner of their choosing, and at times agreed upon between the provider and the resident and his or her legal representative, as applicable.</p> <p>For more detailed information: www.dhs.wisconsin.gov/publications/p02254.pdf.</p>

Suggested Questions to Understand Area of Compliance	Intent and DHS Benchmark for Compliancy
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.	
<input type="checkbox"/> Is a telephone available to residents for personal use? <input type="checkbox"/> Is the telephone in a location that has space around it to ensure privacy? Example: A cordless phone located in community area that reaches within living spaces meets the threshold.	Benchmark: Yes, a telephone is available in a location that ensures privacy. Intent: A telephone (landline or cell) is available 24 hours every day within the facility.
Are there restrictions on the use of (select all that apply): <input type="checkbox"/> Private cellphones <input type="checkbox"/> Computers <input type="checkbox"/> Other personal communication devices	Benchmark: No, personal communication devices are not restricted. Residents must have unrestricted access to cellphones, computers, and personal devices unless documented in ISP. Residents must have access to private telephone calls, for example, a cordless phone or a corded phone in a private room.
<input type="checkbox"/> Is health information, including the resident’s daily therapeutic schedules, medications, or dietary restrictions, kept private?	Benchmark: Yes, health information is kept private. Residents’ health information, including daily therapies, medications, dietary restrictions, and behavior plans, must be kept out of plain sight. Example: Persons are not able to view any schedules, medications, or restrictions (dietary or behavioral) in plain sight.
<input type="checkbox"/> Are restrictive measures, including isolation, chemical restraints, and physical restrictions, used? <input type="checkbox"/> If yes, are approved restrictive measures documented in the resident’s care plan?	Benchmark: The facility must have policies in place addressing restrictive measures. Intent: Restricted measures are allowed if approved by the state (certifiers must verify approval).
<input type="checkbox"/> Are policies and procedures for reporting followed when unapproved measures are used?	Benchmark: Yes, the facility must have policies in place addressing restrictive measures. Intent: Restricted measures are allowed if approved by the state (certifiers must verify approval). Use of approved and unapproved restrictive measures under emergency conditions as defined in the Standards guidelines must be reported to the certifying agency by the next business day.

Suggested Questions to Understand Area of Compliance	Intent and DHS Benchmark for Compliancy
<input type="checkbox"/> Do all staff (paid and unpaid) receive new-hire training related to residents' rights? <input type="checkbox"/> Do all staff (paid and unpaid) receive continuing education related to residents' rights?	<p>Benchmark: Yes, all staff (paid and unpaid) receive initial training on resident rights. No exemptions or prior training at other facilities will apply.</p> <p>Benchmark: Yes, all staff (paid and unpaid) receive annual training on resident rights. No exemptions or prior training at other facilities will apply.</p> <p>Clarification: Anyone that provides direct care for the resident must have resident-rights training. If owner is the only staff, owner must have resident-rights training.</p> <p>Everyone, including nurses, must have resident-rights training.</p>
<input type="checkbox"/> Are facility policies on resident rights regularly reassessed for compliance and effectiveness, and amended as necessary?	<p>Benchmark: Yes, facility policies on resident rights are regularly reassessed.</p> <p>Intent: Resident rights policies reflect current codes and regulations.</p> <p>Clarification: Facilities must regularly reassess their policies on resident rights to ensure compliance and effectiveness.</p>
<p>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.</p>	
<input type="checkbox"/> Physical Environment: Are there gates, locked doors, or other barriers preventing a resident's entrance to or exit from certain areas of the facility?	<p>Benchmark: No, there are no barriers to passage.</p> <p>Intent: Residents have the same access to facilities (for example, a gym or a pool) as the broader community. Any restrictions must accompany a DHS waiver or approval.</p> <p>Clarification: In some instances, barriers may be acceptable as long as they do not restrict access to the living areas of the facility.</p> <p>Examples of allowable restrictions: medical dispensation areas, offices, or basements with no common spaces.</p>
<p>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:</p>	
<p>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 laws 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.</p>	

<p style="text-align: center;">Suggested Questions to Understand Area of Compliance</p>	<p style="text-align: center;">Intent and DHS Benchmark for Compliancy</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Does the provider-owned or controlled residential setting have in place a written, legally enforceable lease for each resident? <input type="checkbox"/> If no, does the provider-owned or controlled residential setting have in place for each resident a written agreement in accordance with licensing or certification requirements? 	<p>Benchmark: The answer to one of the questions must be yes.</p> <p>Intent: Residents must receive a document that provides protections, which address an eviction process and appeals comparable to those provided under Wisconsin's landlord-tenant laws.</p>

42 C.F.R. § 441.301(c)(4)(vi)(B): Each individual has privacy in their sleeping or living unit.	
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.	
<input type="checkbox"/> Does each living unit have lockable entrance doors? (Living unit is defined as apartment or bedroom.)	<p>Benchmark: Yes, each living unit has a lockable entrance door.</p> <p>Intent: The facility provides privacy and security for residents and their belongings.</p> <p>The facility provides lockable key entry to the bedroom or the apartment. Lockable entries must unlock from the outside with a key, with each door being keyed differently (push-pin locks are not acceptable).</p> <p>The facility must provide individual keys to all residents, unless written in a resident's care plan.</p>
<input type="checkbox"/> If yes, does only the resident and appropriate facility staff have keys to doors?	<p>Benchmark: Yes, keys have been provided to the resident and appropriate staff. A master key for facility staff is acceptable.</p> <p>Clarification: Policy documentation must indicate who has access to keys and how the policy will be maintained.</p> <p>Resident and legal guardian must receive copy of documentation stating which staff has access to keys.</p>
<input type="checkbox"/> Does facility staff always knock and receive permission prior to entering a resident's living space? <input type="checkbox"/> Does facility staff only use a key to enter a living area or privacy space under circumstances agreed upon with the resident?	<p>Benchmark: Yes, staff always knock and receive permission before entering.</p> <p>Staff must knock and receive permission prior to entry to a resident's private living area unless documented in ISP.</p>
42 C.F.R. § 441.301(c)(4)(vi)(B)(2): Individuals sharing units have a choice of roommates in that setting.	
<input type="checkbox"/> Do residents sharing units have a choice of roommates? (Roommate choices at facility may be limited by the size of the facility.)	<p>Benchmark: Yes, residents have a choice when applicable.</p> <p>Intent: The facility informs residents of their right to provide input and participate in the choice of a roommate.</p>
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.	
<input type="checkbox"/> Do residents have the freedom to furnish and decorate their sleeping or living units within the bounds of the lease or other written legal agreement?	<p>Benchmark: Yes, residents have this freedom.</p> <p>Intent: Residents have the freedom to furnish and decorate their room within the bounds of the lease or agreement.</p>

42 C.F.R. § 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.

<p>Residents have full access to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Kitchen with cooking facilities <input type="checkbox"/> Dining area <input type="checkbox"/> Comfortable seating in shared areas <input type="checkbox"/> Laundry 	<p>Benchmark: Residents have access to the dining area and comfortable seating at a minimum.</p> <p>Intent: Residents have full access to facilities unless individual restrictions documented in their ISP or their BSP apply.</p>
<p><input type="checkbox"/> Do residents have access to food at any time, as appropriate?</p>	<p>Benchmark: Yes, residents have this access.</p> <p>Intent: Residents have choice in reasonable food access.</p> <p>Clarification: When a resident’s ability to access food at any time must be limited due to diagnosis, medical condition, or other related circumstance, it must be documented in the resident’s care plan.</p>
<p><input type="checkbox"/> Do residents have the freedom and support to control their schedules and activities?</p>	<p>Benchmark: Yes, residents have this freedom.</p> <p>Intent: Residents are given choice in their schedules and activities.</p> <p>Example: The resident likes to sleep late. Staff supports this by providing assistance with eating after the resident wakes up.</p>
<p><input type="checkbox"/> Are residents able to leave and return to the facility at will to accommodate scheduled and unscheduled activities?</p>	<p>Benchmark: Yes, the resident is able to leave and return to the facility to accommodate activities.</p> <p>Intent: Residents have choice of access times.</p> <p>Resident schedules are not required to mirror facility schedules.</p>
<p><input type="checkbox"/> Is there a curfew for a resident’s return to the facility?</p>	<p>Benchmark: No, imposing a facility-wide curfew is not allowed in the program statement or house rules.</p> <p>Example 1: External doors are locked at 8 p.m., but the resident has a procedure to gain access after 8 p.m. This is allowable.</p> <p>Example 2: Residents are not allowed to leave after 10 p.m. This is not acceptable.</p>

42 C.F.R. § 441.301(c)(4)(vi)(D): Individuals are able to have visitors of their choosing at any time.	
<input type="checkbox"/> Do residents have a private, unsupervised space to meet visitors? Clarification: A resident’s living unit counts as space.	Benchmark: Yes, residents have private space to meet visitors. Residents may have visitors whenever they wish and they may meet with them in a private area. Clarification: Facilities cannot prohibit overnight guests. The provider can place some restrictions on extended stays.
42 C.F.R. § 441.301(c)(4)(vi)(E): The setting is physically accessible to the individual.	
<input type="checkbox"/> Are there residents in your facility with mobility impairments? <input type="checkbox"/> Is the facility physically accessible and free from obstructions such as steps, lips in a doorway, or narrow hallways that limit the resident’s mobility in the setting? <input type="checkbox"/> Are there environmental adaptations, such as a stair lift or elevator, to mitigate the obstruction?	Benchmark: Yes, the facility is accessible and free of obstructions. Intent: These address dignity and access issues. Residents are able to independently access the facility. Benchmark: Yes, the facility provides adaptations to mitigate the obstructions.
42 C.F.R. § 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.	
<input type="checkbox"/> Does each resident have an up-to-date, person-centered, adult family home (AFH) service plan in place? <input type="checkbox"/> Is the AFH person-centered service plan separate from and in addition to the certifying agency service plan?	Benchmark: The individual has a current person-centered service plan in place. The person-centered planning process is led by the individual receiving services and supports, where possible. The individual’s representative has a participatory role, as needed and as defined by the individual. Intent: The person-centered service plan reflects the services and supports that are important for that individual to meet their needs (as identified through an assessment of functional need), as well as what is important to the individual.