

**HOME AND COMMUNITY-BASED SERVICES (HCBS) SETTINGS RULE**  
**BENCHMARKS: LICENSED COMMUNITY-BASED RESIDENTIAL FACILITIES (CBRF), LICENSED 3-4 BED ADULT FAMILY HOMES (AFH), AND CERTIFIED RESIDENTIAL CARE APARTMENT COMPLEXES (RCAC)**

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 licensed CBRF, 3-4 bed AFH, and certified RCAC 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>441.301(c)(4)(i)</b> <b>The setting is integrated in and supports access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b>	
<b>1.</b>	Engage in community <sup>1</sup> life, receive services in the community, and seek competitive integrated employment
<b>1a.</b>	The provider identifies resident's preferences regarding competitive integrated employment and community-based activities and integration and documents them in the provider's person-centered plan. (Similar to <a href="#">Wis. Admin. Code §§ DHS 83.35(1)(c)10</a> , <a href="#">DHS 89.26(2)(g)</a> , <a href="#">DHS 89.27(2)(a)3</a> , and <a href="#">DHS 89.34(3)</a> . <sup>2</sup> )
<b>1b.</b>	The provider supports residents interested in pursuing competitive integrated employment by notifying the Medicaid case manager (managed care organization (MCO) care manager or Include, Respect, I Self-Direct (IRIS) consultant).
<b>1c.</b>	The provider provides or facilitates residents with the opportunity to participate in typical community life activities outside of the facility based on the individual's preferences and needs. (Similar to <a href="#">Wis. Stat. § 50.09(1)(h)</a> , <a href="#">Wis. Admin. Code §§ DHS 83.38(1)(d)</a> , <a href="#">DHS 83.38(1)(e)</a> , <a href="#">DHS 83.38(1)(j)</a> , <a href="#">DHS 89.27(2)(a)3</a> , <a href="#">DHS 89.34(8)</a> , and <a href="#">DHS 89.34(11)</a> .)
<b>1d.</b>	The provider's activities are individualized and include more than just facility-based group activities.

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

<sup>2</sup> Administrative code references to DHS will be added for 3-4 bed adult family homes.

1e.	<p>The provider provides or supports resident access to transportation between facility and the broader community including paid employment. (Similar to <a href="#">Wis. Admin. Code § DHS 83.38(1)(k)</a>).</p> <ul style="list-style-type: none"> <li>• Transportation is available for all residents including for residents who cannot access public transportation and do not have natural supports (i.e., friends or family) to access the broader community including paid employment settings.</li> <li>• The provider provides or arranges for accessible transportation when requested by the resident within the established written parameters in the provider's person-centered plan and the Medicaid person-centered plan. For CBRFs, the "reasonable number of community activities of interest" should be determined based on the needs of the resident and documented in the provider's person-centered plan and/or the Medicaid person-centered plan.</li> </ul>
2.	Control personal resources.
2a.	Residents are not required to sign over their paychecks to the provider. Providers may only receive signed-over checks to facilitate resident access.
2b.	Resident funds are managed by a provider only for security and/or record keeping purposes, and this does not impact resident access. Residents or legal decision makers must agree to provider managing funds. (Similar to <a href="#">Wis. Stat. § 50.09(1)(c)</a> , <a href="#">Wis. Admin. Code §§ DHS 83.34(1)</a> , and <a href="#">DHS 89.34(4)</a> .)
2c.	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 or legal decision maker, as applicable. (Similar to <a href="#">Wis. Stat. § 50.09(1)(c)</a> and <a href="#">Wis. Admin. Code § DHS 89.34(4)</a> .)
<b>441.301(c)(4)(ii)</b> <b>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.</b>	
3.	Choice of setting
3a.	The provider has a process for notifying the Medicaid case manager if resident expresses desire to consider other living options.
<b>441.301(c)(4)(iii)</b> <b>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b>	
4.	Training on resident rights

4a.	All staff (paid and unpaid including volunteers) receive initial and annual resident rights training. (Similar to <a href="#">Wis. Stat. § 50.09(4)</a> , <a href="#">Wis. Admin. Code §§ DHS 83.21(1)</a> , and <a href="#">DHS 89.23(4)(d)1</a> ).
5.	Right to privacy, dignity and respect, and freedom from coercion and restraint
5a.	Provider ensures all information about residents receiving HCBS services is kept private and confidential. ( <a href="#">Wis. Stat. § 50.09(1)(f)2</a> , <a href="#">50.09(1)(f)3</a> , <a href="#">Wis. Admin. Code §§ DHS 83.32(3)(b)</a> , <a href="#">DHS 83.42(2)</a> , <a href="#">DHS 89.23(3)(e)</a> , and <a href="#">DHS 89.34(12)</a> .)
5b.	Provider ensures staff treat residents with dignity and respect by addressing residents in a way they would like to be addressed including resident's preferred pronouns, name, nickname, and title, and by not talking about a resident receiving services in the presence of others. ( <a href="#">Wis. Stat. § 50.09(1)(e)</a> , <a href="#">Wis. Admin. Code §§ DHS 83.32(3)(d)</a> , <a href="#">DHS 89.34(1)</a> , and <a href="#">89.34(14)</a> .)
5c.	Provider ensures residents have freedom from coercion including coercion against filing a complaint or grievance. ( <a href="#">Wis. Stat. § 50.09(1)(b)</a> , <a href="#">Wis. Admin. Code §§ DHS 83.32(3)</a> , <a href="#">DHS 83.33(1)(c)</a> , <a href="#">Wis. Admin. Code DHS 89.36</a> , <a href="#">Wis. Admin. Code §§ DHS 89.44(5)</a> , and <a href="#">Wis. Admin. Code DHS 89.58</a> ).
5d.	<p>Providers using restraints or restrictive measures must:</p> <ul style="list-style-type: none"> <li>• Use them in accordance with Wisconsin <a href="#">Restrictive Measures Guidelines and Standards, P-02572</a> and <a href="#">DQA's restrictive measure request process</a>. (<a href="#">Wis. Stat. § 50.09(1)(k)</a>, <a href="#">Wis. Admin. Code §§ DHS 83.27(2)(g)</a>, <a href="#">DHS 83.32(3)(e)</a>, <a href="#">DHS 83.32(3)(f)</a>, and <a href="#">DHS 83.32(3)(g)</a>).</li> <li>• Report any unapproved or emergency use of restrictive measures to the resident's MCO or ICA. (<a href="#">Wis. Stat. § 50.035(5)(b)1</a> and <a href="#">Wis. Admin. Code § DHS 83.12(1)(a)</a>).</li> </ul>
<b>441.301(c)(4)(iv)</b> <b>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>	
6.	Individual autonomy and choice
6a.	Provider ensures residents can make meaningful informed choices by not requiring residents to participate in activities or events. ( <a href="#">Wis. Stat. § 50.034(3)(a)</a> , <a href="#">Wis. Stat. § 50.09(1)</a> , <a href="#">Wis. Admin. Code §§ DHS 83.32(3)(i)</a> , <a href="#">DHS 83.38(1)(a-k)</a> , <a href="#">DHS 89.23(3)(b)</a> , <a href="#">DHS 89.23(3)(d)</a> , <a href="#">DHS 89.23(3)(e)</a> , <a href="#">DHS 89.23(4)(b)1</a> , <a href="#">DHS 89.23(4)(d)2.b.</a> , <a href="#">89.26(3)(a)</a> , <a href="#">DHS 89.26(4)</a> , <a href="#">DHS 29.27(1)</a> , <a href="#">DHS 89.28(1)</a> , <a href="#">DHS 89.34(3)</a> , <a href="#">DHS 89.34(5)</a> , <a href="#">DHS 89.34(8)</a> , <a href="#">DHS 89.34(11)</a> , and <a href="#">DHS 89.34(15)</a> ).
<b>441.301(c)(4)(v)</b> <b>Facilitates individual choice regarding services and supports, and who provides them.</b>	

7.	Choice of services and supports
7a.	<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 provider. This includes:</p> <ul style="list-style-type: none"> <li>• Medical treatments and therapies</li> <li>• Other preferred services, such as hair care, nail care, etc.</li> <li>• Religious services and activities</li> <li>• Other paid or unpaid services</li> </ul> <p>(<a href="#">Wis. Stat. § 50.034(3)(a)</a>, <a href="#">Wis. Stat. § 50.09(1)</a>, <a href="#">Wis. Admin. Code §§ DHS 83.32(3)(j)</a>, <a href="#">DHS 83.38(1)(a-k)</a>, <a href="#">DHS 89.23(3)(b)</a>, <a href="#">DHS 89.23(3)(d)</a>, <a href="#">DHS 89.23(3)(e)</a>, <a href="#">DHS 89.23(4)(b)1</a>, <a href="#">DHS 89.23(4)(d)2.b.</a>, <a href="#">DHS 89.26(3)(a)</a>, <a href="#">DHS 89.26(4)</a>, <a href="#">DHS 29.27(1)</a>, <a href="#">DHS 89.28(1)</a>, <a href="#">DHS 89.34(3)</a>, <a href="#">DHS 89.34(5)</a>, <a href="#">DHS 89.34(8)</a>, <a href="#">DHS 89.34(11)</a>, and <a href="#">DHS 89.34(15).</a>)</p>
<p style="text-align: center;"><b>HCBS Settings Rule Modifications</b></p> <p><b>Definition: HCBS Settings Rule Modification:</b> Restrictions or limitations to a member’s HCBS rights for an individual resident that is implemented by the residential care provider, supported by a specific assessed need to ensure the health, safety, and well-being of the individual or the community, and documented in the resident’s Medicaid person-centered plan.</p> <p>The Centers for Medicare and Medicaid Services (CMS) has issued Home and Community-Based Setting (HCBS) rules allowing modifications to specific provider 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 individual’s Medicaid person-centered plan.</p>	
<p><b>441.301(c)(4)(vi)</b>  <b>In a provider-owned or controlled residential provider, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:</b></p>	

**441.301(c)(4)(vi)(F)**

Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

- (1) Identify a specific and individualized assessed need.
- (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- (3) Document less intrusive methods of meeting the need that have been tried but did not work.
- (4) Include a clear description of the condition that is directly proportionate to the specific assessed need.
- (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- (7) Include the informed consent of the individual.
- (8) Include an assurance that interventions and supports will cause no harm to the individual.

<b>8.</b>	HCBS settings rule modifications
<b>8a.</b>	Providers must have a copy of the resident's Medicaid person-centered plan.
<b>8b.</b>	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 Medicaid person-centered plan in accordance with 1-8 above.
<b>8c.</b>	If a resident has an HCBS Settings Rule Modification documented in the resident's Medicaid person-centered plan, the provider implements and collects data on the HCBS Settings Rule Modification as outlined. The setting provides data to the resident, legal decision maker, or Medicaid case manager upon request.
<b>8d.</b>	If a resident is assessed to need an HCBS Settings Rule Modification, but consent is not obtained, provider documents the modification that was recommended and any associated risk to not implementing the modification in the provider's person-centered plan. The modification cannot be implemented without consent.

**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>9.</b>	Service agreement
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<b>9a.</b>	The provider must ensure that each resident has a signed service agreement following the requirements outlined in DHS administrative code. Reasons and notice requirements for involuntary discharge listed on the service agreements must align with DQA administrative code. ( <a href="#">Wis. Admin. Code DHS 83.29</a> , <a href="#">Wis. Admin. Code § DHS 83.31(4)</a> , <a href="#">Wis. Admin. Code DHS 89.27</a> , <a href="#">DHS 89.28</a> and <a href="#">Wis. Admin. Code § DHS 89.29(3)</a> .)
<b>441.301(c)(4)(vi)(B)</b> <b>Each individual has privacy in their sleeping or living unit:</b> <b>(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b> <b>(2) Individuals sharing units have a choice of roommates in that setting.</b> <b>(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</b>	
<b>10.</b>	Privacy in living unit <sup>3</sup>
<b>10a.</b>	+ <sup>4</sup> Staff must knock and receive permission prior to entry to the resident's living unit. (Similar to <a href="#">Wis. Stat. § 50.09(1)(f)</a> , <a href="#">Wis. Admin. Code §§ DHS 89.34(1)</a> , and <a href="#">DHS 89.34(2)</a> .)
<b>10b.</b>	An exception may be made during an emergency <sup>5</sup> situation. In an emergency, staff may enter without permission to check on a resident's safety and assist the resident in resolving the emergency.
<b>10c.</b>	Every resident is assessed to determine needs and preferences regarding privacy in their living unit. The assessment includes reviewing the resident's Medicaid person-centered plan for information regarding HCBS Settings Rule Modifications or associated risk. (Similar to <a href="#">Wis. Admin. Code §§ DHS 83.35(1)</a> and <a href="#">DHS 89.26(2)</a> .)
<b>10d.</b>	<p>If a resident requires an HCBS Settings Rule Modification for their right to privacy (such as checking for safety if they do not answer when staff knock during rounds or scheduled overnight checks), the provider coordinates with the resident's Medicaid case manager.</p> <ul style="list-style-type: none"> <li>• If the resident (or legal decision maker) consents to the restriction, the restriction must be documented in the resident's Medicaid person-centered plan as an HCBS Settings Rule Modification.</li> <li>• If the resident (or legal decision maker) does not consent to the restriction, document the HCBS Settings Rule Modification that was recommended and any associated risk to not implementing the restriction/HCBS Settings Rule Modification in the provider's person-centered plan. The restriction cannot be implemented without consent.</li> </ul>
<b>10e.</b>	Staff are informed of and follow individual resident plans for privacy in their living unit. (Similar to <a href="#">Wis. Admin. Code §§ DHS 83.19(3)</a> , <a href="#">DHS 83.35(3)(c)</a> , <a href="#">DHS 89.23(3)(d)</a> ).

<sup>3</sup> In these benchmarks, living unit in an RCAC is the resident's apartment. Living unit in a CBRF or AFH is the resident's room.

<sup>4</sup> The benchmarks with a + (plus sign) may have an HCBS Settings Rule Modification.

<sup>5</sup> In benchmark 10, emergency means reason to believe there is an immediate threat to health and safety of the resident.

10f.	The provider has a policy that is shared with residents and legal decision makers regarding privacy in the living unit that includes entry in case of an emergency and how individual exceptions are determined (including working with the Medicaid case manager for Medicaid funded residents). (Similar to <a href="#">Wis. Admin. Code § DHS 83.32(2)(a)</a> , <a href="#">Wis. Admin. Code DHS 89.32</a> , and <a href="#">DHS 89.33</a> .)
11.	Units have lockable doors with only appropriate staff having keys.
11a.	+Must have lockable key entry to their living unit. Lockable entries need to unlock from the outside with a key, with each door being keyed differently (push-pin locks are not acceptable). (Similar to <a href="#">Wis. Admin. Code §§ DHS 83.59(2)</a> and <a href="#">DHS 89.22(2)(b)1.</a> )
11b.	Modifications to the rule cannot be a blanket policy for all residents – must be individualized and documented in the Medicaid person-centered plan as an HCBS Settings Rule Modification (i.e., a memory care unit cannot make a policy that all residents do not use the locks on their doors).
12.	Choice of roommates
12a.	+Residents are able to provide their input and participate in their choice of roommate. (Similar to <a href="#">Wis. Admin. Code §§ DHS 83.32(3)(k)</a> and <a href="#">DHS 89.22(2)(d).</a> )
13.	Freedom to furnish and decorate
13a.	+Residents are given freedom to decorate their living unit within the bounds of the lease/service agreement. The lease or service agreement cannot fully restrict the residents right to furnish and decorate their living unit. (Similar to <a href="#">Wis. Admin. Code §§ DHS 83.32(3)(k)</a> and <a href="#">DHS 89.34(3).</a> )
<b>441.301(c)(4)(vi)(C)</b> <b>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</b>	
14.	Control schedules and activities

14a.	<p>Provider allows residents to choose and control their schedule and activities including:</p> <ul style="list-style-type: none"> <li>• +When they wake up, eat, and go to bed. Residents are not required to mirror the provider schedule.</li> <li>• +When and where they eat including an option to eat in their living unit.</li> <li>• +When they leave and return to the facility. The provider will accommodate scheduled and unscheduled activities and will not impose a provider-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> </ul> <p>(<a href="#">Wis. Admin. Code §§ DHS 83.32(3)(k)</a> and <a href="#">DHS 89.34(3).</a>)</p>
15.	Access to food at any time
15a.	<p>+Provider provides resident access to food and drink at any time and ensures a dignified, age-appropriate dining experience. This includes:</p> <ul style="list-style-type: none"> <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> <p>(<a href="#">Wis. Admin. Code §§ DHS 83.32(3)(k)</a>, <a href="#">DHS 83.32(3)(L)</a>, <a href="#">DHS 83.41(1)(a)</a>, <a href="#">DHS 83.41(2)(b)</a>, <a href="#">DHS 89.22(2)(c)2</a>, <a href="#">DHS 89.23(3)(e)</a>, and <a href="#">DHS 89.34(3).</a>)</p>
<b>441.301(c)(4)(vi)(D)</b> <b>Individuals are able to have visitors of their choosing at any time.</b>	
16	Access to visitors
16a.	<p>+Residents may have visitors whenever they wish, and they may meet with them in a private area. (Similar to <a href="#">Wis. Stat. § 50.09(1)(a)3</a>, <a href="#">Wis. Stat. § 50.09(1)(f)</a>, <a href="#">Wis. Admin. Code §§ DHS 83.32(3)(L)</a>, <a href="#">DHS 89.34(3)</a>, and <a href="#">DHS 89.34(8).</a>)</p>
16b.	<p>+Providers cannot prohibit overnight guests in the resident's living unit. No guest may remain for more than two weeks without the written consent of the provider, which will not be unreasonably withheld.</p>
<b>441.301(c)(4)(vi)(E)</b> <b>The setting is physically accessible to the individual.</b>	



17.	Physically accessible facility
17a.	Facility must be physically accessible to the client groups served. ( <a href="#">Wis. Admin. Code §§ DHS 83.52(2)</a> , <a href="#">DHS 83.54(1)(a)</a> , <a href="#">DHS 83.54(1)(d)</a> , <a href="#">DHS 83.55(2)</a> , <a href="#">DHS 83.59(1)</a> , <a href="#">DHS 83.59(2)</a> , <a href="#">DHS 83.59(3)</a> , <a href="#">DHS 83.59(4)</a> , <a href="#">DHS 83.59(5)</a> , <a href="#">DHS 83.59(6)</a> , and <a href="#">DHS 89.22(3)</a> ).
<b>Additional Benchmarks for Heightened Scrutiny Providers</b>	
<b>42 CFR 441.301(c)(5)(v)</b> <b>(5) <i>Settings that are not Home and Community-Based.</i> Home and community-based settings do not include the following:</b> <b>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.</b>	
1.	Physical distinction: The HCBS provider demonstrates a meaningful physical distinction between the HCBS facility and the institutional facility, including separate entrances and signage. ( <a href="#">Wis. Admin. Code DHS 83.57</a> , <a href="#">Wis. Admin. Code §§ DHS 89.22(4)</a> , <a href="#">DHS 89.61</a> , and <a href="#">Wis. Admin. Code DHS 89.62</a> .)
2.	Staff training: All staff working in the CBRF, AFH, and/or RCAC receive initial and annual training on the HCBS Settings Rule's requirements and on person-centered planning: <ul style="list-style-type: none"> <li>• Initial training must occur prior to assuming responsibilities with residents.</li> <li>• Annual training must occur each calendar year beginning with the first full calendar year of employment.</li> </ul>

#### 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>

[DQA Implementation of Home and Community-Based Services  
Settings Rule in Residential Assisted Living Facilities, P-01826 \(PDF\)](#)

Assisted Living: Home and Community Based Services:

<https://www.dhs.wisconsin.gov/regulations/assisted-living/hcbs.htm>