

HOME AND COMMUNITY-BASED SERVICES (HCBS) SETTINGS RULE BENCHMARKS: CHILDREN'S LONG TERM DAY SERVICE SETTINGS

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.

HCBS requirements from the Code of Federal Regulations (C.F.R.) are cited below:

- **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:
 - **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.
 - **42 C.F.R. § 441.301(c)(4)(ii):** The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs and preferences.
 - **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.
 - **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.
 - **42 C.F.R. § 441.301(c)(4)(v):** Facilitates individual choice regarding services and supports, and who provides them.
- **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 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.

1A	<p>Setting has all of the following at or near the setting:</p> <ul style="list-style-type: none"> • Sidewalks • Pedestrian roads • Signage • Curb cuts and • Accessible ramps (or equivalent) <p>If not, setting has a plan in place and implements the plan to access the broader community.</p>
1B	<p>Setting has access to a variety of community-based activities that provide a measure of psycho-social value to individuals. Examples of where such activities can take place may include, but are not limited to:</p> <ul style="list-style-type: none"> • Parks • Schools and/or colleges/universities • Library • Community center • Job center • Restaurants • Stores <p>If not, setting has a plan in place and implements the plan to access the broader community.</p>
2A	<p>Setting provides opportunities for daily interaction inside the setting with people from the broader community who do not receive HCBS services and are not paid to provide support.</p>
2B	<p>People receiving HCBS have opportunities for individualized or small group activities in and outside the setting with people without disabilities in addition to congregate activities.</p>
3A	<p>People who receive HCBS may choose to receive their medical treatments in the same places as others without disabilities and are not mandated to use services provided by the setting.</p>
4A	<p>Setting provides people 18 and older, the same degree of access to the community as people not receiving HCBS, including staff and volunteers. People under 18 have the same access to the community as same aged peers who do not receive HCBS.</p>

5A	Setting offers opportunities to experience activities that promote new learning related to areas of interest identified by the person receiving HCBS.
5B	Setting allows people receiving HCBS to notify the setting if the individual will be taking time off for any reason including illness.
6A	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. Any restrictions must be documented in each individual person-centered assessment, plan, and behavior support plan.
7A	The setting provides accessible transportation to individuals receiving HCBS or enables them to access accessible public transportation (individuals, where applicable, must have consent of legal decision maker), to and from the broader community. If public transportation is not available, the setting provides and posts information for individuals receiving HCBS or their legal decision makers about resources to access the broader community.
7B	The setting provides transportation for individuals receiving HCBS to the broader community when requested, within reason, or provides and posts information, in a convenient location, about transportation options to individuals if setting does not provide transportation. Individuals under 18 must have consent of legal decision maker.
8A	Setting provides tasks and activities both inside and outside the setting that are comparable to tasks and activities for people of similar ages who do not receive HCBS.
8B	Individuals receiving HCBS are able to decline to participate in activities.
9A	<p>Setting provides:</p> <ul style="list-style-type: none"> • A secure place for people receiving HCBS to store their personal belongings • Opportunity for people receiving HCBS to choose where they keep their monetary resources in the same ways as people not receiving HCBS • Decision making opportunities for spending one's own money onsite or in the community. <p>This may include provision of vending machines, a cafeteria, access to restaurants, and/or shopping opportunities.</p>

10A	<p>Setting is able to adapt activities and schedules to the needs and preferences of people receiving HCBS upon request. This includes:</p> <ul style="list-style-type: none"> • Offering both community-based and facility-based service options to allow flexibility for people receiving HCBS to choose where their services take place at various times throughout the day • Using adaptive aids and technology to assist in activity participation • Other accommodations to meet the needs of people receiving HCBS within the scope of the setting’s responsibilities.
11A	<p>Setting has practices, procedures, and policies to ensure:</p> <ul style="list-style-type: none"> • All information about individuals receiving HCBS services is kept private and confidential • Individuals receiving HCBS have privacy when receiving assistance with personal cares • Staff receive training on confidentiality upon hire and annually thereafter.
12A	<p>Setting ensures staff remain discreet and respectful at all times, including:</p> <ul style="list-style-type: none"> • Addressing individuals in the manner in which they would like to be addressed • Using a person’s preferred name, nickname, or title • Not talking about a person receiving services in the presence of others • Not discussing individuals as if they were not present.
13A	<p>Settings using restraints or restrictive measures must:</p> <ul style="list-style-type: none"> • Have a policy that matches state restrictive measures policies • Use them in accordance with Wisconsin policies • Use them only as approved by DHS and if not approved, does not use • Report emergency use of restrictive measures to the waiver agency as an incident. <p>Settings that do not use restraints or restrictive measures are exempt from meeting this benchmark.</p>
14A	<p>Setting has practices and policies in place to ensure that staff respond to the needs and preferences of people receiving HCBS, as identified in their person-centered assessment and plan, in a timely manner.</p>
15A	<p>Setting ensures person-centered behavior support plans are implemented in such a way as to not impede the rights of other individuals or restrict others from setting activities.</p>
16A	<p>Setting ensures that people who receive HCBS make meaningful choices in their daily activities, which align with their personal goals, interests, and needs. Meaningful choices may be made in a variety of ways including:</p> <ul style="list-style-type: none"> • Person-centered assessments, • Formal interviews or • Informal discussion with people receiving HCBS • Consideration of input from, legal decision maker or others as identified by the individual.

17A	<p>Setting offers a variety of places in the physical environment to meet the goals and needs of people receiving HCBS. Activities cannot take place in the same room, but rather in a variety of at least two distinct areas, with at least one allowing for privacy. Options include:</p> <ul style="list-style-type: none"> • Indoor or outdoor gathering spaces • Large or small group activity areas • Private space • Quiet areas
18A	<p>Setting matches tasks and activities to the age, skills, abilities and desires of people receiving HCBS by offering:</p> <ul style="list-style-type: none"> • An array of comparable tasks and activities • The flexibility to adjust tasks and activities, as needed • Comparable assessment tools • Communication approaches for people receiving HCBS who are of similar age, skills, and abilities
19A	<p>Setting provides and posts information about:</p> <ul style="list-style-type: none"> • Individual rights • How to make a request for additional services, accommodations, or changes to their person-centered, setting-specific assessment and plan • Competitive integrated employment
20A	<p>Setting must have a reasonable accommodations policy and must be accessible per the Americans with Disabilities Act (ADA).</p>
21A	<p>Setting ensures that people who receive HCBS have access to a dignified, age-appropriate dining experience. This includes:</p> <ul style="list-style-type: none"> • A meal setting where people can move about, talk to others and be comfortable • A dignified approach to assistance with pace, food sequence and refusal of food items when setting assists people to eat • Use of appropriate clothing protection, if needed • Allowing consumption of snacks and meals for people receiving HCBS like others in a similar setting • Opportunities for private dining, if requested.
22A	<p>The setting will:</p> <ul style="list-style-type: none"> • Not restrict social interactions or set time limits on who people can talk to and spend time with in or outside the setting • Allow people receiving HCBS to spend as much of their free time as they like with whomever they choose
23A	<p>Setting provides informed choice opportunities for people receiving HCBS to practice decision making and to be as autonomous as possible.</p>

24A	Setting allows flexibility for people receiving HCBS to choose with which staff they would like to work, within reason, that doesn't negatively impact the quality of services being provided to others in the setting.
25A	<p>Setting offers people receiving HCBS opportunities to:</p> <ul style="list-style-type: none"> • Make their own schedules • Update and change their daily schedules upon request and at the person's six- month review. <p>Setting must document these choices and options for each person.</p>
26A	Setting has policies, procedures, and practices to ensure the person receiving HCBS is supported and involved in developing person-centered, setting-specific assessments and plans to support their needs and preferences.
27A	<p>Setting has policies, procedures, and practices in place to ensure that staff is trained upon hire and annually in:</p> <ul style="list-style-type: none"> • Person-centered assessment and planning strategies • Individual and human rights, including how to support people to assert their rights and file grievances • Working with the target population • Using individualized communication styles • Utilization of assistive technology.
28A	The setting allows prospective participants the opportunity to tour the setting.

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

HCBS Rule and Requirements:

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

Please contact the HCBS review staff with questions at 608-261-6393 or by email at dhshcbsreview@dhs.wisconsin.gov