WISCONSIN DEPARTMENT of HEALTH SERVICES

# Home and Community-Based Services (HCBS) Settings Rule

## DQA Provider Forum

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October 14, 2025

# Agenda

- HCBS Settings Rule Overview
- HCBS Settings Rule Modifications
- Heightened Scrutiny Overview
- HCBS Settings Rule Timeline
- Training and Resources

# Home and Community Based Services (HCBS) Settings Rule

Overview

# What is the HCBS Settings Rule?

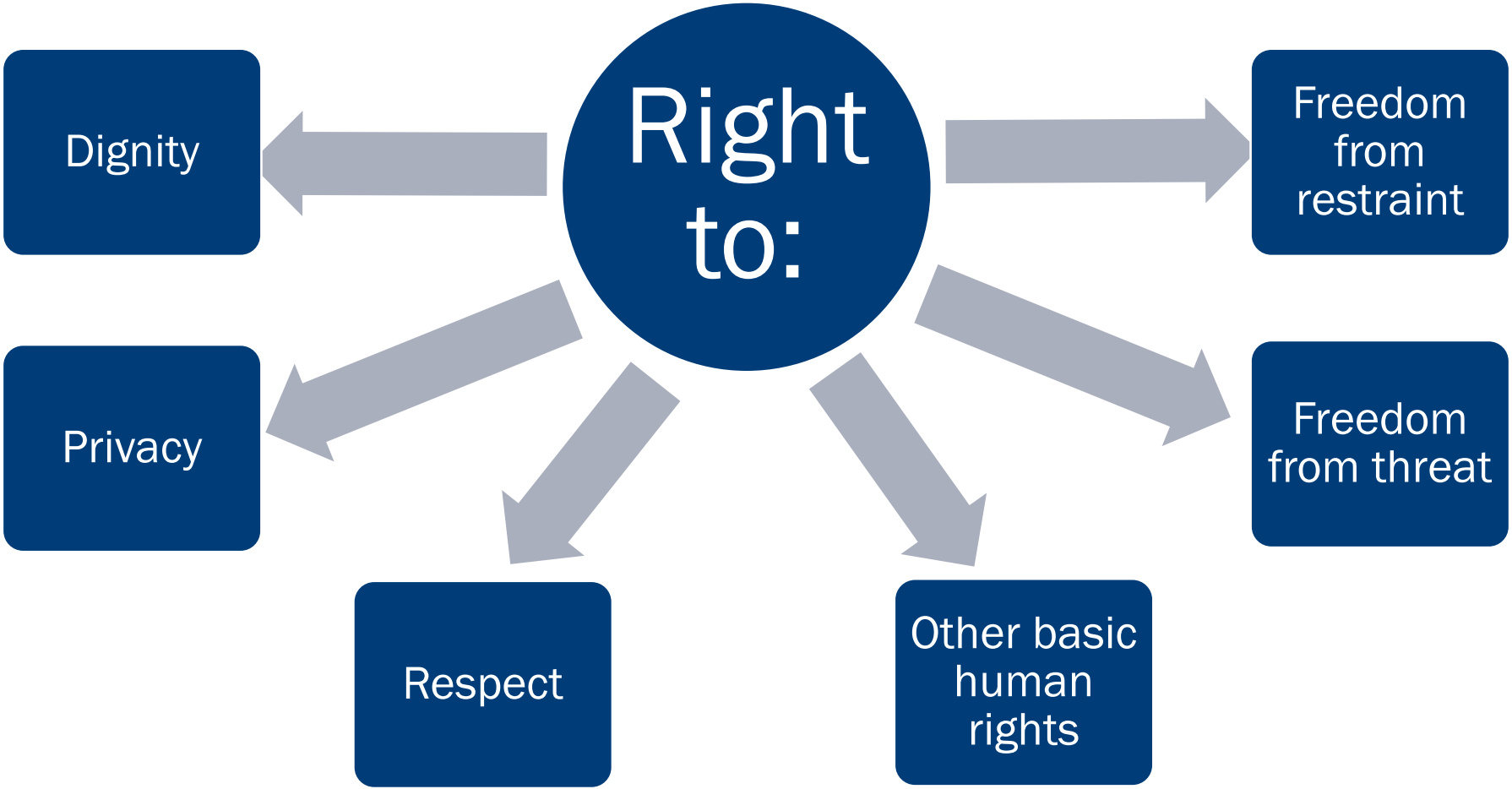
- Established by the Centers for Medicare & Medicaid Services (CMS) in 2014.
- “Ensures that people who receive services and supports through Medicaid’s HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.”
- “It protects individuals’ autonomy to make choices and to control the decisions in their lives…”

# “Under the rule, a setting that is truly home and community is one that:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services”

# “Under the rule, a setting that is truly home and community is one that: (continued)

- 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
- Ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them”


Right to:
Dignity
Privacy
Respect
Other basic human rights
Freedom from threat
Freedom from restraint

# Programs the HCBS Settings Rule Applies To

## Wisconsin Long-Term Care Programs

- IRIS (Include, Respect, I Self-Direct)
- Family Care
- Family Care Partnership
- Children's Long-Term Support

# Locations the HCBS Settings Rule Applies To

## Settings Determined Compliant (without additional review)

- Private residences (nonservice provider owned or controlled)
- Family's private residence
- Places of integrated, competitive employment
- Community sites used for activities by the general public
- Places where childcare is provided that are:
  - Facilities used by the general public
  - Provider's private residence

# Locations the HCBS Settings Rule Applies To (continued)

## Settings That Need Review

Nonresidential:

- Adult day care centers
- Prevocational services
- Group supported employment
- Day habilitation services

Residential:

- Adult family homes (AFH) (1–2 and 3–4 bed)
- Community-based residential facilities (CBRF)
- Certified residential care apartment complexes (RCAC)

# Locations Where the HCBS Settings Rule Does NOT Apply

## Settings NOT Considered Home and Community-Based

- Skilled nursing facilities (SNF)
- Institutions for mental disease (IMD)
- Intermediate-care facilities for individuals with intellectual disabilities
- Hospitals

# HCBS Settings Rule

Modifications

# What is a Modification?

An HCBS modification is an agreed upon restriction, that is implemented by the provider (setting), to limit one or more of an individual's rights to address an identified need or risk to health and safety.

HCBS modifications must follow the HCBS Settings Rule Modification process.

# What HCBS Setting Rules can be modified?

In residential care, **only** the following rules are allowed to be modified:

- Privacy in sleeping and living units
  - Entrance doors are lockable with only appropriate staff having keys.
  - If rooms are shared, the individual has choice of roommates.
  - Freedom to furnish and decorate within lease or agreement guidelines.

# What HCBS Setting Rules can be modified? (continued)

- Freedom and support to control their own schedule and activities.
- Access to food at any time.
- Can have visitors of their choosing, at any time, including overnight and in a private, unsupervised space.

# HCBS Settings Rule Modification Requirements

When discussing restricting an individual's rights, the situation must be:

- A health and safety, behavioral, or other risk to the individual.
- In relation to one or more of the HCBS settings rule rights.
- Justified AND documented in the individual's plan.

# HCBS Settings Rule Modification Process

42 CFR § 441.301(c)(4)(F) Required Modification Process:

F. Modification must be supported by a specific assessed need and justified in the person-centered service plan. Required documentation:

1. Identify a **specific and individualized assessed need.**
2. Document the **positive interventions and supports** used prior to any modifications to the PCSP.
3. Document **less intrusive methods** of meeting the need that have been tried but did not work.

# HCBS Settings Rule Modification Process (continued)

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.

# HCBS Settings Rule

## Heightened Scrutiny Overview

# What does heightened scrutiny mean?

The federal HCBS settings rule set a guideline that says a setting is not home and community-based if it:

- Is located in a publicly or privately owned facility providing inpatient treatment (including a SNF).
- Is on the grounds of, or next to, a public institution.
- Keeps people away from the broader community of people who do not receive Medicaid HCBS waiver services.

When a provider requests to receive Medicaid funding, and if any of these are true, the setting needs a heightened scrutiny review.

# Heightened Scrutiny Reviews

1. A Division of Medicaid Services (DMS) reviewer will request and review materials submitted by a provider.
2. The reviewer will schedule a visit(s) to view the setting and talk to staff and residents.
3. If the reviewer has found enough evidence to show that the setting it reviewed met the HCBS settings rule and is not institutional the review will be posted online for public comment.
4. DMS will then submit the review to CMS for a final determination.

Once submitted to CMS, DQA will survey the same as other providers.

# Heightened Scrutiny Reviews

Most current heightened scrutiny providers have gone through a review process in years 2021 or 2024.

If your facility meets the heightened scrutiny criteria and you want to confirm if DHS has completed a review, past evidentiary summaries have been posted.

# HCBS Settings Rule

Timeline

# Application to DQA-Regulated Residential Providers

- The Division of Quality Assurance (DQA) will enhance the survey process for HCBS waiver providers by surveying to the revised HCBS Settings Rule Benchmarks.
- The revised HCBS Settings Rule Benchmarks are effective January 2026.
- During the first three months of implementation, DQA will provide technical assistance only, and will not issue HCBS Notice of Violations.

# Changes to the Survey for All HCBS Compliant Providers

CURRENT DQA SURVEY

- Access to Personal Funds
- Locks on living unit doors
- Visitors
- Decorate living units
- Choice of roommates
- No exceptions to resident rights training

REVISED DQA SURVEY

All current areas plus:

- Choice of setting
- HCBS settings rule modifications (i.e., restrictions) documented in the Medicaid plan
- Engage in community life and seek employment
- Privacy in living unit

# Extra Benchmark for Heightened Scrutiny Providers

## Additional Benchmarks for Heightened Scrutiny Providers

Staff training: All staff working in the AFH, CBRF, and/or RCAC receive initial and annual training on the HCBS settings rule's requirements and on person-centered planning:

- Initial training must occur prior to assuming responsibilities with residents.
- Annual training must occur each calendar year beginning with the first full calendar year of employment.

# HCBS Settings Rule

Training and Resources

# Training

- DHS worked with the University of Wisconsin Green Bay to create curriculum that meets the HCBS settings rule requirements.
- All heightened scrutiny facilities are required to have all staff complete the training at hire and annually.
- Facilities may create their own in-house initial or annual training.

# Free Training Opportunity

- Providers that are contracted with a managed care organization (MCO) may receive a vendor code from the MCO to take the training at no cost.
- Facilities that are not heightened scrutiny are encouraged (not required) to complete the training to learn the HCBS settings rule requirements.
- The free training codes will expire when all 2,000 vouchers have been used or on June 30, 2027, barring any funding changes.

# HCBS Settings Rule Resources

- HCBS settings rule requirements: §42 CFR 441.301
- DHS's HCBS Settings Rule webpage
- Compliance for Residential Service Providers webpage
- Modifications webpage
- Heightened Scrutiny webpage
- Wisconsin Benchmarks (3-4 bed AFH, CBRF, and RCAC)
- HCBS Compliance Review Request form (F-02138)

# Questions and Answers

# Contact Us

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