

HCBS Settings Rule Updates

Long Term Care Advisory Council
May 14, 2024

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Division of Medicaid Services, Bureau of Programs and Policy

Agenda

1. Revised HCBS Settings Rule 1-2 Bed Adult Family Home (AFH) Benchmarks
2. 1-2 Bed AFH Heightened Scrutiny Process and Benchmarks
3. New HCBS Settings Rule Training

Revised HCBS Settings Rule 1-2 Bed AFH Benchmarks

1-2 Bed AFH HCBS Benchmarks

- Benchmarks updated to reflect CMS guidance and feedback and to match the revised 1-2 Bed AFH Standards
- Reformatted with 1-2 Bed Standard citations
- Updated to reflect HCBS Settings Rule Modification Requirements

1-2 Bed AFH HCBS

Benchmarks continued

- MCOs continue to be responsible for certified 1-2 Bed AFH HCBS compliance for Family Care and Family Care Partnership
- DMS continues to be responsible for 1-2 Bed AFH homes utilized by IRIS participants
- Updated benchmarks will be required to be utilized in the 1-2 Bed AFH certification process

1-2 Bed AFH HCBS

Benchmarks continued

<p>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:</p>		<p>Reference in 1-2 Bed AFH Standards</p>
<p>1.</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>References will be provided throughout document once the AFH standards are finalized.</p>
<p>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.</p>		<p>Reference in 1-2 Bed AFH Standards</p>
<p>2.</p>	<p>Setting supports access to a variety of community¹-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"> • Parks • Schools and/or colleges/universities • Library • Community center • Job center • Restaurants • Stores 	

1-2 Bed AFH HCBS Benchmarks continued

HCBS Settings Rule Modifications

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. **The benchmarks with a + (plus sign) may have a HCBS Settings Rule Modification.** 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.

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. 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.**

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.	
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.	

1-2 Bed AFH HCBS Benchmarks continued

- Example of a benchmark that requires an Exception Request and then an HCBS Settings Rule Modification if a modification is needed:

24.	<p>+*Each resident's bedroom has a:</p> <ul style="list-style-type: none">• Lockable entrance door that can be utilized by the resident.• Key that has been provided to the resident. <p>For more information see: Frequently Asked Questions about Door Locks in Adult Long-Term Care Residential Settings (wisconsin.gov)</p>
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- Example of a benchmark that requires only an HCBS Settings Rule Modification

29.	<p>+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.</p>
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1-2 Bed AFH Heightened Scrutiny Process and Benchmarks

HCBS Heightened Scrutiny

Applies to settings presumed by CMS to have institutional qualities: 42 CFR

441.301(c)(5)(v)

- Prong 1: Settings providing inpatient treatment that are publicly or privately owned
- Prong 2: Settings on the grounds of, or adjacent to, a public institution
- Prong 3: Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services

1-2 Bed AFH Heightened Scrutiny

- If the certifying agency determines that a 1-2 Bed AFH requires a Heightened Scrutiny review, they are responsible for completing the initial Heightened Scrutiny process utilizing the 5 new Heightened Scrutiny benchmarks
- To date, DHS is not aware of any certified 1-2 Bed AFHs that fall under this criteria

1-2 Bed AFH Heightened Scrutiny:

Benchmarks A and B on the 1-2 bed AFH Benchmarks are used to determine if a provider requires a Heightened Scrutiny review

A.	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 Home and Community-Based Setting Rule Benchmarks: Heightened Scrutiny for Nonresidential Providers and 1-2 Bed Adult Family Homes.
B.	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 Home and Community-Based Setting Rule Benchmarks: Heightened Scrutiny for Nonresidential Providers and 1-2 Bed Adult Family Homes. <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>

1-2 Bed AFH Heightened Scrutiny

<p>42 C.F.R. § 441.301(c)(5)(v): Any other locations that have qualities of an institutional setting, as determined by the Secretary. [Prong 1] Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or [Prong 2] in a building on the grounds of, or immediately adjacent to, a public institution, or [Prong 3] 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.</p>	
1.	The HCBS setting demonstrates a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage.
2.	The HCBS setting is selected by the individual from setting options including non-disability options. The setting options are documented in the long-term care service and support plan and are based on individual needs and preferences.
3.	All staff working in the HCBS setting receive initial and ongoing training on the HCBS Settings Rule's requirements, practices, and principles.
4.	<p>If institution staff are assigned to support HCBS staff or provide services to people in the HCBS setting, they must meet the same qualifications and training requirements as HCBS staff.</p> <p>In Nonresidential settings, this includes training that matches setting-specific benchmark requirements found at: HCBS Settings Rule: Compliance for Nonresidential Services Providers Wisconsin Department of Health Services</p> <p>In a 1-2 Bed AFH, the training must comply with Article VI.A.8 of the Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes</p>
5.	Setting has policies and practices in place to ensure that staff in HCBS setting are not pulled to work in the institution unless an equally qualified staff person is available to replace them, with no gap in coverage in the HCBS setting.

Next Steps for HCBS Benchmarks

- DHS will e-mail the LTCAC the proposed 1-2 bed AFH and heightened scrutiny benchmarks after this meeting.
- LTCAC will have two weeks to provide feedback on the revised benchmarks.
- Send feedback to dhshcbssettings@dhs.wisconsin.gov by 05/29/2024.

New HCBS Settings Rule Training

HCBS Settings Rule Training Development

- DHS is working with UW Green Bay to develop an HCBS Settings Rule training as part of the [Certified Direct Care Professional Program](#).
- The target training audience will be direct care professionals working in HCBS Settings serving all 3 of our waiver programs (Family Care/Family Care Partnership, IRIS, and Childrens Long Term Support Waiver (CLTS)).

Volunteers Requested

- DMS is requesting volunteers from the LTCAC to review and provide feedback on the training before it is finalized.
- The target timeline is to have a draft ready to review in May or June of this year.
- Interested members of the LTCAC can e-mail Kaycee to volunteer by this Friday (05/17/2024) at dhshcbssettings@dhs.wisconsin.gov.



WISCONSIN DEPARTMENT
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Family Care and Family Care Partnership Waiver Renewal: Proposed Changes

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Bureau of Programs and Policy
May 2024

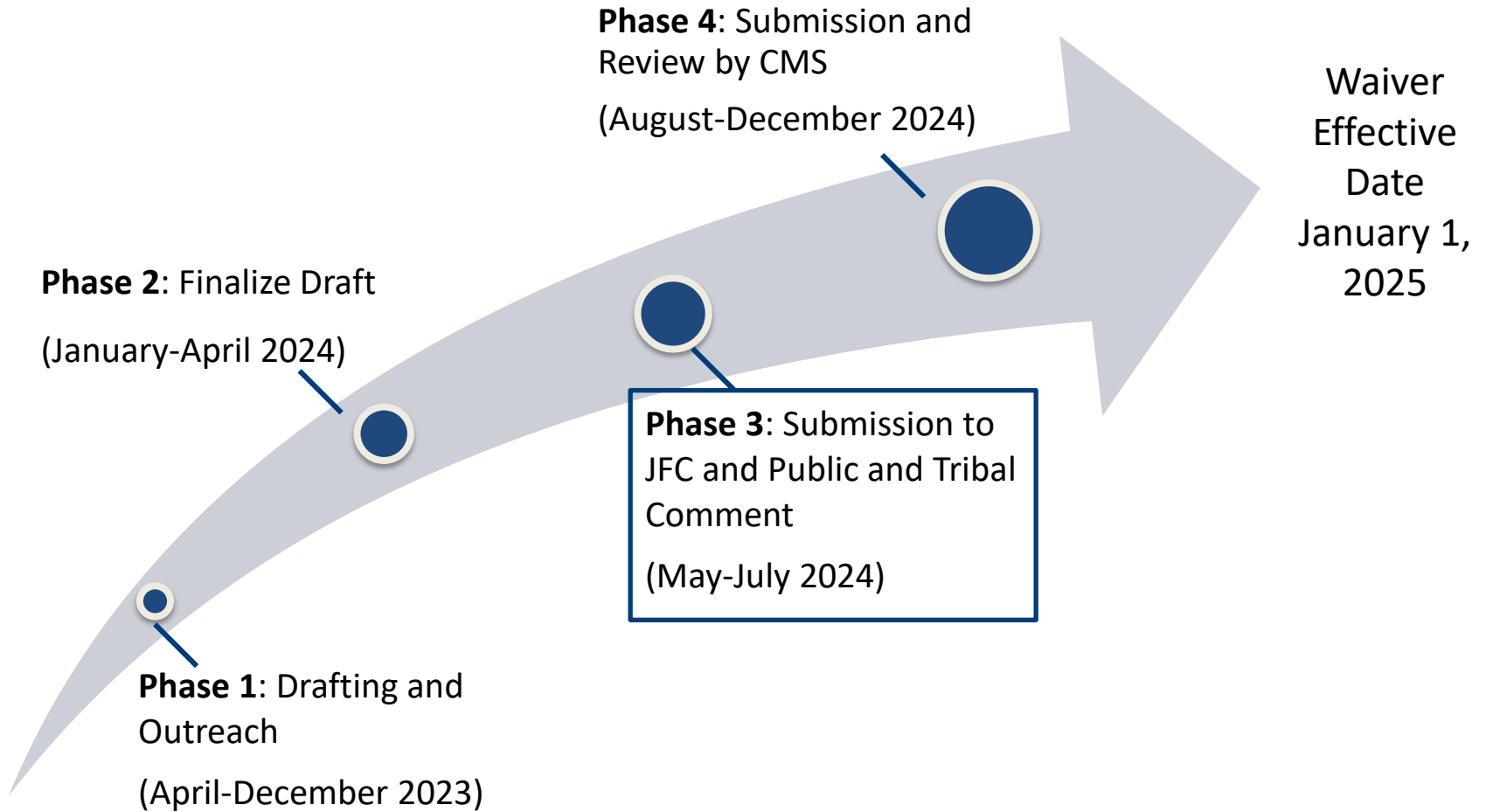
Agenda

- Review the timeline for renewing the waivers.
- Review feedback from members, family, advocates, MCOs, and other partners.
- Describe major categories of changes to the waivers, including specific examples.
- Discuss the next steps for the waiver renewal, including submission to JFC and the public comment process.

Family Care and Family Care Partnership Waiver Renewal

- A waiver is an application to the federal government to waive portions of the Social Security Act to allow states to design **flexible, innovative** Medicaid programs.
- Family Care is operated under concurrent 1915(b) and 1915(c) waivers.
 - 1915(b) waiver: Allows service delivery models, like managed care, that restrict access to providers and allow for variability in the amount, duration, and scope of services provided to members.
 - 1915(c) waiver: Allows the state to provide HCBS as an alternative to institutional care.
- 1915(b) and (c) waivers need to be renewed **every 5 years.**

Waiver Renewal Timeline



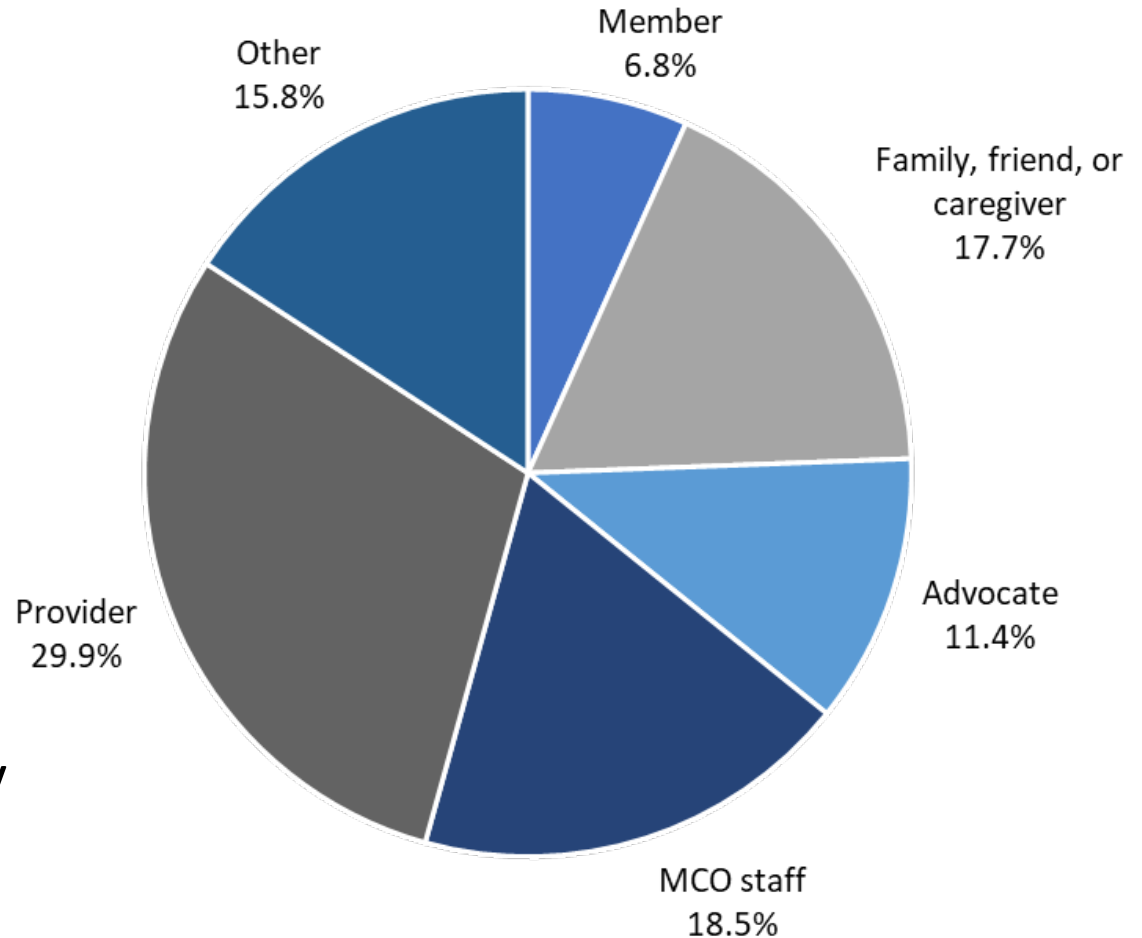
Outreach Plan

Summer 2023

What	Who	When
Survey (Available in English, Spanish, and Hmong, with accessibility features)	<ul style="list-style-type: none"> • Members • Family, Friends, and Caregivers • Providers • Advocates • MCO staff • Other Partners 	<ul style="list-style-type: none"> • June 27th-August 1st, 2023
Outreach to Partners	<ul style="list-style-type: none"> • MCO Leadership • LTCAC • Tribal Health Directors • MCO Member Advisory Councils (members only) • Tribal LTC Study Workgroup 	<ul style="list-style-type: none"> • June 8th, 2023 • July 11th, 2023 • July 12th, 2023 • July 17th, 2023 • August 1st, 2023
Public Input Sessions	<ul style="list-style-type: none"> • All partners • Open to the public 	<ul style="list-style-type: none"> • July 25th, 2023 (Day option) • July 26th, 2023 (Evening option)

Survey Responses and Input Session Attendees

- Over 1,500 survey responses
- More than 250 input session attendees
- Input from around 25 members of MCO Advisory Councils
- Feedback from Tribal Long-Term Care Study Workgroup



Feedback Themes

Transportation

More flexible, convenient options.

Unpaid Caregiver Support

Respite on nights and weekends.

Workforce Shortages

Difficulty finding direct care workers, day services, and residential services.

Improve Care Management

More contact or time with care managers.

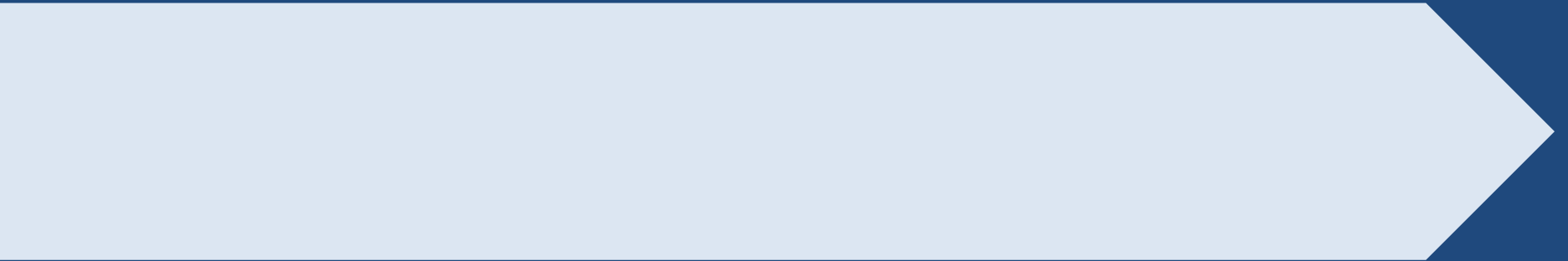
Mental Health Support

Better recognition of mental health needs and connection to resources.

Members are unaware of services available

Plain language resources for members to know which services are included in Family Care.

Major Changes



Major Changes- Health and Wellness

- Healthy lifestyle services (gym memberships, exercise classes, cooking classes, etc.)
- Evidence-based or culturally appropriate wellness services (Meditation, Tai Chi, Traditional Healers, etc.)
- Sexuality Education and Training

Major Changes- Remote Monitoring and Support

- Technology needed to monitor the member's safety from a remote location (sensors, web-based monitoring systems, radio frequency identification, etc.).
- Remote support services provided by trained remote support staff.

Major Changes- CIE Exploration

- Job shadowing, informational interviews, and education about Competitive Integrated Employment (CIE).
- Additional activities to help the member determine whether to pursue CIE.

Major Changes- Expanding Transportation Providers

- Allowing TNCs (Uber/Lyft) to provide waiver transportation services.
- Creating an individual provider type for community transportation (allows family caregivers to receive mileage reimbursement).

Major Changes- Clerical/Administrative/Compliance

- **Vehicle Modifications-** separating from Adaptive Aid service, creating a stand-alone service.
- **Adaptive Aids-** moving remaining adaptive aids to Assistive Technology service. Adaptive Aids will no longer be a stand-alone service.
- **Communication Assistance (Aids)-** separating from Assistive Technology service, creating a stand-alone service.
- **Residential Services-** consolidating 3-4 bed adult family homes, CBRFs, and RCACs into a single service, with separate provider types.

Major Changes- Clerical/Administrative/Compliance

- **Financial Management Services-** requiring MCOs to specifically audit self-directed service claims paid by FMS providers.
- **Adult Incident Reporting System (AIRS)-** updating the waiver to include information about DMS's new incident management system.
- **Adding Partnership to the 1915(b) waiver-** moving Partnership program from the 1932(a) authority to the 1915(b) waiver authority to align with current practice.

Next Steps

- **May 2024:** Joint Finance Committee will review draft waivers.
- **May/June 2024:** Public comment period and tribal consultation.
- **August 2024:** Submit waiver application to CMS.
- **January 2025:** Waiver is effective.



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Thank you!

Questions?

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

BPP/BQO All Staff Meeting
April 22, 2024

Agenda

1. Background and Project Overview
2. Overview of Changes
3. Review and Feedback Process

Background and Project Overview

Why did DHS Update the Standards?

- DHS identified need for additional 1-2 bed AFH oversight
- DHS needed to clarify 1-2 bed AFH roles and the responsibilities of certifying and placing agencies
- DHS needed to clarify the types of settings that require 1-2 bed AFH certification
- DHS Partners expressed interest in strengthening 1-2 bed AFH certification standards

Project Overview

- Standards are issued under the authority of the approved HCBS Waiver programs operated by DHS
- Standards were initially published on 10/22/2013
- Minor Standard updates were published in 02/2018
- Standards are being revised to include:
 - ◆ More precise health and safety provisions for people living in 1-2 bed AFHs
 - ◆ Clarification of a variety of concepts/language (e.g., types of plans, definitions, certifying/placing agency responsibilities, etc.)
 - ◆ Creation of standardized reporting criteria
 - ◆ HCBS setting rule requirements

Overview of Changes



Article I Introduction

- ◆ Changed and updated definitions
 - Revised Placement Agency to include IRIS Consulting Agency (ICA)

Article II. Certifying Agency: Qualifications and Responsibilities

- ◆ Included requirement that certifying agency staff must receive initial training AND on-going training
- ◆ Enhanced content of the certifying agency training plan

Article III Certification

- Updated certification process for new applicants and recertification for current providers or operators
 - ◆ Mandates annual site visit with requirement to attempt to engage residents
 - ◆ On-going caregiver background checks revised from four years to “not less than once every three years”
 - ◆ Prior to hire, new staff must pass the required background checks. Checks must be completed no sooner than 90 days prior to hire. (This also includes household members age 18 and who reside in the home.)

Article IV Requirements for the Home

- Added visual verification requirement during annual site visit that ammunition is stored separately from weapons and that weapons are stored and physically secured
- Added requirement for battery operated carbon monoxide detectors to be checked and logged monthly
- Added requirement for provider to submit floor plan to certifying agency, including square footage of each room
- Added HCBS settings rule bedroom door lock requirements

Article V Provider, Operator, and Staff Qualifications

- Updated personnel qualifications
 - ◆ Added background check specifications for new employees, new respite residents, substitute providers, and new household members 18 years and older
 - ◆ Added reporting requirements for unexpected provider health issues
 - ◆ Clarified conflict of interest process
 - ◆ Expanded initial and on-going training requirements and hours of training

VI Provider or Operator Responsibilities

- Added immediate reportable incidents and reporting requirements
 - Revised when to report; to whom; and required timelines

Article VII Requirements for Residential Supports and Services

- Expanded contents of the AFH service agreement including
 - ◆ Reasons and notice requirements for involuntary discharge
 - ◆ Requirement for AFH to provide residents with written information for advocacy groups
 - ◆ Revised to allow use of an AFH for respite only. Respite resident care stays may not exceed 28 consecutive days and 90 days per calendar year per resident (unchanged from current standards)

Article VIII Requirements for Home and Community-Based Settings

- Updated expectations of HCBS compliance
 - ◆ Added WI HCBS Settings Rule benchmarks for 1-2 Bed Adult Family Homes
 - ◆ Added HCBS Settings Rule Modification process including documentation and consent requirements
 - ◆ Added HCBS Setting Rule Heightened Scrutiny process

Article IX Resident Rights

- Require upon placement and annually thereafter, residents must be notified orally and given a written copy of their rights
- Expanded resident rights article to specifically identify all rights
- Clarified rights that can be denied or limited
- Added informed consent and risk agreement process
- Clarified process for the right to file a grievance

Article X Records and Reports

- Revised retention of records to seven years instead of 10 years

Article XI Exceptions to a Requirement

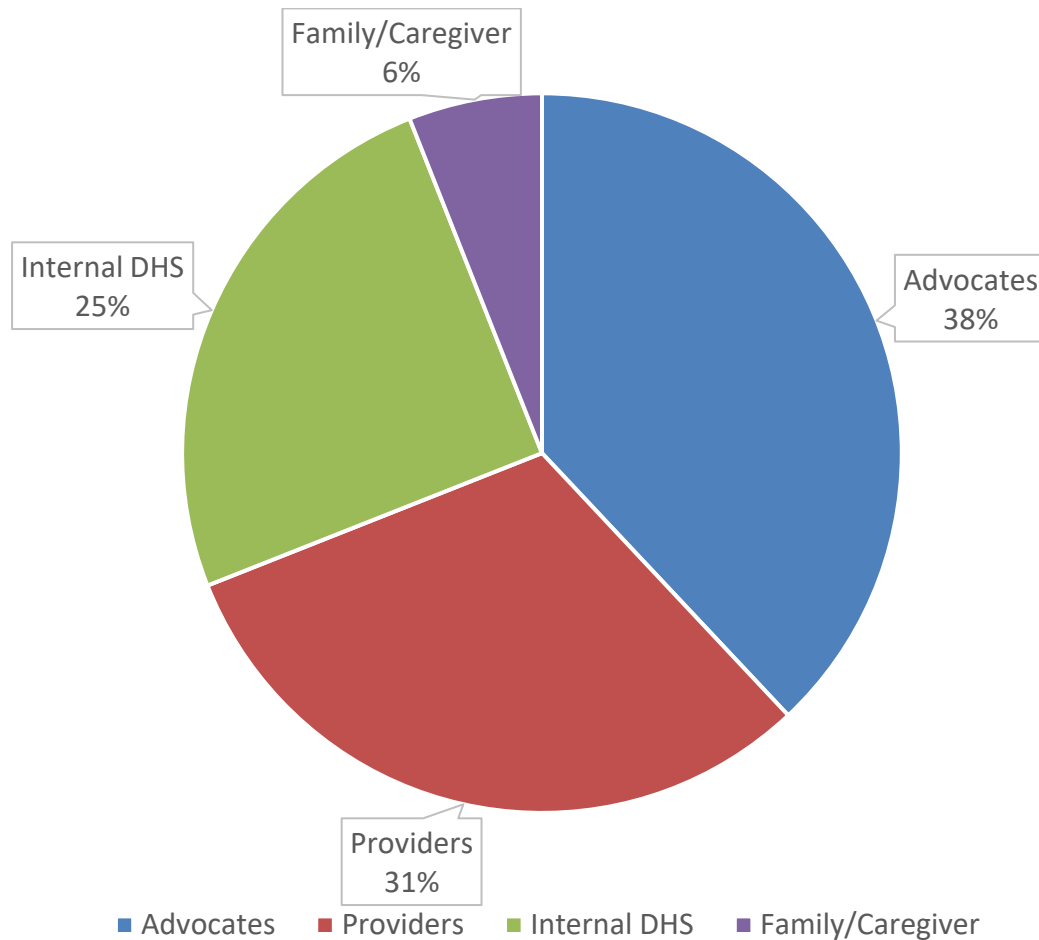
- Created a DHS Approval Committee to review, approve, or deny exception requests using a standardized process
- Indicated articles which MAY BE considered for exception
 - ◆ Clarified which Articles require both an exception request and a HCBS Rule Modification
- Changed certifying agency quarterly exception reporting to monthly via DHS standardized template

Review and Feedback Process

Outreach

What	Who	When
Targeted Outreach	<ul style="list-style-type: none">• MCO Leadership• Area Administration• Wisconsin County Human Service Association (WCHSA)	<ul style="list-style-type: none">• June - July 2023
Public Comment	<ul style="list-style-type: none">• All DHS partners• Open to the public	<ul style="list-style-type: none">• December 2023 - January 2024

Public Comment Feedback



Public Comment Themes

Consistency

Where possible, align with DHS 83 and DHS 88

ICA as a placing agency

Comments asking about the requirements of an ICA as a placing agency

Rights and Grievances

Request for more stringent processes and oversight for rights and grievance process

Background Checks

Comments regarding background check requirements changing from 4 to 3 years

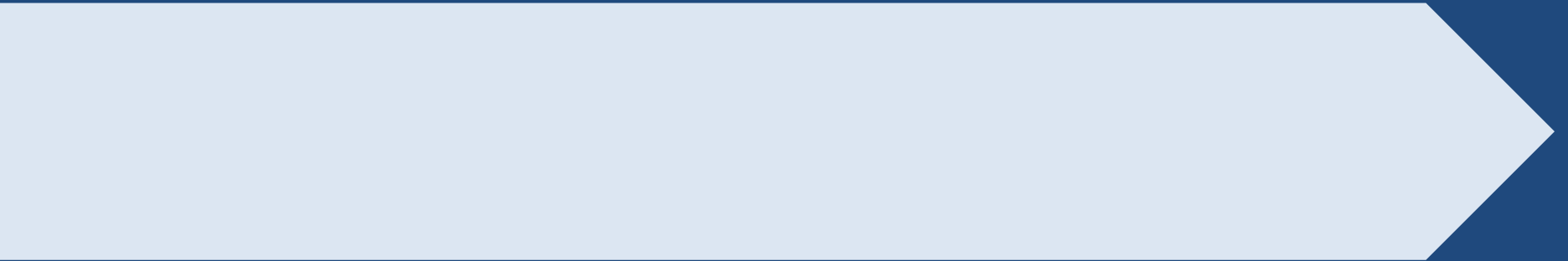
HCBS Setting Rule

Questioning HCBS Setting Rule language

Training Requirements

Varying comments about additional training requirements; providers requested less training and advocates requested more

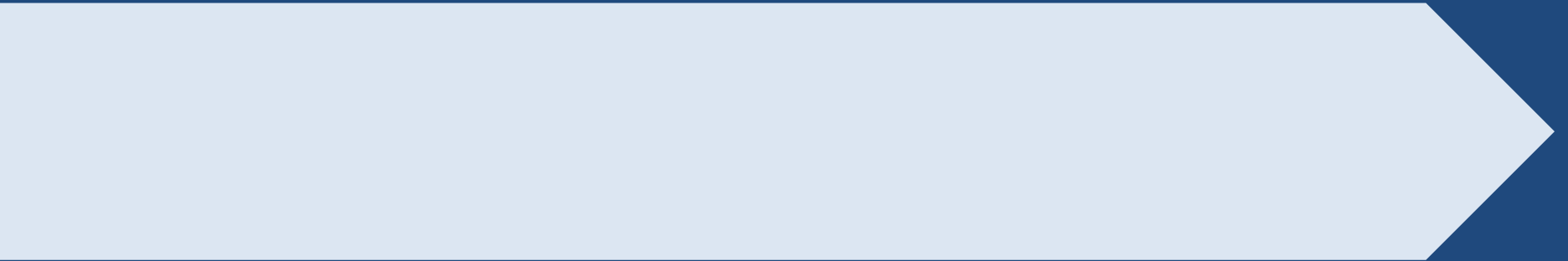
Additional Revisions based on Public Comment



Major Changes based on Public Comment

- Consistency - aligned where appropriate with DHS 88 (3-4 bed AFH)
- IRIS Consultant Agency (ICA) - clarified definition and role
- Rights and Grievances - included all rights and created a requirement for a clear grievance process
- Background checks - retained change from 4 years to 3 years
- HCBS Setting Rule - expanded throughout Articles
- Training requirements - strengthened AFH initial and on-going training requirements

Next Steps



Next Steps

- Submit the completed Standards to OLC for review
- Gather feedback from DHS partners on revised HCBS Benchmarks
- Submit Standards and all supporting documents to EIA for review/publishing
- After publishing, website and benchmarks will be updated

Thank you!