



REVISED as of December 20, 2022

**Wisconsin Department of Health Services (State Medicaid Agency)  
Statewide Transition Plan for Compliance with the  
Medicaid Home and Community-Based Services Settings Rule Requirements of the  
Medicaid Home and Community-Based Services Final Regulation  
(CMS 2249-F/2296-F)**

**Introduction and Background**

**Background and applicability:** The Wisconsin Statewide Transition Plan was developed by the Department of Health Services, the State Medicaid Agency (SMA), in accordance with the Medicaid Home and Community-Based Services Settings Rule Requirements of the Medicaid Home and Community-Based Services Final Regulation at CMS 2249-F/2296-F. The statewide transition plan laid out in this document applies to the Medicaid Home and Community-Based Services (HCBS) waivers under § 1915(c) of the Social Security Act that provides the authority for the Children’s Long-Term Support (CLTS) Waiver Program, the IRIS (Include, Respect, I Self-Direct) self-directed program, the Family Care program, and the Family Care Partnership program.<sup>1</sup>

This statewide transition plan is intended to supersede the waiver-specific plans that were approved by the Centers for Medicare and Medicaid Services (CMS) for the IRIS and Family Care/Family Care Partnership 1915(c) waivers. Reflected in the following plan, the SMA has identified opportunities to align and combine many of the activities described in those plans. This is critical since many settings and providers serve individuals in more than one of the waivers listed above. The SMA will replace the waiver-specific plans with the statewide transition plan at the next amendment or renewal of those waivers. The CLTS Waiver program does not have approved waiver-specific plans and will follow the statewide transition plan.

**Assessment of compliance:** Wisconsin used a multi-phase process to assess compliance and will ensure continuing compliance with the HCBS settings rule requirements for both residential and nonresidential settings. This approach includes:

- I. A preliminary review of all waiver services and settings in which they are typically provided to determine whether the setting was subject to additional review (that is, provider self-assessment and validation) under the rule
- II. An assessment of the regulatory and policy framework for both residential and nonresidential settings, and identification and implementation of systemic remediation actions
- III. Provider self-assessment
- IV. Review and validation of the provider self-assessment responses through site visits and examination of provider assessment responses by the SMA
- V. Identification and completion of site-specific remediation by providers
- VI. Ongoing monitoring, to include re-evaluation of settings at routine intervals
- VII. Implementation of the heightened scrutiny process
- VIII. Plan to relocate participants or discontinue waiver funding
- IX. Timeframes and milestones
- X. Public input

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<sup>1</sup> The waivers covered by this plan are: WI.0367 (Family Care); WI.0414 (CLTS); and WI.0484 (IRIS). The plan originally also covered WI.0154 (COP-W) and WI.0229 (CIP-W), but these waivers have been terminated.

## *I. Preliminary review and assessment of services and settings*

The SMA conducted a preliminary review of all existing home and community-based services and the types of settings in which each service is typically provided. The SMA further evaluated these setting types for their consistency with HCBS characteristics identified in the rule and classified as:

- Yes—The setting has HCBS characteristics
- No—The setting is not home and community-based
- The setting type was subject to further assessment by the state

A list of services and typical settings is found at Appendix 2. Some services were closely tied or synonymous with specific settings while others occurred in various settings based on the needs of the program participant. SMA staff, with knowledge of waiver services and the settings in which they are provided, reviewed each service, and determined the typical settings for all waiver services. The different settings were then compiled across all services, and the types of settings were reviewed to determine which were settings that serve primarily people with disabilities, and which were natural community settings that were not specific to people with disabilities. All waiver services are provided in one or more of the settings that are identified in this document.

The SMA made this assessment for all 1915(c) waiver programs. Per the final rule, a participant's private residence, including the parental home for a child, is presumed to be compliant. In addition, the SMA determined that the following settings would typically meet the compliance requirements of 42 C.F.R. § 441.301(c)(4):

- Places of integrated, competitive employment
- Community sites predominantly used by the general public for typical community activities, unless specifically prohibited by 42 C.F.R. § 441.301(c)(5), including but not limited to: retail establishments; schools; recreational and entertainment facilities; libraries; places of religious worship; public and private transportation settings such as buses, trains, and private vehicles; restaurants; community centers; professional offices; non-disability related service establishments; streets; and other public accommodations

The following settings found in the CLTS Waiver Program also meet the requirements of the rule:

- Family's private residence, whether owned or rented
- Child care facilities predominantly used by the general public for child care
- Child care provider's private residence, whether owned or rented, used for child care

The SMA determined that the settings listed above are typically integrated in the greater community or, in the case of residences in rural settings, are the person's choice and consistent with the character of such communities; do not segregate or isolate participants, except with respect to private residences in rural areas where such is the chosen preference of the person, or his or her guardian; provide opportunities for regular interaction in daily activities with non-HCBS waiver participants; facilitate participant-centered choice in services, daily activities, and assumption of typical, age-appropriate social roles; and support rights to dignity, respect, autonomy, and freedom from coercion.

While these settings are viewed as integrated in the community, the SMA will not assume that in each instance they meet the HCBS settings rule requirements. As part of the ongoing monitoring for HCBS settings compliance used by all waiver agencies<sup>2</sup> in Wisconsin, all settings in which waiver services are delivered, including those described above, will be assessed by the waiver agency, or other entity delegated by the SMA, to ensure that the setting is not designed in such a way that it isolates the individual from the greater

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<sup>2</sup> The term "waiver agencies" is used throughout to refer to Managed Care Organizations, IRIS Consultant agencies, and county waiver agencies.

community. This assessment occurs at the time of development of the initial person-centered plan and at reviews of that plan on at least an annual basis. The assessment includes periodic face-to-face meetings with the participant at the setting in question.

Per the HCBS final rule, services provided in the following settings **are not** considered home and community-based and are not allowable settings for home and community-based services:

- Nursing facility
- Institution for mental diseases
- Intermediate-care facility for individuals with intellectual disabilities
- Hospital

The SMA has determined the following settings for delivering services to children are not considered home and community-based and are not allowable living arrangements for the CLTS Waiver Program:

- Residential care center for children and youth
- Group home for children

All other settings were initially assessed individually by the SMA through a multi-phase process, using SMA staff or contracted entities under the direction of the SMA. These settings will also be reviewed to ensure continued HCBS settings for compliance on an ongoing basis:

#### **Residential settings**

- Community-based residential facilities
- Licensed 3-4 bed adult family homes
- Certified adult family homes, including 1-2 bed homes and homes certified under Wis. Admin. Code ch. DHS 82
- Residential care apartment complexes
- Foster homes for children (CLTS only)
- Level 5 exceptional treatment foster homes (CLTS only)

#### **Nonresidential settings**

- Adult day care centers
- Children's long term support day services settings (CLTS only)
- Day habilitation service settings (adult day services)
- Prevocational service settings (center-based sites where individuals receive pre-vocational services intended to enable progression to integrated employment)
- Group-supported employment settings (enclaves/work crews)

## Summary of Preliminary Analysis of Settings

Waivers	Age Group	Settings Determined Compliant without Additional Review
All <sup>3</sup>	Adults	Private residences not owned or controlled by service providers and not regulated under Wisconsin law or policy as residences for persons with disabilities
All	Adults	Places of integrated, competitive employment
All	Adults	Community sites predominantly used by the general public for typical community activities
WI.0414	Children's settings	Family's private residence, whether owned or rented
WI.0414	Children's settings	Child care facilities predominantly used by the general public for child care
WI.0414	Children's settings	Child care provider's private residence, whether owned or rented, used to provide child care
Waivers	Age Group	Settings Requiring Additional Review
All	Adults	Community-based residential facilities (CBRFs)
All	Adults	Licensed 3-4 bed adult family homes (AFHs)
All	Adults	Certified 1-2 bed adult family homes (AFHs)
All	Adults	Residential care apartment complexes (RCACs)
All	Adults	Adult day care settings
All	Adults	Adult day (habilitation) service settings
All	Adults	Prevocational service settings
WI.0414	Children	Foster homes
WI.0414	Children	Level 5 exceptional treatment foster homes
WI.0414	Children	Children's day services settings (disability-related)
Waivers	Age Group	Settings Determined to be Noncompliant
All	All ages	Nursing facility
All	All ages	Institution for mental diseases
All	All ages	Intermediate care facility for individuals with intellectual disabilities
All	All ages	Hospital
WI.0414	Children only	Residential care center for children and youth
WI.0414	Children only	Group home for children

### II. Assessment of regulations and policies for residential and nonresidential settings

Some of the HCBS standards found in the federal rule, such as choice of setting, choice of providers, and financial support for access to activities in the community, are the responsibility of the entity providing care management or consultation, not the service provider.

Other standards such as preference for a private room or choice of roommate and access to activities in the community are a joint responsibility of the setting and the waiver agency. For example, if a setting does not have private rooms or none are available, the waiver agency should assist the participant to consider another setting with private rooms. While all settings must allow access to the community, an individual may need more support to engage in an activity than the setting can provide. In such cases, the waiver agency is responsible for working with the participant and the setting to identify resources. This is true across all HCBS waiver programs

<sup>3</sup> The waivers covered by this plan are: WI.0367 (Family Care); WI.0414 (CLTS); and WI.0484 (IRIS). The CLTS Waiver serves individuals ages 18-22 who may receive services in adult settings. WI.0154 and WI.0229 have been terminated since the original publication of the Wisconsin Transition Plan.

in Wisconsin. Monitoring the quality of person-centered planning is an ongoing process in all these programs. A description of person-centered planning is found in each of the waivers listed in this document (see footnote 1) and in the policy documents that govern those programs. These policy documents include:

- [DHS-MCO Contract](#) for Family Care/Partnership
- [Medicaid Home and Community-Based Services \(HCBS\) Waiver Manual for the CLTS Waiver Program](#)
- [IRIS Provider Agreement](#)
- [IRIS Policy Manual](#)
- [IRIS Work Instructions](#)
- [Being a Full Partner](#) (Family Care member booklet)
- [Vocational Services State Guidance Website](#)
- [Wisconsin Stat. ch. 51](#)
- [Wisconsin Admin. Code ch. DHS 94](#)
- Other related technical assistance documents

Person-centered planning requirements are addressed by the SMA for each program through contracts and program policy. The systemic assessment crosswalk (Appendix 3, Table 1) provided analysis of the role of person-centered planning in enforcing the requirements of the rule.

The remaining tables in the crosswalk addressed setting-specific policy guidance that related to the provisions of the final rule. The analysis of each setting type focused on those standards within the control of the setting, while addressing all aspects of the rule.

Wisconsin's initial assessment of the settings that were determined to need additional review was based on these crosswalks of state regulations, standards, and policies to the requirements articulated in the final federal rule.

**Residential settings:** For residential settings, the service standards in Wisconsin's waivers are based upon and reference applicable state statutes and regulations. The SMA conducted an analysis of the regulatory requirements for the residential settings that serve adults and identified those that align with and meet specific requirements of the HCBS regulations and guidelines for these residential settings. The analysis indicated that most of the requirements included in the federal rule are already covered by Wisconsin's statutes and regulations that govern certain licensed or certified residential settings.

The SMA determined that Wisconsin's state statutes, state regulations, and DHS standards related to residential settings do not conflict with any requirements of the HCBS regulations—that is, they do not include any requirement for certification or licensure that would put the setting out of compliance with the rule. The results of the analysis conducted by the SMA are detailed in the crosswalk found in Appendix 3.

**Nonresidential settings:** The SMA used the same process for systemic assessment of nonresidential settings. The crosswalk is based on the language of the HCBS settings rule and the state's regulatory or SMA policy requirements where applicable. As not all day and vocational settings are covered by state law, regulation, or certification standards, the SMA analyzed program policies as articulated in Wisconsin's waivers, policy documents, and contract requirements to determine the degree of compliance with the HCBS settings rules. The results of the analysis conducted by the SMA are detailed in the crosswalk found in Appendix 3.

**Conclusion of analysis:** Wisconsin laws, regulations, standards, and other policies addressed most of the requirements of the rule, including provider agreements, participant choice, participant rights, and accessibility. In some cases, however, the policies did not address all the criteria that CMS has suggested in its toolkits and other sub-regulatory guidance. In addition, Wisconsin policies were silent on some aspects of the rule.

Therefore, provider assessments were performed to determine whether requirements of the federal rule that were not addressed in detail through state policies were met by individual providers.

Based on CMS guidance, areas where the SMA determined additional information was needed include:

- Location of the setting—characteristics of surrounding area
- Access to transportation
- Opportunities to receive services in an integrated community setting
- Opportunities to engage in competitive integrated employment
- Lockable entrances to individual living spaces
- Opportunities for privacy
- Nature of ability to make individual choices, such as access to food and money
- Access to certain areas in the setting

As necessary, additional requirements were incorporated into SMA policies, contracts, and other documents, e.g., benchmarks, compliance reviews and other oversight materials used to articulate program requirements per the remediation plan described below.

Additionally, the SMA expanded the compliance review conducted by the External Quality Review Organization (EQRO) beyond the requirements specified in 42 CFR 438, to include other state statutory, regulatory, and contractual requirements related to the following areas:

- Availability and use of HCBS as alternatives to institutional care, so individuals can receive the services they need in the most integrated setting appropriate;
- Credentialing or other selection processes for LTSS providers, including those required where the enrollee can choose their caregiver (such as verification of completion of caregiver background checks); and
- Person-centered assessment, person-centered care planning, service planning and authorization, service coordination and care management for LTSS. This includes authorization/utilization management for LTSS and any beneficiary rights or protections related to care planning and service planning such as conflict-free case management, self-direction of services, and appeal rights related to person-centered planning.

**Remediation at the system level:** Because contracting and direct oversight of providers differs across Wisconsin’s HCBS waiver programs and generally involves local waiver agencies, remediation strategies have program-level variation. The SMA has analyzed regulations that govern certified and licensed settings and determined that there is no need to propose changes to regulations or certification standards for those programs.<sup>4</sup> Both licensed and certified providers also serve people who do not receive Medicaid HCBS and any instances where additional criteria must be met for compliance with the HCBS settings rule can be accommodated through requirements specific to HCBS waiver providers. The crosswalk analysis for both the residential and nonresidential settings validated that none of the HCBS requirements conflict with the statutes or licensing regulations. The SMA imposed additional requirements on licensed or certified providers above those required in statute and rule in order for the provider to serve HCBS program participants. The SMA ensures that any setting that serves one or more HCBS waiver participants comply with the requirements through our additional requirements and monitoring.

All programs reviewed policy and technical assistance documents and made revisions as needed. All changes are in place to ensure compliance with the HCBS settings rule requirements on or before March 17, 2023.

Waiver agencies are required by contract to ensure compliance with the requirements of the HCBS settings rule through their contracts and agreements with waiver providers. As part of the SMA’s review of waiver agency

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<sup>4</sup> Licensure requirements and detailed standards are defined in state statutes and administrative code. Both require either action or review and concurrence by the Wisconsin Legislature. Settings that are governed by state statutes and administrative code are CBRFs, 3-4 bed AFHs, RCACs, level 5 exceptional treatment foster home care, and child day care.

compliance with contract and waiver standards, the SMA will validate waiver agency compliance with these requirements.

In addition to ensuring that existing program policies and guidance are compliant with the settings rule, the SMA analyzed infrastructure and procedures consistent with each program structure to implement oversight of compliance. This included:

- Procedures to document provider remediation and validate implementation of those plans
- Development of educational materials for providers, waiver agencies, aging and disability resource centers, participants, family members, and others
- Consideration of additional processes to verify ongoing compliance, such as participant surveys
- Development of mechanisms to notify waiver agencies and third-party administrators of noncompliant providers
- Updating information management systems to assure ongoing compliance with the rule

### *III. Provider self-assessment*

**Residential settings:** Nearly 5,000 residential settings serving adult HCBS waiver participants were identified as subject to individual assessment for compliance with the HCBS settings rule. The SMA used several methods to ensure that all covered providers received information about the self-assessment. Waiver agency provider lists (managed care organizations, county and tribal waiver agencies, IRIS agencies) were collected and compiled to create a comprehensive list.

The provider self-assessment was a single standardized tool developed by SMA staff based on the review of the requirements of the rule, model tools, exploratory questions provided by CMS, and similar assessment tools developed by other states. The SMA released the draft tool using a public notice process and invited stakeholders to provide comments. Stakeholder comments were compiled, reviewed, and incorporated into the tool as determined necessary by the SMA.

The SMA released the self-assessment tool to providers in an online format. Each site was provided with a personalized link to the tool so that the state could determine the response rate. A paper version of the tool was available upon request for providers who did not have access to a computer. The tool requested a *yes* or *no* response to most questions, with space allowed for comments. Other questions provided a list of options from which the respondent could select. Providers were not asked to attach documentation to the self-assessment but were informed that follow-up could include a request for documentation of the accuracy of their responses.

Providers were required to complete the self-assessment for each site that they operate. Provider responses were compiled and evaluated by SMA staff and contractors. Entities that were not currently providing waiver services were encouraged to complete the self-assessment if the provider anticipated delivering HCBS waiver services in the future. If such a provider did not complete the self-assessment during the transition period, they were instructed to contact their credentialing agency and request an HCBS compliance review.

Children's residential settings, including traditional foster care and Level 5 Exceptional Treatment Foster Homes, were not asked to complete a self-assessment. The nature of Level 5 Exceptional Treatment Foster Homes is such that the home shall promote normalcy and the healthy development of the child in a family setting according to the Reasonable and Prudent Parenting standard. Waiver care managers and child welfare staff are required to ensure the adequacy of this interaction in the community. Because these settings primarily serve HCBS waiver participants, the SMA used the site visit process outlined in section IV of the statewide transition plan for assessing and ensuring HCBS settings rule compliance for Level 5 Exceptional Treatment Foster Homes. All Level 5 Exceptional Treatment Foster Homes serving waiver participants received a site



visit. Personnel conducting site visits determined compliance with the settings rule using a standardized review tool developed by the SMA. Provider compliance designations followed the same process as all other settings.

The SMA furnished information to, and continues to work closely with, the state licensing entities responsible for licensing residential facilities—the Department of Health Services (DHS), Division of Quality Assurance (DQA) for adult settings, and the Department of Children and Families (DCF), Division of Early Child Care and Education and Division of Safety and Permanence for children’s settings. The SMA also notified the entities that certify 1-2 AFHs. These entities varied by program and included Family Care managed care organizations; county and tribal waiver agencies for CIP, COP, and CLTS; and Lutheran Social Services for IRIS.<sup>5</sup> SMA staff provided information to provider associations to share with their members. SMA representatives presented at provider meetings held by associations as well as at forums hosted by DQA and DCF (the state licensing entities).

**Nonresidential settings:** Wisconsin initially identified approximately 1,115<sup>6</sup> nonresidential settings that were potentially subject to individual assessment for compliance with the HCBS settings rule.

- Adult day care centers – 235
- Children’s long term support day service settings – 33
- Day habilitation service settings (adult day services) – 405
- Prevocational service settings – 211
- Group-supported employment settings (enclaves/work crews) – 231

From the time settings were initially identified to the deployment of the initial self-assessments, 296 nonresidential settings were removed from the active settings list because they were not providing services funded by Medicaid waivers. The SMA utilized several methods to ensure that all covered nonresidential providers received information about the self-assessment. Waiver agency provider lists (managed care organizations, county and tribal waiver agencies, IRIS agencies) were collected and compiled to create a comprehensive list. A total of 819 providers remained that were provided the opportunity to complete the self-assessment.

The SMA furnished information to provider associations to share with their members and continued this communication throughout implementation of the self-assessment. The SMA contacted non-responding providers to ensure they were aware of the tool, and to reinforce their need to complete it. The SMA also took every opportunity to present at provider meetings and conferences to share the tool and its purpose.

Providers were asked to complete one self-assessment for each site they operated and for each service they delivered in the site (e.g., prevocational services and adult day services). Providers serving participants in more than one waiver program or from more than one waiver agency in the setting only needed to complete the self-assessment once for a given site and service combination.

The nonresidential provider self-assessment tool developed by SMA staff was based on the requirements of the rule, model tools, exploratory questions, and technical assistance provided by CMS, and assessment tools developed by other states. The SMA released the draft tool using a public notice process and invited stakeholders to provide comments. Stakeholder comments were compiled, reviewed, and incorporated into the tool as determined necessary by the SMA.

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<sup>5</sup> The CIP and COP waivers have been terminated, and 1-2 bed AFH certification for the IRIS program is currently done by staff in the SMA.

<sup>6</sup> Nonresidential numbers included in the initial STP were reported incorrectly. Numbers have been updated for accuracy.



The single standardized tool was deployed in the summer of 2016 to:

- Assess current provider operations in comparison to the nonresidential settings rule requirements
- Determine capacity building and technical assistance needs
- Identify site changes needed to achieve compliance with the settings rule

Meetings were scheduled for stakeholder feedback on the tool to make recommendations for revisions. One meeting was held with a group of nonresidential providers and their associations, and the second meeting included advocacy agencies and parent groups. Feedback from the two meetings was then incorporated into the review tool to build a more robust set of questions for measuring nonresidential provider compliance with the HCBS settings rule.

The resulting nonresidential self-assessment tool consisted of 50 quantitative and qualitative questions. Definitions were provided specific to wording used in the questions to assist the respondent with response clarity and accuracy. Each question offered an “other” choice and a “comments” section to allow respondents to be more specific in their responses to certain questions.

The only nonresidential settings that are regulated by a state licensing entity are adult day care settings. The SMA coordinated with DQA in its assessment of adult day care settings as ongoing compliance is now monitored by DQA. The remaining nonresidential setting types are not licensed or regulated by the state. Those settings must meet the provider qualifications laid out in the state’s waivers and will be monitored for HCBS settings rule compliance by SMA staff.

At the close of the self-assessment period, provider comments were reviewed and compiled by the SMA as part of the benchmark development process. Aggregate information taken from the provider self-assessment tool responses was used in the development of both the benchmarks and the validation tool. Each of the 50 questions on the validation tool has an individual benchmark to which the setting was measured.

Three in-person sessions were held with stakeholders, providers, and advocates to review and discuss the state’s benchmarks. Feedback and consensus from these meetings were beneficial in the finalization of the benchmarks. Available on the SMA website, the 22-page [Benchmark Guide for Home and Community-Based Settings Rule: Nonresidential Provider Settings](#) establishes a high bar for integration both within the setting and out in the broader community.

#### *IV. Review and validation of self-assessment*

**Residential settings:** Of the nearly 5,000 self-assessments released to individual residential settings subject to compliance assessments, a total of 4,719 responses were received. If the self-assessment was not received directly from the provider, the SMA completed the assessment orally during the review process via phone or onsite visit. From the time that the initial self-assessments were taking place to the start of the compliance validation process, 554 residential settings closed. In addition, reviewers identified 241 duplicate settings. These settings were identified when more than one MCO submitted the same entity with a slightly different name; however, it was discovered it was the same entity or had the same licensing number when the review was completed. An additional 346 respondents were screened out because they were nonresidential settings or the settings were primarily for alcohol and drug treatment, mental health treatment, or for use by correctional residents only. None of these screened-out settings were serving HCBS residents.

For the 3,578 (4,719 completed assessments – 554 closed settings – 346 not serving HCBS – 241 duplicates = 3,578) settings that remained, the results of the validation process were as follows:

<b>Compliance Status</b>	<b>1-2 bed AFH</b>	<b>3-4 Bed AFH</b>	<b>CBRF</b>	<b>RCAC</b>	<b>Level 5 Foster Care</b>	<b>Total</b>
Met criteria of HCBS settings rule	241	233	295	140	9	918
Met criteria upon completion of remediation	677	1,002	699	17		2,395
Did not meet criteria (did not remediate during validation period)	148	41	47	2		238
Presumptively institutional			20	7		27 <sup>7</sup>
<b>TOTAL</b>	<b>1,066</b>	<b>1,276</b>	<b>1,061</b>	<b>166</b>	<b>9</b>	<b>3,578</b>

The SMA reviewed each submitted residential self-assessment to make a preliminary determination as to whether compliance criteria were met or not met. Validation tools specific to the setting type were used by reviewers conducting all desk reviews and onsite visits. The evidence provided by the setting or observed by the reviewer during the onsite visit or desk review took precedence over the provider's self-assessment responses. In some cases, settings did not understand the question or made necessary changes within the setting during the interval between completing the self-assessment and the onsite visit. The remediation notice, if any, was based on the onsite visit or desk review findings. A sample of compliance reports for settings determined by reviewers to meet criteria were reviewed by an SMA compliance evaluation panel for consistency and inter-reviewer reliability.

A representative sample of residential settings that submitted self-assessments received an onsite validation review. The sample selected for onsite review was stratified to ensure that it was representative of settings. The factors considered in the stratification process included setting type and geographic distribution. Beginning in June 2016, the SMA, using contracted staff under the direction and supervision of the SMA, conducted the site visits to a stratified representative sample of residential settings. The SMA contracted for validation staff through a third party with no affiliation with providers. DQA, Wisconsin's designated state survey agency that regulates most residential and health care settings, worked with the third party staff to oversee the site visit and validation process for residential settings.

In addition to the settings randomly selected for a review, any waiver provider that failed to submit a self-assessment for a setting received a site visit by the SMA's contracted staff. If management of a setting refused to cooperate with the site visit personnel or any subsequent efforts to assess compliance, the setting was determined not to meet criteria and subject to relocation of all program participants. Before making any final determination, the SMA worked with providers and waiver agencies to ensure that providers understood the process and the requirement to participate in the process. When appropriate, the SMA utilized existing statutory process for facilities that chose to downsize or close as a result of noncompliance with the HCBS settings rule requirements.

The SMA, using SMA or contracted staff under the direction of the SMA, determined provider compliance designations. These designations were as follows:

- Yes—Setting meets HCBS settings rule criteria
- Not yet—Setting currently does not meet HCBS settings rule criteria but may, with remediation
- No—Setting cannot meet HCBS settings rule criteria; setting cannot or will not conform, setting is presumptively institutional, and/or state determines setting is incompatible with the HCBS final rule (setting may request review and consideration by SMA for submission to CMS for heightened scrutiny)

<sup>7</sup> Additional settings were later identified by the SMA and are included in the heightened scrutiny number below.

### **Nonresidential settings:**

Of the 819 self-assessments released to individual nonresidential settings subject to compliance assessments, a total of 402 responses were received:

- Adult day care centers (ADC)– 79
- Children’s long term support day service settings – 41
- Day habilitation service settings (Adult day services (ADS)) – 171
- Prevocational service settings – 111
- Group-supported employment (GSE) service settings (enclaves/ work crews) – 0

Settings that did not submit or return self-assessments were still included on the SMA’s list. Between the onset of the self-assessment period and the beginning of the validation process, several settings closed and others not on the original list were identified. From the time that the initial self-assessments were taking place to the start of the compliance validation process, a total of 742 nonresidential settings were removed from the active settings list. This includes the initial removal of 296 settings in 2016 that were not providing Medicaid services and subsequent removal of 446 settings from 2019 to 2020. These additional settings were removed for a variety of reasons: the settings permanently closed; the setting indicated they did not offer HCBS services; the setting no longer served HCBS individuals; the setting was identified as being duplicate on the master list.

Of the 742 settings removed from the active setting list:

- Adult day care centers – 153
- Children’s long term support day service settings – 32
- Day habilitation service settings (Adult day services) – 242
- Prevocational service settings – 130
- Group-supported employment service settings (enclaves/ work crews) – 185

Beginning in May 2019, a third party entity under contract to the SMA began conducting the validation site visits to nonresidential settings that had submitted a self-assessment. The third party entity used the benchmark validation tool developed by the SMA and conducted onsite visits during calendar year 2019. The process was closely monitored by SMA staff, and the decision was made to bring the process in-house. On January 1, 2020, the process was brought in-house utilizing contracted staff supervised directly by the SMA. Upon bringing the process in-house, it was determined the best course would be to start the nonresidential review and validation process over to ensure no settings were inadvertently missed, and to ensure that DHS maintained full accountability for the integrity of each review completed. The intent was to conduct the initial reviews onsite; however, due to the COVID pandemic, the reviews were completed virtually to remain on schedule for transition plan milestones.

Of the 373 nonresidential settings reviewed to determine compliance, 225 had completed the self-assessment in 2016 and 110 of these had a site visit in 2019 by the previous validation contractor. When the SMA brought the validation process in-house in 2020, reviewers were unable to conduct additional site visits due to the public health emergency. Consequently, throughout 2020, the review process was conducted virtually. In-house contracted staff contacted provider settings with instructions on participating in and completing the HCBS compliance review process. SMA staff developed a comprehensive [Nonresidential Provider Evidentiary Document Checklist](#) as a reference for providers while compiling their materials. SMA reviewers conducted extensive desk reviews of provider-submitted materials. Preliminary compliance with each of the state’s benchmarks was validated through the assessment of the setting’s policy and procedure materials, participant materials and handbooks, community activity schedules, staff training and development materials, and person-centered assessment and planning documents. If the reviewer identified inconsistencies or other ambiguous responses, the setting was contacted by phone or email to discuss any unclear responses.

Validation tools created by the SMA were used by reviewers conducting all desk reviews and onsite visits. The evidence provided by the setting and observed by the reviewer during the desk review took precedence over the provider’s self-assessment responses, because in some cases, settings did not understand the self-assessment questions or made necessary changes within the setting during the interval between completing the self-assessment and completion of the review.

If areas of non-compliance were identified during the review process the provider received a Notice of Remediation and setting-specific Remediation Report. Settings were required to submit a plan of remediation including supportive documentation, where applicable, within a specified time frame to demonstrate compliance with the HCBS Settings Rule.

For the 373 (1,115 initially identified – 742 removed from list = 373) that remained, the results of the validation process were as follows:

<b>Compliance Status – estimated based on findings to date</b>	<b>ADC</b>	<b>ADS</b>	<b>PREVOC</b>	<b>CLTS</b>	<b>GSE</b>	<b>NUMBER</b>
Expected to meet criteria of HCBS Settings Rule	0	7	6	0	46	59
Expected to meet criteria upon completion of remediation	82	156	75	1	0	314
Expected to not meet criteria (will not remediate during validation period)	0	0	0	0	0	0
Presumptively institutional	0	0	0	0	0	0
<b>TOTAL</b>	<b>82</b>	<b>163</b>	<b>81</b>	<b>1</b>	<b>46</b>	<b>373</b>

To verify the effectiveness of the virtual desk review process, the SMA randomly selected 30 settings initially found compliant and conducted onsite reviews in these settings. The results of these onsite reviews confirm the virtual desk review process and findings were complete and accurate. The onsite review visits, broken down by the following setting types:

- Adult day care centers – 7
- Children’s long term support day services settings – 0
- Day habilitation service settings (adult day services) – 12
- Prevocational service settings – 10
- Group-supported employment settings (enclaves/work crews) – 1

***V. Identification and completion of provider remediation***

**Residential:** Every residential site that submitted a self-assessment received a thorough desk review. If the reviewer identified internal inconsistencies or other ambiguous responses, the setting was contacted by phone or email and was interviewed regarding any unclear responses. If remediation requirements were identified during the desk review or subsequent follow-up, reviewers sent detailed remediation notices to the setting. Settings were required to respond to the notice of remediation with evidentiary documentation of actions taken, or their plan of remediation to be completed within a specified deadline. Settings that did not remediate were identified as not meeting criteria.

The process for remediation was as follows:

- Provider was notified that setting does not fully meet the HCBS settings rule criteria. Notification included description of areas of criteria not met. Notifications occurred as individual site reviews and self-assessment reviews were completed.
- Provider was required to remediate any areas of criteria not met and submit evidence of remediation to the SMA based on a timeframe specified in the notification. The reviewers contracted by the SMA reviewed this evidence based on guidance provided by the SMA. When the reviewer determined that the provider had achieved compliance, the determination was sent to the SMA and followed the process described above.
- If remediation was complex and required additional time, the provider was required to submit a remediation plan that identified the remediation steps and timeline proposed by the provider.
- SMA reviewed plans for response to areas of concern and advised provider of any issues.
- Remediation plans identified remediation steps to be completed. A provider could request a compliance review as soon as it had implemented the plan.
- SMA conducted a follow-up validation review of evidence submitted by the provider or a site visit, if deemed necessary, and determined whether the setting now met the HCBS settings rule criteria.

Personnel conducting validation site visits used standardized review tools developed by the SMA. These tools allowed for site observations, review of supporting documents submitted by the provider, interviews with staff, and conversations with waiver participants in the setting.

For residential settings, the primary area of remediation was to add keyed locks to individual living unit doors and develop policies for staff use of keys. The SMA provided one-on-one technical assistance to settings to help understand the door lock requirement and produced [Door Locks in Adult Long-Term Care Residential Settings](#), available on the SMA website. The second most frequently identified area of remediation was access to personal funds. Some settings have arrangements by which residents can voluntarily place funds with the setting for security reasons. In some facilities, the funds were not continuously accessible. The SMA provided one-on-one technical assistance to settings to help understand the access to funds requirement, and produced a technical assistance document, [Access to Personal Funds and Resources in Adult Long-Term Care Residential Settings](#), available on the SMA website.

Settings that met all compliance criteria, both with and without remediation, received a letter from the SMA confirming their compliance. For DQA- licensed or certified settings (CBRFs, 3-4 bed AFHs, and RCACs), the HCBS compliance designation is included on DQA's public-facing [Provider Search](#). This includes settings that achieved compliance during the initial review process and settings that achieved compliance as a result of a subsequent DQA review.

The SMA compiled a list of provider settings determined compliant with the regulations for HCBS settings. The SMA also identified settings that were determined to need remediation and required these providers to submit remediation plans or evidence of remediation to the SMA. Providers that submitted remediation plans were actively monitored by the SMA and/or its contractors to ensure full compliance with the HCBS settings rule within the timeframe identified in the plan.

In some cases, the management of a setting refused to cooperate with the compliance review personnel or dismissed all contact efforts to assess compliance. Before making any final determination of noncompliance, the SMA worked with providers and waiver agencies to ensure that providers understood the process and the requirement to participate in the process. When appropriate, the SMA utilized the existing statutory process for facilities that chose to downsize or close as a result of noncompliance with the HCBS settings rule requirements.

The SMA has collaborated with provider associations and advocacy organizations to provide benchmark and process information, technical assistance, and to answer questions. A dedicated phone line and email address

are available for providers to ask questions, receive one-on-one technical assistance, or submit materials. The SMA website has a dedicated webpage for the [HCBS settings rule](#) that includes information on the rule, response to frequently asked questions, and additional contact information. SMA HCBS settings rule staff have presented at numerous meetings, conferences, and other outreach venues on the HCBS settings rule, including providing information on remediation topics. These have included sessions sponsored by the state regulatory agency, by industry organizations, and conferences of general interest to disability agencies and self-advocates. Sessions provided interactive opportunities for providers to ask presenters HCBS-related questions, and to share information with each other.

**Nonresidential:**

Validation tools specific to nonresidential settings were used by reviewers conducting all desk reviews and onsite visits. Setting-specific compliance reports were then generated, with each of the benchmark areas identified as “valid” or “remediate,” including a letter to the provider describing the compliance areas requiring remediation to meet the settings rule criteria.

If the reviewer found that a setting did not meet the SMA’s benchmarks for compliance, a remediation report was generated to include the HCBS settings rule requirements, the SMA’s benchmark for applicable compliance areas, and the reviewer’s assessment and observations. Each setting’s report included all areas requiring remediation to reach compliance. Providers were asked to develop and submit a remediation plan addressing each of the benchmarks. Each remediation plan submitted by a provider was reviewed by the SMA to confirm that the plan adequately addressed the settings rule requirements and would lead the setting to compliance. Settings received written notice when their remediation plan was accepted, including a timeline for implementation of the plan. Throughout the remediation process reviewers were available to provide feedback and guidance on policy or practice updates, and other steps toward compliance with the regulation. Confirmation that the provider had implemented all areas of their remediation plan was assessed through a review of provider-submitted evidence.

Settings that met all compliance criteria, both with and without remediation, received a letter from the SMA confirming their compliance. A list of nonresidential provider settings and their compliance status is available on the SMA’s [HCBS Nonresidential Settings Compliance List](#).

Validation has been completed for all nonresidential settings. None of the settings fall under the heightened scrutiny requirement. Several providers have changed their model to incorporate more integrated activities. The SMA continues to work with industry organizations to encourage additional changes.

The most common technical assistance needs identified for nonresidential settings included identifying the documentation needed to validate compliance, discussions on community integration inside and outside the setting, and development and implementation of a person-centered assessment and planning process.

The SMA has collaborated with provider associations and advocacy organizations to provide benchmark and process information and technical assistance. Contact information for the review team members is available for providers to ask questions, receive one-on-one technical assistance, or submit materials. The SMA website has a dedicated [webpage for nonresidential HCBS](#) providers that includes information on the rule, response to frequently asked questions, and additional contact information. SMA HCBS settings rule staff have presented at numerous meetings, conferences, and other outreach venues on the settings rule, including providing information on remediation topics. These have included sessions sponsored by the state regulatory agency and conferences specific to provider types, such as prevocational and adult day care providers. Sessions provided interactive opportunities for providers to ask presenters HCBS-related questions, and to share information with each other.

**Report of findings:** After review of all remediation plans and final determinations of compliance, the [HCBS Nonresidential Settings Compliance List](#) is available on the [HCBS settings rule webpage](#).



For DQA- licensed or certified settings (CBRFs, 3-4 bed AFHs and RCACs), the HCBS compliance designation is included on DQA's public-facing [Provider Search](#).

From the date that the initial validation results were identified, the SMA has continued to work with and encourage providers to become compliant. Residential settings that did not meet criteria during the initial validation process were able to submit an [HCBS Compliance Review Request](#) to DQA to be reviewed through the state's ongoing compliance review process. The SMA's goal is to have as many settings achieve compliance as possible to minimize disruption of living arrangements for waiver program participants.

For those providers that do not reach full compliance, or choose not to comply, waiver participants will be transitioned to an HCBS-compliant setting in accordance with the SMA's transition plan described in *VIII. Plan to relocate participants or discontinue waiver funding*

## *VI. Ongoing assessment and monitoring of settings*

All settings are subject to the ongoing regulatory process for their setting type. Any areas of non-compliance that may not have been identified during the initial review process are being identified through the ongoing compliance and regulatory process. This process is conducted by DQA for CBRFs, 3-4 bed AFHs, RCACs, and ADCs. For 1-2 bed AFHs, the process is conducted by MCOs for managed long-term care (LTC), and contracted staff employed on behalf of the SMA for the IRIS program. For nonresidential settings that are not otherwise regulated, the process is conducted by contracted staff employed on behalf of the SMA.

Wisconsin will use several methods for ongoing assessment and monitoring of settings:

**Build into regulatory monitoring:** DQA will continue to assess the compliance of any new licensed settings that are certified by DQA (CBRFs, 3-4 bed AFHs, RCACs, and adult day care providers) requesting HCBS compliance by reviewing the [HCBS Compliance Review Request, F-02138](#) and the required supporting documentation. Licensed settings and settings that are certified by the state licensing authority (DQA) (CBRFs, 3-4 bed AFHs, RCACs, and adult day care providers) are subject to periodic compliance site visits (at least every 3 years for CBRFs, 3-4 bed AFHs, and RCACs and at least every 5 years for adult day care providers) by DQA. As part of these periodic licensing or certification reviews, DQA also reviews the setting for continued HCBS compliance. Settings found to have deficiencies in licensing or certification requirements are required to implement corrective actions and can lose their license or certification when noncompliance continues or is egregious. Any provider that loses its license or certification cannot continue to be a qualified waiver service provider regardless of their HCBS compliance status. Providers are required to address any HCBS rule deficiencies. Failure to adequately remediate results in removal as an HCBS waiver provider. New providers who are licensed or certified by DQA are reviewed for HCBS compliance if they intend to serve HCBS waiver participants. Information about which residential settings are HCBS compliant and standard or abbreviated surveys completed in the past three years are listed on DQA's public-facing [Provider Search](#).

Certified 1-2 bed AFHs are certified by MCOs for Family Care and Family Care Partnership members, and contracted staff employed on behalf of the SMA for IRIS participants. The HCBS requirements have been incorporated into the [Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes](#). The certification entities are required to review compliance with the state standards for any setting that intends to serve HCBS waiver participants. These settings must be recertified on an annual basis. HCBS compliance requirements are part of the initial review and the recertification process. Settings that are not compliant with all AFH standards, must implement corrective actions within 45 days and will have their application for certification or recertification denied if they fail to successfully remediate the areas with which they are non-compliant within the designated time frame. If an AFH application for certification or recertification has been denied or if an AFH certification has been revoked, the AFH is no longer eligible to serve as an HCBS waiver provider.



**Use of contracted staff under the direction and supervision of the SMA to oversee nonresidential settings that are not otherwise regulated:** The contracted staff currently conducting the compliance reviews of nonresidential settings will continue to be employed to assess the compliance of any new nonresidential settings and to conduct ongoing compliance reviews of existing settings. The SMA will complete an updated review process to ensure compliance at least every three years, similar to DQA-regulated residential settings. Certifiers use the [Benchmark Guide for Home and Community-Based Services Settings Rule: Nonresidential Provider Settings](#) as a reference of state benchmarks and to provide justification to support the certifying agency's determination of compliance. The review process for all new and existing providers will include an off-site review of provider documents and an onsite visit. Settings that are not found to be compliant with the HCBS settings rule, are required to submit acceptable remediation plans within 45 days and to implement the accepted plans within 6 months. If the non-residential provider fails to achieve compliance with the HCBS settings rule within the designated timeframe, the provider is no longer eligible to serve as an HCBS waiver provider.

**Incorporate monitoring into person-centered planning and required waiver monitoring visits:** All of Wisconsin's HCBS waivers require that the waiver agencies support person-centered planning. Care managers and support and service coordinators in Family Care and the CLTS waiver work with the participant, family and other parties as preferred by the participant to develop a person-centered plan and provide services that implement the plan. In the IRIS program, the participant develops his or her own plan and is supported to implement that plan by the IRIS consultant and fiscal-employer agency. In all cases, participants are given the choice of services in non-disability specific settings.

Waiver agencies ensure that providers meet the standards as defined in the respective approved waivers, including requirements of the HCBS settings rule. Waiver agencies and IRIS participants are only allowed to contract with or otherwise engage providers who meet the HCBS settings rule requirements.

MCO care managers and IRIS consultants must meet with program participants face-to-face every 3 months. At least one meeting per year must be in the person's home. Other meetings may occur in other locations including day program settings. CLTS support and service coordinators must have contact with program participants every 3 months, which may be completed by any of the following: in-person meeting, meeting using both audio and video technology, meeting using audio-only (telephone), or written/email exchanges. When meeting with the participant, residential and nonresidential settings are observed to ensure health and safety and continuing compliance with the HCBS settings rule. This does not replace monitoring and compliance determination by the credentialing authority but provides an important supplemental check on compliance. In the event a setting appears to no longer be compliant with the HCBS settings rule, the waiver agency will inform the SMA who can make a request to the credentialing authority or to SMA staff, as appropriate, to conduct a site visit to further determine compliance with the rule.

**Beneficiary recourse to notify the state of provider non-compliance:** In addition to monitoring or compliance by waiver agencies, beneficiaries have several options to report provider non-compliance to the SMA. The Division of Quality Assurance has a [complaint process](#) in place for state licensed and certified providers. If any individual believes that a caregiver or DQA regulated health care provider has violated State or Federal laws, that individual has the right to file a complaint with DQA. The Bureaus of Health Services, Assisted Living, and Nursing Home Resident Care are responsible for conducting complaint investigations of health and residential care facilities. Individuals can file a complaint or report by calling a toll-free number, filing a report, submitting a concern, or submitting a complaint. Individuals can also contact the Ombudsman Program which responds to complaints and problems of residents or recipients of long-term care, such as community-based residential facilities and services provided by managed care organizations.

HCBS programs have grievance processes, including notification of care managers and IRIS consultants, that are followed if someone has concerns regarding the quality of their care or services. Waiver agencies identify

whether specific providers are the subject of grievances or appeals and have protocols to take appropriate corrective action. The SMA reviews grievance and appeal information as part of its ongoing monitoring procedures and overall quality management strategies.

**Systems development to document compliance:** Assisted living facilities and programs that are licensed, certified, or regulated by DQA are included in an existing state-level data repository. This includes residential settings (CBRFs, 3-4 bed AFHs, RCACs) and nonresidential adult day care (ADC) settings. HCBS compliance status for residential settings is currently noted on DQA’s public-facing [Provider Search](#). Ongoing compliance of adult day care settings will be conducted by DQA beginning no later than March 17, 2023, and the HCBS compliance status for adult day cares will then be included on the public facing ADC directory provider search.

A list of nonresidential provider settings and their compliance status is available on the SMA’s [HCBS Nonresidential Settings Compliance List](#).

In the future, the SMA expects to leverage new functionality in Wisconsin’s Medicaid Management Information System (MMIS) to store HCBS compliance status residential and nonresidential facility-based providers. The implementation of this functionality is anticipated to begin in 2024, with provider rollout concluding in 2025. Using data from the MMIS, the SMA will create, regularly update, and make provider directories available publicly which include an indicator of HCBS compliance status for applicable providers.

**Building capacity to assure non-disability specific options:** The SMA has several activities in place to build capacity for non-disability specific options for waiver program participants.

### **Residential**

- Waiver services support housing modifications and costs of relocating to a less-restrictive setting.
- Low-income housing credit preference points for integrated, supportive housing development. The State’s housing finance authority, the Wisconsin Housing and Economic Development Authority (WHEDA), has implemented preference points for supportive housing that limits targeted supportive units to 25% of the capacity of the development. Applications for the preference points are reviewed by SMA staff.
- Section 811 vouchers — The SMA coordinates with WHEDA and property management agencies to make referrals to available units in integrated developments.
- Money Follows the Person (MFP) — Wisconsin has an active MFP program. Transitions under MFP are limited to settings of 4 or fewer people; most move to an individual home or apartment.
- Additional capacity-building initiatives are included in the [American Rescue Plan Act HCBS Funding Plan](#).

### **Nonresidential**

- Competitive Integrated Employment (CIE) Pay for Performance (P4P) — The SMA has implemented a pay-for-performance initiative for its managed long-term services and supports (MLTSS) programs that provides incentive for MCOs to increase member participation in CIE. The P4P initiative is in its second year.
- 2017 Act 178 — With the enactment of Act 178, the Wisconsin legislature made Wisconsin an Employment First state. The law requires state agencies engaged in employment activities to establish CIE for people with disabilities as their priority policy and work together, with stakeholders, to set benchmarks and goals for increasing CIE participation rates across Wisconsin.
- Redefining waiver services — The SMA started working on new definitions for several of its day services to more accurately identify and promote the services being provided in non-disability specific settings. This initiative was put on hold due to the Public Health Emergency. Revisions to the waivers will occur through the regular renewal timeline.

- Additional capacity-building initiatives are included in the [American Rescue Plan Act \(ARPA\) HCBS Funding Plan](#).

***VII. Heightened scrutiny review process***

The three CMS criteria for settings presumed to have institutional characteristics are:

- Prong I. Settings in a publicly or privately owned facility providing inpatient treatment
- Prong II. Settings on the grounds of, or adjacent to, a public institution
- Prong III. Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS waiver services

The first two questions on the provider self-assessment form required settings to identify whether they were in the same building as a public or private inpatient facility, or on the grounds of a public institution. This question was not included in the nonresidential self-assessment. SMA reviewers assessed nonresidential settings for institutional qualities and did not identify any that met either Prong I or II criteria.

The SMA identified 48 residential settings serving waiver participants that met either Prong I or Prong II criteria.

<b>Compliance Status</b>	<b>1-2 bed AFH</b>	<b>3-4 Bed AFH</b>	<b>CBRF</b>	<b>RCAC</b>	<b>Level 5 Foster Care</b>	<b>Total</b>
Presumptively institutional						
Prong I			33	8		
Prong II		2	4	1		
Prong III						
<b>TOTAL</b>	<b>0</b>	<b>2</b>	<b>37</b>	<b>9</b>	<b>0</b>	<b>48</b>

The SMA provided each residential setting with a written notice of need for heightened scrutiny review. Instructions for submitting evidentiary materials were also provided, as well as an evidentiary document checklist and information on the federal heightened scrutiny process. Only certain SMA reviewers were tasked with the heightened scrutiny reviews. In most cases, providers were able to work with the same heightened scrutiny reviewer throughout the entire process.

The SMA developed an [HCBS Heightened Scrutiny Reviewer Assessment and Evidentiary Summary](#) form to ensure a consistent and logical review summary, as well as inter-reviewer reliability. The summaries were consistent in form and included compliance within state standards and regulations specific to the setting type (RCAC, CBRF, AFH, and nonresidential settings, as applicable). The format specified the compliance areas and criteria and allowed the reviewer to document all evidentiary information within the appropriate criteria. For instance, all evidentiary information obtained regarding how an individual was able to choose to receive services in the community was documented in the same area of the evidentiary summary. The verification of related documents such as policies, procedures, staff training, or resident handbook was included along with the onsite observations and/or public comments received regarding the same. Each evidentiary summary received a quality assurance review by the SMA’s HCBS Implementation Coordinator to ensure that the review was complete, evidenced how the setting overcame an institutional presumption, and was ready to be posted for public comment.

Each provider received a copy of their completed evidentiary summary. Providers were advised of the public comment period, along with stakeholders and provider associations.

The SMA made public the name and address of each setting that received a heightened scrutiny review — and overcame the institutional presumption — to allow for public comment. SMA staff considered the findings of the reviewers and any public comments and made a recommendation on each setting. The list of heightened scrutiny settings was reviewed by SMA managers based on the recommendations of review staff. The list was then submitted to the Secretary of the Department of Health and Human Services (DHHS) for federal review on April 2, 2021. On November 18, 2022, CMS directed states that have submitted presumptively institutional settings to CMS for a heightened scrutiny review and have yet to receive final adjudication of those settings to request a corrective action plan (CAP) to authorize additional opportunities to complete discussions with CMS. On December 6, 2022, the SMA received feedback on six specific settings visited by CMS in June 2022 and the overall heightened scrutiny review process. The SMA requested the CAP on December 1, 2022 and is actively working with CMS on strengthening the heightened scrutiny review process.

### *VIII. Plan to relocate participants or discontinue waiver funding*

This overall process has clear start and end date to allow for participant transitions, but the determination of noncompliance may occur at any time during the ongoing assessment and monitoring process. The SMA maintains a record of findings of provider compliance and noncompliance.

The SMA will contact all waiver agencies that use the provider to begin the process of relocating waiver participants. The SMA will work with waiver agencies to ensure that each individual is provided with choices of HCBS-compliant providers, including non-disability specific settings. If a waiver participant chooses to continue to receive services in a setting that is not compliant, the MCO will work with that member to understand and identify alternative day activities or funding. In the IRIS program, the ICA will support the participant to identify available resources and compliant providers.

Providers that do not attempt or choose not to come into compliance may notify the SMA at any point in the assessment and remediation process. When a provider makes this notification to the SMA, the SMA will inform the provider of their ineligibility to participate in providing HCBS waiver services.

**Residential:** Following the initial compliance review process, the SMA informed waiver agencies of the compliance designation, and provided them with a list of settings that had not met criteria prior to completion of the initial review process. The MCOs assisted the SMA with outreach to settings in their provider networks emphasizing the need to become compliant. These providers were advised to contact DQA to request an HCBS compliance review.

The SMA notified waiver agencies of the need to begin the process of identifying new living arrangements for program participants living in settings that do not meet the criteria for compliance. The SMA worked with all waiver agencies to allow settings ample opportunity to come into compliance before any transitions occur. MCO care management staff will work with their members to identify options in compliant residential settings.

The SMA has currently identified 25 individuals that may need to transition to new living settings because their current setting has decided not to pursue compliance with the HCBS settings rule. SMA oversight staff are working directly with care management staff at the MCOs to ensure that the transition process is implemented smoothly and that participant preferences are considered, including the choice of a non-disability specific setting. Participants will be given sufficient notice and time to explore other settings and will not transition until all necessary services and supports are in place.

**Nonresidential:** Validation has been completed for all nonresidential settings. None of the settings fall under the heightened scrutiny requirement. All nonresidential settings are compliant.

The SMA is making every effort to minimize the impact and is only transitioning HCBS waiver program participants after all attempts to assist providers towards compliance with the settings rule have been exhausted. The SMA timeline included completing its assessment and remediation activities in a timely manner to allow people sufficient opportunity to choose a new setting and relocate before the CMS deadline for full statewide compliance. For additional details regarding transitions, please see the sections specific to residential and nonresidential settings above.

People who will be affected by the noncompliance of a provider are being issued written notice and ensured due process. The process is as follows:

- A minimum of 30 days in advance of a transition, the waiver agency will issue each participant or legal representative written notice, in language specified by the SMA, and including notice of the right to due process, that the person will need to transition due to noncompliance by the provider.
- In IRIS, the SMA will issue each participant or legal representative written notice, including notice of the right to due process that the person will need to transition due to noncompliance of the provider.
- The notice will be provided as soon as the waiver agency is aware that the setting has not successfully met the HCBS waiver requirements, or has chosen not to comply, to allow time for due process and the identification of a compliant setting that meets the needs and preferences of the participant.
- At the same time, the MCOs will notify the provider in writing of the intent to transition a participant from the setting or the intent to discontinue waiver funding.
- The SMA will notify IRIS providers in writing of the intent to discontinue waiver funding. The ICA will support IRIS participants in identifying available resources and compliant providers.
- Waiver agencies will utilize the person-centered planning process to identify other compliant settings for affected individuals. Support and services coordinators interdisciplinary teams will work with each person affected and their families or guardians to identify a choice of compliant settings, including settings that are not disability specific.
- IRIS consultant agencies will work with participants and guardians to assist in identifying compliant settings, including settings that are not disability specific.
- MCOs and county agencies will meet all required person-centered care planning and care plan development processes and practices and provide all necessary supports to the person who will transition.
- IRIS consultants will meet all required person-centered care planning and plan development processes and practices to assist the participant in this transition.
- If a person chooses not to move, the waiver agency will help the person to understand the consequences of remaining in the noncompliant setting, including the loss of waiver eligibility.
- The SMA will provide support to all waiver agencies as needed during this process.

At this time, no residential providers serving IRIS participants, nor any nonresidential providers have been found non-compliant with the HCBS settings rule. If an IRIS residential provider or any nonresidential provider is found non-compliant and is unable or unwilling to remediate during ongoing assessment and monitoring activities, the above process will be utilized.

### *IX. Timeframe and milestones*

The SMA established timeframes with the following priorities:

- Minimize avoidable member transitions.
- Maximize the amount of time for providers to come into compliance.
- Provide enough time for the SMA to diligently conduct onsite provider assessments.

- Provide enough time for any necessary participant transitions to occur in a planned, person-centered manner allowing for due process for each affected participant.

## Wisconsin Statewide Transition Plan Milestones and Projected Timeline

### Systemic Assessment — Regulation and Policy Review Process

Milestone Reference Number	Milestone	Description	Status
WI.01.0	Systemic assessment	Preliminary assessment of waiver services and settings	Completed 10/31/2014
WI.01.1	Completion of systemic assessment	Analysis of service descriptions, policies, waiver language, program regulations, waiver provider agreements, contracts, manuals, handbooks and other materials for compliance with HCBS settings requirements.	Completed 06/30/2016
WI.01.2	Completion of Systemic assessment	Regulatory/Policy assessment of waiver services and settings; adult residential and nonresidential settings	Completed 9/30/2015

### Systemic Remediation

Milestone Reference Number	Milestone	Description	Status
WI.02.0	Revisions made to service descriptions, waiver language, program regulations, contracts, manuals, and handbooks to ensure compliance with HCBS settings requirements	Revisions will be made to ensure compliance with HCBS settings requirements: service descriptions; waiver language, program regulations; contracts; manuals; handbooks. Changes to coincide with new contract years, waiver years, etc., as applicable	Completed 12/20/2022
WI.03.0	Effective date of new rules and regulations	Wisconsin is not making any changes to rules, regulations or statutes.	Completed 7/14/2017
WI.04.0	Effective date of new rules and regulations: 100% complete	Wisconsin is not making any changes to rules, regulations or statutes.	Completed 7/14/2017

### Residential Provider — Assessment

Milestone Reference Number	Milestone	Description	Status
WI.05.0	Completion of site-specific assessment	A representative sample of residential settings that submitted self-assessments received an onsite validation review. The sample selected for onsite review was stratified to ensure that it was representative of settings.	Completed 8/31/2018



Milestone Reference Number	Milestone	Description	Status
		In addition to the settings randomly selected for a review, any current waiver provider that failed to submit a self-assessment for a setting received a site visit by the SMA's contracted staff. All settings are subject to the ongoing regulatory process for their setting type. Any areas of non-compliance that may not have been identified during the initial review process are being identified through the ongoing compliance and regulatory process. This <a href="#">Div. of Quality Assurance ongoing compliance process</a> has been in place since January 2019.	
WI.05.2	Completion of site specific assessment	Preliminary results of provider self-assessment/validation process analyzed	Completed 11/1/2017
WI.05.3	Completion of site-specific assessment	Residential: The SMA has reviewed each submitted residential provider self-assessment to make a determination as to whether compliance criteria were met or not met.	Completed 8/01/2018

#### Residential Provider — Remediation

Milestone Reference Number	Milestone	Description	Status
WI.08.0	Completion of residential provider remediation: 25%	<ul style="list-style-type: none"> <li>• Provider remediation plans submitted as required.</li> <li>• Provider is notified that setting does not fully comply. Notification includes description of areas of non-compliance. Notifications will occur as individual site reviews are completed.</li> </ul>	Completed 12/31/2016
WI.09.0	Completion of residential provider remediation: 50%	<ul style="list-style-type: none"> <li>• Provider remediation activities occurring.</li> <li>• Provider is required to remediate any areas of criteria not met and submit evidence of remediation to the SMA based on a timeframe specified in the notification. The reviewers contracted by the SMA are reviewing this evidence based on guidance provided by the SMA. When the reviewer determines that the provider has achieved compliance, the determination will be sent to the SMA and follow the process described above.</li> <li>• If remediation is complex and requires additional time, the provider will be required to submit a remediation plan that identifies the remediation steps and timeline proposed by the provider.</li> <li>• SMA will review plans for response to areas of concern and advise provider of any issues.</li> </ul>	Completed 12/31/2017



Milestone Reference Number	Milestone	Description	Status
		Remediation plans must identify remediation steps that will be completed.	
WI.10.0	Completion of residential provider remediation: 75%	<ul style="list-style-type: none"> <li>• Validations of provider remediation.</li> <li>• Compliance will be re-assessed upon notification by the provider that the remediation plan has been implemented and validated through review of evidence submitted by the provider or during a follow-up site visit.</li> </ul>	Completed 12/31/2017
WI.11.0	Completion of residential provider remediation: 100%	<ul style="list-style-type: none"> <li>• SMA conducts a follow-up validation review of evidence submitted by the provider or a site visit, if deemed necessary, and determines whether the setting now meets the HCBS settings rule criteria.</li> <li>• Upon notice of unmet HCBS settings rule criteria, a provider who does not wish to comply may notify the SMA at any point in the assessment and remediation process.</li> </ul>	Completed 9/30/2018

#### Nonresidential Settings — Assessment

Milestone Reference Number	Milestone	Description	Status
WI.05.1	Completion of site-specific assessment	Nonresidential – The SMA will review each submitted nonresidential provider self-assessment to make a preliminary determination as to whether compliance criteria were met or not met.	Completed 9/27/2021

#### Nonresidential Settings — Remediation

Milestone Reference Number	Milestone	Description	Status
WI.12.0	Completion of nonresidential provider remediation: 25%	Provider remediation activities occur.	Completed 12/15/2020
WI.13.0	Completion of nonresidential provider remediation: 50%	<ul style="list-style-type: none"> <li>• Provider remediation plans submitted as required by DHS.</li> <li>• Provider remediation activities occurring.</li> </ul>	Completed 2/05/2021
WI.14.0	Completion of nonresidential provider remediation: 75%	<ul style="list-style-type: none"> <li>• Provider remediation plans submitted as required by DHS.</li> <li>• Provider remediation activities occurring.</li> </ul>	Completed 8/30/2021
WI.15.0	Completion and validation of nonresidential provider remediation: 100%	Validation of provider remediation. SMA conducts a follow up compliance review and determines whether setting is now compliant.	Completed 10/01/2022

## Heightened Scrutiny — Residential and Nonresidential Settings

Milestone Reference Number	Milestone	Description	Status
WI.17.0	Identification of and communication with settings that are subject to heightened scrutiny review process	Identify settings that are subject to heightened scrutiny. This milestone was completed 9/30/2020. This was an active process throughout 2018-2019. Remaining settings requiring heightened scrutiny were contacted in 2020	Completed 9/30/2020
WI.18.0	Complete gathering information and evidence on settings requiring heightened scrutiny that it will presented to CMS	The SMA assigned HCBS reviewers to review the documentation provided by each setting, make follow-up contacts to the setting for clarifications and additional information, and conduct an on-site assessments. This was an active process throughout 2018-2020; onsite assessments were not conducted in 2020 due to the public health emergency. A 30-day public comment period was held 2/23/21 to 3/24/21. The list of reviewed settings that the state believes will overcome the institutional assumption was submitted to CMS on 4/02/2021. (See Appendix 4 of this Statewide Transition Plan.)	Completed 12/30/2020
WI.20.0	Submit STP with Heightened Scrutiny information to CMS for review	Only those settings that are determined to have satisfied the SMA heightened scrutiny review process will be submitted to Secretary of DHHS for federal review. Addendum to STP: List of HS settings post public comment period	Completed 4/2/2021
WI.20.1	Submit Corrective Action Plan (CAP) to CMS for review	CMS has directed states that have submitted presumptively institutional settings to CMS for a heightened scrutiny review and have yet to receive final adjudication of those settings to request a corrective action plan (CAP) to authorize additional opportunities to complete discussions with CMS.	Completed 12/1/2022
WI.20.2	Submit response to CMS to remediation report	CMS requests that the state provide a written response providing updated information describing how the state will remediate both the heightened scrutiny settings to ensure compliance with all of the settings criteria.	Due 1/5/2022
WI.20.3	Complete Heightened Scrutiny CAP	Once approved by CMS, the SMA will complete all remediation activities outlined in the corrective action plan.	Due TBD based on CMS approval of submitted remediation report

## Transition

Milestone Reference Number	Milestone	Description	Status
WI.16.0	Identification of settings that will not remain in the HCBS System	After review of all remediation plans and final determination of compliance, the SMA will issue a report identifying settings determined to comply with the HCBS settings rule. This report will be provided to all waiver agencies and will be readily available to the public, including program participants, families, and providers.	Due 3/01/2023
WI.21.0 – 25% complete	Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements and that resolution or alternate funding sources need to be considered:	<ul style="list-style-type: none"> <li>• People who will be affected by the noncompliance of a provider will be issued written notice and ensured due process.</li> <li>• A minimum of 30 days in advance of a transition, the waiver agency will issue each participant or legal representative written notice, in language specified by the SMA, and including notice of the right to due process, that the person will need to transition due to noncompliance by the provider.</li> </ul>	Completed 9/01/2022
WI.22.0 – 50% Complete	Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements and that resolution or alternate funding sources need to be considered:	<ul style="list-style-type: none"> <li>• People who will be affected by the noncompliance of a provider will be issued written notice and ensured due process.</li> <li>• A minimum of 30 days in advance of a transition, the waiver agency will issue each participant or legal representative written notice, in language specified by the SMA, and including notice of the right to due process, that the person will need to transition due to noncompliance by the provider.</li> </ul>	Completed 10/01/2022
WI.23.0 – 75% Complete	Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements and that resolution or alternate funding sources need to be considered:	<ul style="list-style-type: none"> <li>• People who will be affected by the noncompliance of a provider will be issued written notice and ensured due process.</li> <li>• A minimum of 30 days in advance of a transition, the waiver agency will issue each participant or legal representative written notice, in language specified by the SMA, and including notice of the right to due process, that the person will need to transition due to noncompliance by the provider.</li> </ul>	Completed 11/01/2022
WI.24.0 – 100% Complete	Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is	<ul style="list-style-type: none"> <li>• People who will be affected by the noncompliance of a provider will be issued written notice and ensured due process.</li> <li>• A minimum of 30 days in advance of a transition, the waiver agency will issue each participant or legal representative written</li> </ul>	Completed 12/31/2022

<b>Milestone Reference Number</b>	<b>Milestone</b>	<b>Description</b>	<b>Status</b>
	not in compliance with HCBS settings requirements and that resolution or alternate funding sources need to be considered:	notice, in language specified by the SMA, and including notice of the right to due process, that the person will need to transition due to noncompliance by the provider	
WI.25.0	Complete beneficiary resolution: 25% Complete	<ul style="list-style-type: none"> <li>Participant transition or loss of waiver funding target start date is as soon as waiver agencies are aware that a given provider will not comply</li> <li>The waiver agency will utilize the person-centered planning process to identify other compliant settings for affected individuals. Care managers and interdisciplinary teams will work with each person affected and their families or guardians to provide a choice of compliant settings, including settings that are not disability specific</li> </ul>	Completed 11/01/2022
WI.26.0	Complete beneficiary resolution: 50%	The waiver agency will meet all required person-centered care planning and care plan development processes and practices and provide all necessary supports to the person who will transition.	Due 12/01/2022
WI.27.0	Complete beneficiary resolution: 75%	The SMA established timeframes with the following priorities: Provide enough time for the SMA to diligently conduct on-site provider assessments.	Due 1/01/2023
WI.28.0	Complete beneficiary resolution: 100%	The SMA established timeframes with the following priorities: Provide enough time for the SMA to diligently conduct on-site provider assessments.	Due 3/01/2023

### Statewide Transition Plan

<b>Milestone Reference Number</b>	<b>Milestone</b>	<b>Description</b>	<b>Status</b>
WI.06.0	Incorporate results of settings analysis into final version of the STP and release for public comment	The results of the residential and nonresidential settings analyses has been incorporated into the final version of the STP. It was released for a 30-day public comment period between 6/24/2021 and 7/26/2021.	Completed 9/30/2021
WI.19.0	Incorporate list of settings requiring heightened scrutiny and information and evidence referenced in WI.18.0 above into the final version of STP and release for public comment	The list of settings requiring heightened scrutiny was incorporated into the final version of the STP as Appendix 4. The list of heightened scrutiny settings and related evidentiary documents were released for a 30-day public comment period from 2/23/21 to 3/24/21. The final STP was released for public comment between 6/24/2021 and 7/26/2021.	Completed 9/30/2021
WI.07.0	Submit final STP to CMS		Completed 12/22/2022

## *X. Public Input*

The SMA, in accordance with federal requirements, solicited public comments on its Statewide Transition Plan for Compliance with the Medicaid Home and Community-Based Setting Requirements of the Medicaid Home and Community-Based Services Final Regulation at CMS 2249-F/2296-F. On June 24, 2021, the revised draft plan was posted on the SMA website for public review and comment ([www.dhs.wisconsin.gov/hcbs/index.htm](http://www.dhs.wisconsin.gov/hcbs/index.htm)). Comments were accepted through July 26, 2021. Notice of the review and comment period was published in 16 major newspapers throughout the state.

The plan, originally posted on November 26, 2014, and as revised on March 1, 2017, and as updated to final on April 30, 2021, was reposted in July 2021 to provide opportunity to comment on changes made to the document in response to federal feedback.

The plan was submitted to CMS for review and approval in December 2021. CMS requested that additional updates and revisions be made, and that DHS repost the updated plan for public comment in November 2022.

The public was able to submit comments by email at [dhsitcpubcomment@dhs.wisconsin.gov](mailto:dhsitcpubcomment@dhs.wisconsin.gov).

Written comments were also accepted when mailed to the address below:

Department of Health Services  
Statewide Transition Plan — Comment  
P.O. Box 309  
1 W. Wilson St., Room 518  
Madison, WI 53701-0309

### **Summary of public comments and SMA response from November 2022:**

Seven state-level organizations that advocate for people with disabilities provided feedback on Wisconsin's Statewide Transition Plan. These organizations are the Board for People with Developmental Disabilities, Disability Rights Wisconsin, the Disability Service Provider Network, Independence First, Leading Age, Living Well Grant, and the Survival Coalition. Comments that were common across the organizations are combined. The state Medicaid agency (SMA) response is provided in bold type for each comment:

### **ONGOING ASSESSMENT AND MONITORING OF SETTINGS**

#### ***Build into regulatory monitoring:***

Concerns with DQA's capacity to provide timely facility surveys and response to complaints. **DQA has resources and processes in place to prioritize and respond to complaints, and to incorporate regulation of the HCBS settings rule into their regulating and licensing processes. See [DQA Implementation of Home and Community-Based Services Settings Rule in Residential Assisted Living Facilities, P-01826 \(wisconsin.gov\)](#) for more information on this process. This concern has been shared internally with DQA.**

For DQA-regulated 3-4 bed AFHs, CBRFs, and RCACs, DQA completes ongoing HCBS compliance by ensuring facilities continue to meet HCBS settings rules during standard or complaint surveys. Under the plan, DQA review is every 3 years. Information about which residential settings are HCBS compliant, last date of inspection, previous citations, and any corrective actions that were completed to come into compliance are not publicly published. **Information about which residential settings are HCBS compliant and standard or abbreviated surveys completed in the past three years are listed on DQA's [Provider Search](#). This link has been added to the STP and the input will be considered in the development and modification of resources available to the public to learn more about HCBS and compliant community-based settings.**

The current DQA licensing review takes place once every three years. It is unclear if these certifications include an actual visit and interview with people with disabilities. Recommendation for any review to include

engagement through conversation with the individuals living in those setting to determine if rights violations are taking place. **The Division of Quality Assurance conducts both announced and unannounced [surveys](#) of assisted living facilities, including community-based residential facilities (CBRFs), residential care apartment complexes (RCACs), adult family homes (AFHs), and adult day care centers (ADCCs) in Wisconsin to ensure state licensure/certification and home and community-based services (HCBS) requirements are met. Interviews with consumers, and family members/representatives are conducted to determine how consumers and family members/representatives perceive the services delivered by the facility and to clarify information gathered during observations.**

The MCO's and SMA currently certify the 1-2 Bed AFH's in Wisconsin. Recommend the State prioritize the completion of the certification manual and engage stakeholders in the revision of the manual. In addition, the certification manual should go through a public comment period. **The SMA continues to prioritize completion of the certification manual and intends to gather stakeholder input via public comment.**

It is unclear how 1-2 bed AFHs are evaluated and monitored under the Transition Plan. Current practice assigns contracted MCOs responsibility for evaluation and monitoring 1-2 bed AFHs. ICAs are assigned responsibility for evaluation and monitoring 1-2 bed AFHs in IRIS. This is inherently problematic as MCOs and ICAs do not have regulatory authority and DQA should monitor 1-2 bed AFHs. **Certified 1-2 bed AFHs are certified by MCOs for Family Care and Family Care Partnership members, and contracted staff employed on behalf of the SMA for IRIS participants. The HCBS requirements have been incorporated into the [Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes](#). The certification entities are required to review compliance with the state standards for any setting that intends to serve HCBS waiver participants. These settings must be recertified on an annual basis. This clarification has been added to the STP. IRIS Consultant Agencies are not assigned responsibility for ongoing assessment and monitoring of 1-2 bed AFHs.**

It is unclear in the transition plan how the state will evaluate segregated communities for people with disabilities that have isolating and institutional characteristics that do not fall within the state's current regulatory framework. **To receive Medicaid waiver funding, all residential settings will be evaluated for HCBS compliance within our on-going compliance monitoring process. Settings that do not obtain regulatory licensure or certification would not be eligible to receive Medicaid funds. The SMA is currently working on updates to the [HCBS Compliance Review Request, F-02138](#) to enhance identification of settings that may meet the criteria of having the effect of isolating individuals.**

DHS emphasizes language in guidance documents, handbooks and contract language as proof of HCBS compliance. Simply having language is not a sign of compliance, especially when oversight is done by a contracting entity rather than DHS itself. Developing HCBS compliant documentation systems is a needed shift. **Language in guidance documents, handbooks, and contracts is only one aspect of HCBS Compliance. Provider practices are also assessed and monitored for HCBS compliance through the on-going monitoring process. Section VI. Ongoing Assessment and monitoring of settings outlines these additional HCBS compliance activities. The SMA expects to leverage new functionality in Wisconsin's Medicaid Management Information System (MMIS) to store HCBS compliance status for residential and nonresidential facility-based settings. The implementation of this functionality is anticipated in 2024, with provider rollout concluding in 2025. Using data from the MMIS, the SMA will create, regularly update, and make provider directories available publicly which include HCBS compliance status.**

The department should consider any location where people with disabilities are congregated ineligible to be considered a HCBS setting, this should include both residential and nonresidential settings. We find the transition plan insufficient for labeling these-facilities as compliant without having any expectation or requirement these service providers transition to community integrated models. **The purpose of the HCBS Settings Rule is to ensure that people receiving services through HCBS waiver programs have access to**

**the benefits of community living and are able to receive services in the most integrated setting. There is no mandate that congregated settings are ineligible HCBS settings. The SMA supports providing opportunities for community integration for program participants but must also honor the preferences of program participants to use other service models. The SMA has built the integrated nature of provider settings into its compliance benchmarks to ensure options and choice for members.**

The State should add an ongoing requirement for providers to document their implementation of the setting rule such as a simple checklist which includes the rule to consider and several questions to help guide the provider on whether it is being implemented for the individual. Recommendation that the State create a checklist for providers to document ongoing compliance implementing the setting rule in both residential and non-residential settings. **The suggestion has been shared within the SMA for future consideration.**

DHS has provided little training and guidance to providers related to changing/improving their practices to fully align with the settings rule. Other states have invested heavily in training and technical assistance for providers to ensure full implementation of the HCBS settings rule. **The SMA does provide additional training and technical assistance to providers during the certification and review processes. The concerns have been shared within the SMA for future consideration.**

DHS indicates in the Statewide Transition Plan sets a high bar for community integration for Non-Residential settings. Commentor does not find this characterization to be true about settings that were not found to have isolating qualities. **During the height of COVID, providers requested and were granted dispensations for safety reasons. Each provider was required to demonstrate how/ when they expected to resume full compliance with the applicable benchmarks and was also required to demonstrate how they were compliant prior to the onset of COVID. There has been no allowable exemption to full compliance since the fall of 2021. The SMA supports providing opportunities for community integration for program participants but must also honor the preferences of program participants to use other service models.**

***Use SMA supervised staff to over see nonresidential settings that are not otherwise regulated:***

Adult Day Care Centers (ADCCs) are certified by DQA. The HCBS settings rule also applies to adult day services settings, prevocational settings, group supported employment settings, and children's day services settings. The transition plan identified "SMA supervised staff" to conduct ongoing compliance of nonresidential settings (except ADCCs) first annually, then every 3 years. It is unclear who specifically is responsible for monitoring nonresidential settings. **As noted under IV. Review and validation of self-assessment, the SMA utilizes contracted staff under the direction and supervision of the SMA to conduct reviews of nonresidential settings. Names of specific SMA or contracted staff are not included in the Statewide Transition Plan. Language has been added to the STP to clarify that SMA contract staff are providing ongoing assessment and monitoring of nonresidential settings that are not otherwise regulated.**

***Incorporate monitoring into person-centered planning and require waiver monitoring visits:***

DHS should work more closely with individuals in adult family homes who want to use supported decision making to live in the community. Working with the guardian may be a barrier or individual. DHS should focus on the individuals, not the guardians. **The individual is always central to the assessment and care planning process. Agencies shall include any legal decision maker in decisions relating to the individual only to the extent consistent with the scope of the legal decision maker's authority.**

A fundamental standard through the settings rule states "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." This is verified through self assessment and relies on the person centered plan to meet the State's obligation. Many times choice in where services are provided are artificially inhibited by the utilization of participant networks, and because of obligations to work within participant networks non-disability specific housing is often not presented as an option. This is now being impacted by external forces like the workforce crisis which



are resulting in a greater lack of choice in where individuals live. This type of evaluation should really be done with a third-party that doesn't have any connection to the residence. **The member-centered planning process expectations are included throughout contract language. The concerns have been shared within the SMA. At this time, the contract language includes requirements related to the member-centered planning process including encouraging members to take an active role in decision-making regarding the services they need to live as independently as possible and ensuring that the member, the member's legal decision maker and any other persons identified by the member be included in the member-centered plan development. If an MCO is not meeting these requirements, it is expected that our partners would bring this to the SMA's attention.**

Care Managers and IRIS consultants do not include any type of review of HCBS compliance or active conversation with their members. **The member-centered planning process expectations are included throughout contract language. The concerns have been shared within the SMA. At this time, the contract language includes requirements related to the member-centered planning process including an exploration with the member of the member's preferences in regard to privacy, services, caregivers, and daily routine, including, if appropriate, an evaluation of the member's need and interest in acquiring skills to perform activities of daily living to increase the member's capacity to live independently in the most integrated setting; an exploration with the member of the member's preferences and opportunities for community integration including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community; an exploration with the member of the member's preferred living situation and a risk assessment for the stability of housing and finances to sustain housing as indicated; and an exploration with the member of the member's preferences for educational and vocational activities, including supported employment in a community setting. If an MCO is not meeting these requirements, it is expected that our partners would bring this to the SMA's attention.**

***Beneficiary recourse to notify the state of provider non-compliance:***

The transition plan surmises case managers will observe residential and nonresidential settings for continuing compliance with the HCBS settings rule during their regular face-to-face meetings with participants. If noncompliance is observed, the case manager will "inform the SMA who can make a request to the credentialing authority or SMA staff, as appropriate, to conduct a site visit to further determine compliance." Wisconsin's transition plan does not identify which Family Care, IRIS, or CLTS staff are responsible for receiving case manager reports of observed noncompliance and sharing them with the SMA. It does not identify which SMA staff are responsible for interfacing with DQA or scheduling site visits. **Each MCO and ICA can determine their process for receiving reports and sharing them with the SMA. The SMA has staff assigned to coordinate with DQA for DQA regulated facilities and additional staff assigned for 1-2 bed IRIS AFH's and non-residential HCBS compliance reviews. Names of specific DHS or contracted staff are not included in the Statewide Transition Plan.**

Commentor recommends that DHS require MCOs and ICAs, either directly or through providers, offer rights education to all HCBS recipients, their families, and agency staff. These training should include education on rights, how to assert their rights, what type of supports are available and how to file a complaint if rights are being limited or denied in plain language materials. Additional recommendation that a discussion of rights restrictions be added to every check in with their members. A form should be created to document these conversations and should include any reports from the member or their family about concerns related to rights. DHS should develop and implement policies to require Human Rights Committees in Wisconsin HCBS Long-Term Care agencies, including both residential providers and non-residential providers, so that there is a standard process to ensure informed consent and due process. **The Division of Quality Assurance (DQA) has a complaint process in place, and the Family Care, IRIS, and CLTS programs have grievance processes that should be followed if someone believes there has been a rights violation. Individual MCOs are also**

required to have a member rights specialist within their organization. Additionally, the SMA's External Quality Review Organization (EQRO) conducts an assessment of member's understanding of his/her/their rights as part of the independent evaluation of managed care organization (MCO) compliance with federal Medicaid managed care regulations and the DHS contract with MCOs. Reference to the EQRO's expanded compliance review has been added to the STP. The comment regarding future development or modification to participant educational materials and resources has been shared within the SMA for future consideration.

The IRIS program needs to implement a process if the individual is experiencing a rights violation from a service provider being funding through the waiver. Any report of a restriction should include assistance reporting an entity to the appropriate agency for investigation. **The IRIS program has a process for individuals to report complaints and grievances. This process and assistance to report to the appropriate agency for investigation is included in many IRIS program materials including the IRIS Participant Handbook (P01008) and IRIS Participant Education Manual (P01704).** The commenter's input will be considered in the development and modification of additional guidance to IRIS participants residing in 1-2 bed Adult Family Homes.

***Systems development to document compliance:***

In September of 2022, Wisconsin took a step in the right direction regarding HCBS Settings compliance oversight for one- and two-bed AFHs when it published a list of these facilities publicly available on DHS's website, alongside the published *Standards*. The newly published list allows participants, family members, advocates, and others to identify where facilities are located, the parent company, and certifying agency. However, the list does not identify which facilities are HCBS compliant, date of last inspection, compliance history or remediation, or provide direction about how or where complaint about noncompliance. **As noted under Section VI. Ongoing assessment and monitoring of setting, the SMA expects to leverage new functionality in Wisconsin's Medicaid Management Information System (MMIS) to store HCBS compliance status for residential and nonresidential facility-based settings. The implementation of this functionality is anticipated in 2024, with provider rollout concluding in 2025. Using data from the MMIS, the SMA will create, regularly update, and make provider directories available publicly which include HCBS compliance status.**

***Building capacity to assure non-disability specific options:***

The rate of Family Care/IRIS participants with I/DD working in the community has remained consistently low over time. While there have been some increases in the numbers of people participating in any amount of CIE, there also appear to be increases in usage of facility-based day services, indicating there are significant blocks of time where people are neither working nor receiving job training services. More people shifting away from employment entirely as the percentage of people using facility-based day programs increases. **The SMA remains committed to addressing barriers to employment and community living face by many individuals with disabilities with a variety of [employment initiatives](#). The purpose of the HCBS Settings Rule is to ensure that people receiving services through HCBS waiver programs have access to the benefits of community living and are able to receive services in the most integrated setting. There is no mandate that congregated settings are ineligible HCBS settings. The SMA supports providing opportunities for community integration for program participants but must also honor the preferences of program participants to use other service models.**

Objection to the Department's citation of the Pay for Performance measure within the MCO contract as a sign of HCBS compliance when one hour of community integrated employment per week meets the criteria. One hour of work in a forty-hour workweek is not community integrated employment. Recommendations that MCO, ICA, and FEA contracts all include a Pay for Performance to significantly incentivize community integrated employment, including a scale that rewards MCOs for participants working 1-10 hours (less than part time), 11-

20 hours (up to part time), and 21-40 hours (part-time up to full-time). **The SMA will share the comment with regard to future development or modification of Pay for Performance mechanisms.**

Commentor objects to DHS citing the Employment First law as mechanism to demonstrate HCBS compliance. The law prioritizes community employment, but the planning and reporting requirements show little meaningful change in community employment outcomes. To date, the law confirms the system has not changed its segregated service model. **2017 Wisconsin Act 178 is identified in the Statewide Transition Plan as one activity to build capacity for non-disability specific options for waiver program participants. Specific concerns about 2017 Wisconsin Act 178 are outside the scope of the Statewide Transition Plan and should be directed to the Department of Workforce Development.**

Certain policies and practices prohibit provider owned businesses from being defined as Competitive Integrated Employment and/or Supported Employment (SE) and that current definitions do not allow for Individual SE or Group SE opportunities. **Any development or change to future waiver definitions will follow the waiver renewal process, including public comment and stakeholder engagement.**

Suggest the SMA establish appropriate rates to support the expansion of community-based settings and ensure that support needs are being met so individuals can remain in those settings. **Rate increases are outside the scope of the Statewide Transition Plan, however the [ARPA Medicaid Rate Reform Initiative](#) does include information on DHS's plan to establish a minimum fee schedule. This is an important step forward in making sure our providers are getting paid consistently and fairly. Reference to the SMA's ARPA funding for home and community-based services has been added to the STP.**

Overreliance on unpaid support in care plans puts long-term care participants at risk of being moved into the congregate HCBS regulated settings. Wisconsin does not have the residential provider or workforce to increase congregate settings capacity, nor is it desirable to do so. **Expanding, enhancing and strengthening the direct care workforce is one of the additional capacity-building initiatives including in the ARPA HCBS Funding Plan: [Medicaid HCBS Direct Care Workforce Reform](#). Reference to the SMA's ARPA funding for home and community-based services has been added to the STP.**

There is not agreement with the Department's assertion in the transition plan that Wisconsin Housing and Economic Development Authority (WHEDA) is prioritizing integrated housing, or that this is a sign of the state's HCBS setting rule compliance. WHEDA has specifically asked advocates how to improve communication to help refer eligible Medicaid recipients to available units in integrated settings. It does not appear there is active coordination between the DHS and WHEDA. Many families are actively seeking integrated housing options, including affordable subsidized HUD housing units, and report progress on independent living depends on their own initiative. Active coordination to incentivize and support long-term participants transitioning to independent living and better utilization of community supported living within long-term care should be incentivized as part of compliance with the HCBS settings rule. **The use of Low-income housing credit preference points for integrated, supportive housing development by WHEDA is listed as one activity to build capacity for non-disability specific options for waiver program participants and does not indicate prioritization of any of WHEDA's initiatives. The SMA supports providing opportunities for independent living for program participants but must also honor the preferences of many program participants to use other service models.**

## **HEIGHTENED SCRUTINY REVIEW PROCESS**

In previous comments, the shortcomings of the process of self-assessment and desk reviews that have been used to assess HCBS rule compliance have been noted. We have noted the limited number of settings that have been identified for heightened scrutiny. **The self-assessment was only used once in 2016. As noted under IV. Review and validation of self-assessment, starting in January 2020 the nonresidential review and validation process was brought in-house and restarted to ensure no settings were inadvertently missed,**

and to ensure that DHS maintained full accountability for the integrity of each review completed. The desk review only process was only utilized during the height of the COVID pandemic. All ongoing nonresidential reviews include both a desk review and onsite visit. The HCBS Settings Rule requires that the SMA conducts a heightened scrutiny review for all HCBS settings: (1) in a publicly owned facility providing inpatient treatment (including skilled nursing facilities); (2) on the grounds of, or adjacent to, a public institution; or (3) with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS waiver services. The SMA submitted the list of settings and evidence from the heightened scrutiny review to the Secretary of the Department of Health and Human Services (DHHS) for federal review on April 2, 2021. On December 6, 2022, the SMA received feedback on six specific settings visited by CMS and the overall heightened scrutiny review process. CMS has directed states that have submitted presumptively institutional settings to CMS for a heightened scrutiny review and have yet to receive final adjudication of those settings to request a corrective action plan (CAP) to authorize additional opportunities to complete discussions with CMS. The SMA requested the CAP on December 1, 2022 and is actively working with CMS on strengthening the heightened scrutiny review process.

Multiple skilled nursing facilities commented many frail elders choose to reside on a continuing care retirement campus where nursing home settings are often co-located on the same campus as HCBS services and do so to take advantage of the availability of the continuum of care and for the peace of mind such care offers. The state should modify the state transition plan to clearly state that the recipients, providers, and MCOs can all safely rely on a DHS determination of a setting's compliance up to the point of a CMS determination. This is an important clarification due to the length of time it has taken CMS to issue decisions with respect to this rule. When a skilled nursing facility is undergoing a partial conversion to a HCBS setting, please add a clear provision to the statewide transition plan that would permit that conversion to occur without relocation of the Medicaid member or loss or interruption of funding to the provider. This would also include an assurance to the MCO that they can continue to fund the resident at the setting whilst it undergoes a SNF to assisted living conversion and that the MCO-paid encounter will be included in capitated rate setting. Allowing partial conversions of skilled nursing facilities to be immediately eligible for HCBS funding upon the granting of licensure will promote the availability of high quality, resident-centered care to Medicaid recipients. **When a skilled nursing facility is undergoing a partial conversion to a HCBS setting, the SMA will coordinate with the provider and state licensing agency to complete the required HCBS heightened scrutiny review as expeditiously as possible, providing technical assistance as needed. The SMA directs providers to address reimbursement questions directly with their MCOs as these are contractual agreements between these entities. The SMA will address MCO questions regarding capitated rate setting on a case-by-case basis.**

#### **OUTSIDE THE SCOPE OF THE STP**

The state should ensure that Managed Care Organizations and IRIS Consultant Agencies provide direct assistance to consumers to find their own affordable, accessible housing and personal care team to help consumers live in the community. **Community-supported living options are outside the scope of the Statewide Transition Plan.**

Request that the SMA provide options such as assistive technology to help people live independently and safely without reliance on congregate settings or services. **While this comment is outside the scope of the statewide transition plan, assistive technologies are available if part of a person's long-term care needs.**

DHS should provide a timeline for the Family Care waiver renewal process. **The 1915(b) and (c) Family Care and Family Care Partnership waiver renewals are outside the scope of the Statewide Transition Plan.**

The acquisition of residential service providers and fiscal agents by private equity and proposed acquisitions of two MCOs by for-profit insurance companies is a new development with unknown consequences for long-term

care participants and services. Advocates are concerned that a focus on profits or cost cutting will result in loss of person-centered services options. **Private entity acquisitions are outside the scope of the Statewide Transition Plan.**

We request DHS incorporate person centered planning into the DSP Credentialing Initiative funded through ARPA and make this available to existing and new Direct Support Professionals at no additional cost. We also request allowance for provider determination on what PCP training is appropriate for them when offering this to their team. Lastly, we request higher reimbursement for staff who complete competency training through the DSP Initiative. **The Certified Direct Care Professional (CDCP) project is outside the scope of the Statewide Transition Plan. Questions regarding the American Rescue Plan Act Workforce Reform Initiative may be directed to [DHSDMSWIARPAHCBS@dhs.wisconsin.gov](mailto:DHSDMSWIARPAHCBS@dhs.wisconsin.gov).**

### **Summary of public comments and SMA response from July 2021:**

Six state-level organizations that advocate for people with disabilities provided feedback on Wisconsin's Statewide Transition Plan. These organizations are the Board for People with Developmental Disabilities, Disability Rights Wisconsin, the Disability Service Provider Network, GT Independence, the Survival Coalition, and TMG. Comments that were common across the organizations are combined. The state Medicaid agency (SMA) response is provided in bold type for each comment:

#### **SERVICE AUTHORIZATION PROCESS**

Commenters shared concerns with use of the resource allocation decision (RAD) process and the potential impact on members and providers, reduction of services and available settings. **The current RAD process wording was developed prior to the HCBS settings rule requirements being posted. The commenter's concerns have been shared within the SMA.**

The plan cites future definitions yet to be determined. Commenter requests the opportunity to build on their partnership with DHS by participating in discussion of future definitions and standards related to HCBS compliance. **Any development or change to future waiver definitions will follow the waiver renewal process, including public comment and stakeholder engagement.**

Current FC model lacks uniformity of policies and practices, e.g., members have shared recent decisions by MCOs that reduce services and settings for individuals and denying authorization for day services programs citing redundancy with their residential setting offerings. Commenter asks SMA to work with MCOs to increase communication and transparency regarding service authorization decision making. **The SMA will follow-up with commenter to request additional clarification on the specifics of this, and to contact DHS to report issues they are made aware of. Contract language will continue to be reviewed and developed leading up to the March 2023 deadline for final compliance with the settings rule.**

The integrated nature of both residential and nonresidential services should be the primary consideration in the service authorization process. **The SMA supports providing opportunities for community integration for program participants but must also honor the preferences of many program participants to use other service models. The SMA has built the integrated nature of provider settings into its compliance benchmarks and is making necessary changes to its policies and processes to ensure options and choice for members.**

#### **PERSON-CENTERED PLANNING**

While the commenter is pleased to see a recent commitment by the state to bring provider reimbursement rates closer to actual costs, they also feel that this does not address structural issues in the person-centered planning process. The person-centered planning process should involve and document informed choice and that non-disability specific settings are readily available to the individual. **The member-centered planning process expectations are included throughout contract language. The commenter's concerns have been shared**

**within the SMA. At this time, the contract language includes requirements related to the member-centered planning process. If an MCO is not meeting these requirements, it is expected that our partners would bring this to DHS' attention.**

The STP is overly reliant on policy documentation and does not explain how onsite HCBS reviews include and document participant reviews. Commenter feels that SMA should develop a protocol to incorporate participant interviews into ongoing provider compliance reviews. **Participant interviews occur in both residential and nonresidential settings.**

It is unclear how an evidence-based person-centered planning process would incorporate restrictive measures used upon a person. **In all programs, the approved restrictive measure or restraint must be incorporated into the overall behavioral support plan and is considered a key component of the person's individual support plan. The DHS [Restrictive Measures Guidelines and Standards](#) state that those with behavioral restrictive measures need to have a behavioral support plan (BSP). If someone has a BSP, it needs to be attached to the person-centered plan or IRIS individual support and service plan as an addendum.**

The plan indicates that within the person-centered planning process, all participants are given the choice of non-disability specific settings. The plan should ensure that the person-centered planning process involves documented informed choice and that non-disability specific settings are readily available to the individual. **Waiver agencies are required to identify non-disability specific settings to individuals through the person-centered planning process. The SMA has several activities in place to build capacity for non-disability specific options for waiver program participants (Section VI).**

Support for direct care worker training on person-centered planning and community access.

**Direct care worker training on person-centered planning has been incorporated into the benchmarks and review process.**

#### **TRANSITION OF PARTICIPANTS TO COMPLIANT SETTINGS**

Update the wording related to transitions for those in IRIS self-directed program, including language to reflect the role of ICAs with transitions. **Wording has been modified throughout STP to reflect how IRIS participants and IRIS consultant agencies would each respond to possible noncompliance with contracted providers, especially within the process outlined on page 19.**

The timeframe and milestones noted under member transitions from non-compliant settings should include a priority to provide support to the member with informed choice of all options and meaningful access to other like, compliant services. **The timeframe and milestones are step references to the larger process described in the statewide transition plan on pages 18-19. The overall plan will have a clear start and end date to allow for participant transitions. The SMA expects that waiver agencies will ensure that each individual is provided with choices of HCBS-compliant providers, including non-disability specific settings according to their contract with the SMA.**

Assure that ICAs are included in DHS communications with noncompliant provider lists, updates.

**The SMA will contact all waiver agencies that use the noncompliant providers to begin the process of relocating waiver participants. This is described in the statewide transition plan on page 18.**

#### **AVAILABILITY OF DATA, DOCUMENTATION — MMIS**

Commenter agrees with DHS' plan for single data repository system for residential and nonresidential provider compliance information to ensure alignment with the process of onboarding and credentialing agency providers. It is essential that the compliance repository and any related enhancements to MMIS align with the process of onboarding and credentialing agency providers serving people in IRIS. **Onboarding and credentialing take place through the Fiscal Employer Agency. The service provider's qualifications are verified during the**



provider assessment review before a setting is determined to be HCBS compliant. Only HCBS compliant settings are accepted as allowable settings in the IRIS program. Only allowable settings are included in the WISITS system from which the participant and IRIS consult develop the ISSP.

The plan indicates that “updated reports will be produced on a regular basis and shared with waiver agencies.” Will these reports serve as the official notification to ICAs and participants that services may no longer be authorized for providers who are out of compliance? **No, the reports will be for different points of reference. When the DQA Bureau of Assisted Living sends a written Notice of Rescinded Compliance, copies are forwarded to SMA, all waiver agencies, and county-specific ADRCs, Human Services departments, and Ombudsman agencies. The SMA will work with all waiver agencies that use the provider to begin the process of transitioning waiver participants to HCBS-compliant settings. The overall process will have a clear start and end date to allow for participant transitions.**

Options for public to learn more about community-based settings, compliant settings, etc.

**The Bureau of Assisted Living posts updated lists of licensed long-term care settings in the state, including AFHs, CBRFs, RCACs, and Adult Day Care centers. The provider’s HCBS compliance status is included within this listing. [Finding and Choosing an Assisted Living Facility | Wisconsin Department of Health Services](#). The commenter’s input will be considered in the development and modification of resources available to the public to learn more about HCBS and compliant community-based settings.**

## **IRIS**

Commenter asking for increased references to IRIS and self-direction throughout STP.

**References to IRIS and self-direction have been updated throughout the statewide transition plan.**

The plan states that if someone chooses to continue to receive services in a setting that is not compliant, MCOs and ICAs are responsible for “ensuring an alternative is available in a compliant setting.” In a self-directed program like IRIS, the ICA supports the person to identify available resources and compliant providers, however, we are not responsible for ensuring that compliant providers are available. We recommend modifying the language to reflect this. **Wording has been modified throughout the STP to reflect how IRIS participants and IRIS consultant agencies would each respond to possible noncompliant providers.**

On pages 29-30, language is included that will be added to the IRIS Policy Manual to ensure that plan documents include language confirming that the settings where services are provided support integration into the greater community and sustain and maintain and/or enhance the member’s existing natural supports and community supports. We recommend that these verifications be included in the Participant Education Manual. **The characteristics of person-centered planning are referenced throughout the IRIS Participant Manual and IRIS Policy Manual. The Policy Manual directs all further process for IRIS consultant Agencies and Fiscal Employer Agents. Currently, the IRIS manuals are undergoing revisions and information regarding the HCBS settings rule will be incorporated in the manuals as necessary.**

The plan identifies language from the Family Care contract that will be modified for IRIS and included in the IRIS Policy Manual, requiring documentation in situations where there are modifications to the HCBS settings rule for people residing in a provider-owned or controlled residential setting. Commenter recommends that this information be included as part of the Provider Agreement between the person and their residential provider, as opposed to the person’s ISSP. **The HCBS settings rule requires that modifications of the additional requirements of the settings rule must be supported by a specific assessed need, then justified and documented in the person-centered plan or individual support and service plan.**

## **PARTICIPANT RIGHTS and RIGHTS MODIFICATION PLAN**

The Board for People with Developmental Disabilities, through their work within the Living Well Grant, submitted several comments and concerns related to human rights.



Concern with the implementation of rights protections for people using home and community-based services. Commenter states an awareness of rights restrictions from service providers, long-term care organizations, families, and self-advocates. Commenter is concerned that DHS guidance will be sufficient to prevent the continuation of restrictive practices which have been part of the operational model. **The examples provided by the commenter are all covered within the requirements of the settings rule, and are compliance areas that reviewers, care managers or IRIS consultants pay attention to while onsite. Some changes did occur, of course, during the COVID public health emergency, such as changes to visitors inside the setting having restricted access. The Division of Quality Assurance has a complaint process in place for state licensed and certified providers. HCBS programs have grievance processes that should be followed if someone believes there has been a rights violation, and individual MCOs are required to have a member rights specialist within their organization. DHS is considering implementing a public process to receive concerns related to potential noncompliance of settings who have previously been deemed compliant and will take into consideration the commenter's concerns as this public process is further considered.**

Concern that many residential settings met compliance on technical levels operate in a manner that restrict opportunities and choices in the same way larger scale institutional settings do. The size of the setting is not the only criteria that puts it at risk of being institutional; common practices providers use can create an institutional environment. **DHS is considering implementing a public process to receive concerns related to potential noncompliance of settings who have previously been deemed compliant.**

Concern that people with disabilities are not educated on their informed decision making or the scope of their rights, especially their rights under the HCBS Settings Rule. Recommend that DHS require all MCOs, ICAs and service providers (both residential and nonresidential) to provide plain language information about HCBS rights developed by DHS to all HCBS long-term care participants, families, and guardians. **The Division of Quality Assurance (DQA) has a complaint process in place, and the Family Care programs have grievance processes that should be followed if someone believes there has been a rights violation. Individual MCOs are also required to have a member rights specialist within their organization. The SMA will share the comment with regard to future development or modification to participant educational materials and resources.**

With regard to the definition of rights and a Rights Modification Plan, the following recommendations were made to DHS:

- Incorporate a more explicit definition of rights into all waiver manuals to create consistency across settings with a focus on a full spectrum of rights.
- Develop and implement policies to require involvement of human rights committees within Wisconsin HCBS long-term care agencies.
- Update the Family Care and IRIS manual to include more specific information about the scope of HCBS rights in residential and nonresidential settings.
- Incorporate training and supports for direct care workers on participant rights related to community-access, what meaningful community access looks like, and how to facilitate it.
- Add a standard HCBS Rights Modification Plan be added as an addendum to person-centered plans; to be used across all HCBS long-term care programs to aid in planning and documenting HCBS rights modifications. Recommendation that a standard HCBS Rights Modification Plan be included as part of the Provider Agreement between the IRIS participant and their residential provider, as opposed to the person's ISSP.

**The Living Well Grant team has a workgroup that includes DHS staff, along with other stakeholders, working to develop recommendations. This group is tasked with, and has made, recommendations for**

change. Some of the recommendations have been implemented and others are undergoing consideration for future contract cycles.

#### **ADDITIONAL COMMENTS**

The following comments could not be grouped with others received. SMA responses are provided in bold type.

The qualifications and training of 3rd party reviewers was not included and is not clear. **Clarifying language was added to pages 10-11 of the statewide transition plan. The compliance review work done with 3<sup>rd</sup> party contracted staff was done in-house under DHS training, direction, and supervision.**

Develop policies, written guidance, and training for HCBS long-term care system, including in FC contract and IRIS manual, to ensure informed consent and due process. The plan should ensure that person-centered planning process involves documented informed choice and that non-disability specific settings are readily available to the individual. **The DHS-MCO contract Article V includes robust requirements for care development and documentation which includes choice of non-disability specific settings.**

It is unclear the accountability or documentation that will occur by responsible entities to outline HCBS compliance of 1-2 bed homes. How can the public making choices about the home and community-based quality of service providers access this information? **Certified 1-2 bed AFHs are certified by MCOs, counties, or staff employed by the SMA. The HCBS requirements have been incorporated into the [Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes](#). The certification entities are required to review compliance with the state standards for any setting that intends to serve HCBS waiver participants. These settings must be recertified on an annual basis, and the HCBS compliance requirements are part of the review and recertification process. The SMA expects to leverage new functionality in Wisconsin's Medicaid Management Information System (MMIS) to store HCBS compliance status for residential and nonresidential facility-based settings. The implementation of this functionality is anticipated in 2024, with provider rollout concluding in 2025. Using data from the MMIS, the SMA will create, regularly update, and make provider directories available publicly which include HCBS compliance status.**

Concerns and recommendations related to the compliance review process for nonresidential providers. We believe there is opportunity for improvement in communication and technical assistance to providers when remediation is needed. **Changes were made to the review process in response to provider and provider association feedback, such as making sure providers knew the name and contact information for their assigned reviewer and ensuring prompt responses. The SMA takes advantage of available opportunities to communicate with provider groups and meets on a regular basis with one provider association specific to nonresidential service providers. The SMA has done extensive outreach to external integrated employment workgroups and provider organizations, including participating in town halls and conferences sponsored by provider groups. Information on the HCBS settings rule was included in the materials, along with information specific to the benchmarks and compliance review process. Background information is also posted on the DHS website.**

Commenter requests that DHS seek feedback from nonresidential stakeholders on improving the appeal process. **It is unclear as to what appeal process is being referenced. Until there is a notice of noncompliance, there is not an appeal process. No notices of noncompliance have been issued to nonresidential stakeholders. Nonresidential service providers should work with their assigned reviewer with any concerns or questions they have about the process or benchmarks.**

Commenter does not believe the current HCBS Transition Plan adequately addresses how congregate settings will shift away from institutional practices and finds the solution to these issues is to shift service models. Wisconsin should be calling for innovation and evolution that leads to greater self-determination, increased

independence, and lower cost service delivery. Commenter sees opportunity for real service delivery change with the increased FMAP available through ARPA funds. **Wisconsin has developed its SMA ARPA plan for use of the ARPA funds in a manner that demonstrates a commitment to enhance, expand, and strengthen HCBS under the Medicaid program through many projects, including promoting quality and innovation resources.**

Commenter feels there is not enough capacity building, funding, or technical assistance to support facility-based providers in transitioning their business models. **SMA capacity-building activities are included in Section VI of the statewide transition plan. Additional capacity-building initiatives are included in the [SMA ARPA plan](#).**

#### **OUTSIDE THE SCOPE OF THE STP**

The state lists a variety of activities in place to build capacity. There is a significant lack of capacity building in the area of community-supported living. Many individuals are currently living in settings that are far more restrictive than necessary, despite their choice, in part due to lack of CSL options. **Community-supported living options are outside the scope of the Statewide Transition Plan.**

Commenter requests that SMA provide options such as remote technologies and access to robust internet connections / devices to help people live independently and safely without reliance on congregate settings or services. **While this comment is outside the scope of the statewide transition plan, remote technologies are available if part of a person's long-term care needs.**

The statewide transition plan does not explicitly address or document the policies for regulatory oversight of individual rights violations and complaints. **This is beyond the scope of the statewide transition plan.**

## APPENDIX 1

### Acronyms Used in Statewide Transition Plan

ADC	Adult Day Care
ADS	Adult Day Services
AFH	Adult Family Home
ARPA	American Rescue Plan Act
BSP	Behavioral Support Plan
CBRF	Community-Based Residential Facility
C.F.R.	Code of Federal Regulations
CIE	Community Integrated Employment
CIP	Community Integration Program
CLTS	Children’s Long-Term Support
CMS	Centers for Medicare and Medicaid Services
COP	Community Option Program
DCF	Department of Children and Families, State of Wisconsin
DHHS	Department of Health and Human Services, Federal
DHS	Department of Health Services, State of Wisconsin
SMA	Division of Medicaid Services, State of Wisconsin
DQA	Division of Quality Assurance, State of Wisconsin
EQRO	External Quality Review Organization
FEA	Fiscal Employer Agency
GSE	Group Supported Employment
HCBS	Home and Community-Based Services
ICA	IRIS Consultant Agency
IRIS	Include, Respect, I Self-Direct program
MCO	Managed Care Organization
MFP	Money Follows the Person
MLTSS	Managed Long-Term Services and Supports
P4P	Pay for Performance
PACE	Program of All-Inclusive Care for the Elderly
RAD	Resource Allocation Decision
RCAC	Residential Care Apartment Complex
SMA	State Medicaid Agency
SNF	Skilled Nursing Facility
STP	Statewide Transition Plan
WHEDA	Wisconsin Housing and Economic Development Authority

## APPENDIX 2

### Summary of Wisconsin Waiver Services<sup>8</sup> and Typical Service Delivery Settings

Services—including in all waivers unless specified (CLTS, IRIS, Family Care)	Service Delivery Settings
Adaptive aids	Not applicable (N/A)
Adult day care	Fixed-site facilities or private residences (not provided in the participant's residence)
Adult day services	Fixed-site facility(ies) and/or natural settings in the community at large (not provided in the participant's residence)
Adult family homes (1-2 bed resident certified settings and 3-4 bed resident licensed settings)	Houses, apartments, or other residential structures owned or leased by provider
Care management/support and service coordination/IRIS consultant services	Various locations as convenient for the participant — residence, site(s) of day activities, program offices, etc.
Child day care (CLTS)	Centers, private residences
Child foster care homes (CLTS)	Private family residences in the community
Children's day services settings (CLTS)	Fixed-site facilities and/or natural settings in the community at large (not provided in the participant's residence)
Assistive technology/communication aids (includes interpreter service)	N/A
Community-based residential facilities (5 or more residents)	Fixed-site facilities
Community supported living	This is a service option that combines or helps to coordinate many of the services listed elsewhere in this document. <b>Persons receiving community supported living cannot live in a provider owned or controlled setting.</b>
Consultative clinical and therapeutic services for caregivers (Family Care)	Various locations as relevant to type of services— participant's residence, site(s) of day activities, natural community locations, professional offices, etc. <b>Service is provided to caregivers, not program participants.</b>
Consumer- or family-directed supports (CLTS only)	This is a specific self-directed service option that includes many of the services listed elsewhere in this document.
Consumer education and training	Various locations as relevant to skills being developed— residence, site(s) of other day activities, natural community locations, program offices, etc.
Counseling and therapeutic resources	Various locations as convenient for the participant— residence, site(s) of day activities, professional offices, etc.

<sup>8</sup> Individual waivers may have slightly different names for particular services, but they are grouped here when they are essentially the same service.

Services—including in all waivers unless specified (CLTS, IRIS, Family Care)	Service Delivery Settings
Customized goods and services	Various locations as relevant to goods or services—residence, site(s) of other day activities, natural community locations, program offices, etc.
Daily living skills training	Various locations as relevant to skills being developed—residence, site(s) of other day activities, natural community locations, program offices, etc.
Environmental accessibility adaptations (home modifications)	N/A
Financial management services/fiscal employer agent services	Most financial management services do not involve regular contact with the participant, but in cases where that is needed, it would occur in various locations as convenient for the participant—residence, site(s) of day activities, program offices, etc.
FEA (IRIS)	Fiscal Employer Agency
Home-delivered meals	Residence
Housing counseling	Various locations as convenient for the participant—residence, site(s) of day activities, program offices, etc.
Housing start-up	N/A
Live-in caregiver	Residence
Personal emergency response system (PERS)	N/A
Prevocational services	Fixed-site facilities and/or natural settings in the community. Prevocational services may be furnished in a variety of locations in the community and are not limited to fixed-site facilities.
Relocation housing start-up and related utility costs	N/A
Residential care apartment complexes (IRIS and Family Care)	Residential structures consisting of independent apartments with living, sleeping, and cooking facilities
Respite care services	Private residences (controlled by participant or provider), licensed or certified residential settings, institutional settings as allowed per approved waivers. Respite in institutional settings will be limited to 30 days. This clarification will be made in waivers as well as contracts and policies.
Self-directed personal care	Residence and to enable access to the community
Level 5 exceptional treatment foster home (CLTS)	Private residences in the community
Skilled nursing (not covered by state plan)	Various non-clinical locations as appropriate to the service being provided—residence, site(s) of day activities, etc.
Specialized medical equipment and supplies	N/A
Specialized transportation—community transportation	N/A

Services—included in all waivers unless specified (CLTS, IRIS, Family Care)	Service Delivery Settings
Specialized transportation—other (self-directed non-emergency medical transportation) (IRIS, Family Care)	N/A
Support broker (IRIS, Family Care)	Various locations as convenient for the participant—residence, site(s) of day activities, program offices, etc.
Supported employment—individual and small group support services	Regular business or industry work settings and other sites of employment in the community. Not facility-based.
Supportive home care	Residence and to enable access to the community
Training services for unpaid caregivers (Family Care)	Various locations as relevant to type of training being provided—participant’s residence, site(s) of day activities, natural community locations, professional offices, etc. <b>Service is provided to caregivers, not program participants.</b>
Vocational futures planning and support	Various locations as convenient for the participant—residence, site(s) of day activities, places of participant employment, professional offices, etc.

## APPENDIX 3

**Waiver policies that apply across settings:** Wisconsin has language in its contracts and/or program-specific policies that apply across all waiver services and settings, including policies addressing person-centered planning and choice of services, settings, providers, and participant rights. These policies are found in the following documents and are cited as they apply to specific HCBS settings rule requirements. (All references in this document are to the original cross walk of the HCBS Settings Rule and 2016 contracts, manuals, and program-specific documents).

[DHS-MCO Contract](#)

[Medicaid Waivers Manual](#)

[IRIS Policy Manual](#)

[IRIS Work Instructions](#)

[IRIS Service Definition Manual](#)

[Being a Full Partner](#) (Family Care member booklet)

**Participant rights protection that applies across settings:** All waiver programs must comply with Wis. Stat. ch. 51 and Wis. Admin. Code ch. DHS 94 addressing participant rights and the use of isolation, seclusion, or physical restraint. All waiver agencies must comply with these requirements pursuant to language and references in contracts and waiver policy documents.

<http://docs.legis.wisconsin.gov/statutes/statutes/51.pdf>

[http://docs.legis.wisconsin.gov/code/admin\\_code/dhs/030/94.pdf](http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/94.pdf)

<https://www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf>

The waivers covered by this plan are: WI.0367 (Family Care); WI.0414 (CLTS); and WI.0484 (IRIS). The plan originally also covered WI.0154 (COP-W) and WI.0229 (CIP-W), but these waivers have been terminated.



## Crosswalk for Systemic Assessment for HCBS Statewide Transition Plan

### Crosswalk Table 1: Cross-Cutting Requirements

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Person-Centered Planning</b></p> <p><b>Family Care:</b> “The MCP shall document at least the following:                      g) The setting in which the member resides supports integration into 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.                      j) The plan to sustain, maintain and/or enhance the member’s existing natural supports and community supports and for coordinating services the member receives from such supports.” (DHS-MCO contract, Article V, C)</p> <p><b>CIP/COP/CLTS:</b> “The Medicaid waiver programs are built upon a foundation of primary program values. These values support individual choice, the enhancement of relationships, the building of accessible, flexible service systems, the achievement of optimum physical and mental health for the participant, and the promotion of presence, participation and optimal social functioning in the community. The program values further seek to ensure that participants are treated with respect and assure that service systems empower the individual, build on their strengths, enhance individual self-worth and supply the tools necessary to achieve maximum independence and community participation.” (Medicaid Waivers Manual, 1.01)</p> <p><b>IRIS:</b> IRIS is a fully self-directed program. IRIS participants make their own decisions regarding:</p> <ul style="list-style-type: none"> <li>• “The goods, supports, and services needed to help live the life he or she wants while meeting his or her long-term care outcomes.</li> <li>• The amount and location goods, supports, and services are provided, as well as decisions on the provider of these services.” (IRIS Policy Manual, 1.1C)</li> </ul>	<p>Compliant for Family Care</p> <p>Language in both the Medicaid Waivers Manual and the IRIS Policy Manual is consistent with settings rule, but the following language will be added to those documents. It will be inserted in an appropriate section and numbered per the format of the document.</p> <p>“The plan shall document at least the following:                      a) The setting in which the member resides supports integration into 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.                      b) The plan to sustain, maintain and/or enhance the member’s existing natural supports and community supports and</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		for coordinating services the member receives from such supports.”
<p><b>§ 441.301(c)(4)(ii) 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></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents—see links at the beginning of this table.</p> <p><b>Family Care</b> – “The MCP shall document at least the following: e) The home and community-based residential setting option chosen by the member and other options presented to the member unless the member declines to consider other options;” (DHS-MCO contract, Article V, C)</p> <p>“As a member, you have the right and responsibility to be a full partner in deciding what you need for your health and long-term support services, and in planning how those services will be provided to you. Being a full partner in your care plan means you have the right to:</p> <ul style="list-style-type: none"> <li>• Participate in decisions that affect your own care.</li> <li>• Choose to involve family members or other people that are important to you.</li> <li>• Describe your most important support needs, and what you want your life to be like.</li> <li>• Know the different services and supports that are available and how much they cost. You can also suggest other services or supports that you think would meet your needs.</li> <li>• Get help from your MCO to make choices about your services and supports.</li> </ul> <p>As a full partner, you also have the responsibility to:</p> <ul style="list-style-type: none"> <li>• Meet with your care team face-to-face to discuss your needs, outcomes and preferences.</li> <li>• Choose among the cost-effective options that are available to meet your needs.</li> <li>• Identify the support your family and friends currently provide, and what they can continue to provide.” (Being a Full Partner, member-focused document) <p><b>CIP/COP/CLTS:</b> “All Medicaid waiver participants must be given a choice of qualified service providers when the person first applies for waiver services and upon request, at any time while the participant is receiving waiver services. Waiver participants must be informed of their right to choose from any willing and qualified providers during any review of the individual service plan. Information provided to waiver applicants and participants must include a description of all qualified providers available for the waiver-covered services they are authorized to receive.” (Medicaid Waivers Manual, 4.03)</p> </li></ul>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p><b>COP-W:</b> Before waiver funding can be used for a community-based residential facility (CBRF) of up to 20 beds, four criteria must be met. For CBRFs with more than 20 beds or structurally connected to a nursing home, the waiver agency must request a variance from the DHS on a case-by-case basis. The basic criteria include:</p> <p>“a. A determination that in-home care services are infeasible,  b. A determination that the CBRF is the person’s preferred residence,  c. A determination that the CBRF provides a quality environment and quality care services,  d. A determination that the CBRF is cost-effective when compared to other residential options.”</p> <p>In the case of a variance, the additional criteria include:  “a. The environment is non-institutional and the facility operates in a manner that enhances resident dignity and independence, and  b. The facility is the preferred residence of the applicant/participant or his/her, legal representative.”  (Medicaid Waivers Manual, Chapter 5)</p> <p><b>CIP-W:</b> Waiver funds may not be used for a setting in excess of eight beds. (Summarized from Medicaid Waivers Manual, Chapter 5)</p> <p><b>CLTS:</b> CLTS waiver funds may only be used for adult family homes (1-2 bed or 3-4 bed). (Summarized from Medicaid Waivers Manual, Chapter 5)</p> <p><b>IRIS:</b> IRIS is a fully self-directed program. IRIS participants make their own decisions regarding:</p> <ul style="list-style-type: none"> <li>• “The goods, supports, and services needed to help live the life he or she wants while meeting his or her long-term care outcomes.</li> <li>• The amount and location goods, supports, and services are provided, as well as decisions on the provider of these services.” (IRIS Policy Manual, 1.1C)</li> </ul>	
<p><b>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Restraints:</b> Use of isolation, seclusion, or physical restraint in community settings is closely scrutinized per state statute and administrative code. While the statute and code apply to “any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency,” DHS applies it to all waiver participants. (Quoted language from Wis. Stat. § 51.61(1))</p> <p>State Statute: Individuals shall “have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible.” (Wis. Stat. § 51.61(1)(i)1)</p> <p>Administrative Code: “For a community placement, the use of isolation, seclusion or physical restraint shall be specifically</p>	<p><b>Compliant</b>—policies support limitations on the use of restraints in all community settings.</p> <p>In all programs, the approved restrictive measure or restraint must be incorporated into the overall behavior plan and is considered a key component of the person’s individual plan.</p> <p>See setting specific - sections in regard to</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p> <p>Department policy: DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a></p> <p><b>Family Care:</b> “Use of Isolation, Seclusion and Restrictive Measures  The MCO shall comply with, and as needed, provide training for its providers in compliance with the following requirements:  a. The MCO shall review and approve each request for restrictive measures involving any one or more of its members prior to submission of the request to the designated state level approving entity.  b. The MCO and its subcontracted providers shall follow the Department’s written guidelines and procedures on the use of isolation, seclusion and restrictive measures in community settings, and follow the required process for approval of such measures  (<a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>).  c. The use of isolation, seclusion and restrictive measures in licensed facilities in Wisconsin is regulated by the Department’s Division of Quality Assurance. When subcontracted providers of the MCO are subject to such regulation, the MCO shall not interfere with the procedures of the Division of Quality Assurance.  d. The MCO and its subcontracted providers shall comply with Wis. Stat. §§ 51.61(1)(i) and 46.90(1)(i) and Wis. Admin. Code § DHS 94.10 in any use of isolation, seclusion and restrictive measures.” (DHS-MCO contract, Article V, J.)</p> <p>“Subcontract Language:  9. Restrictive Measures  The MCO must require its subcontractors to adhere to regulatory requirements and standards set by the MCO relative to restrictive measures including any type of restraint, isolation, seclusion, protective equipment, or medical restraint as required in Article V.J.4. Use of Isolation, Seclusion and Restrictive Measures, page 67.” (DHS-MCO Contract Article VIII)</p> <p><b>CIP/COP/CLTS:</b> “Wisconsin’s community-based long term support system is based on the principles of respect, dignity,</p>	<p>individual rights and freedom from coercion.</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>community integration, consumer participation and choice. The waiver gives people the opportunity to live in the community, including people who may exhibit dangerous and challenging behavior or who may have complex medical needs. The Medicaid Waivers covered in this Manual support and promote these principles by providing community living opportunities that are safe and free from the use of restrictive measures to the extent possible.</p> <p>Most of the participants who are served by the waiver are covered by the provisions in s.51.61 Wis. Statutes giving people the right to be free of restraints. Others not covered by that statute are protected by the Wisconsin elder-adults/adults-at-risk laws (Wis. Stats s.46.90 (1) (a) 5.) which provides protection from the use of unreasonable confinement or restraint by including restraint under the definition of abuse. “Unreasonable confinement or restraint” includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.</p> <p>For a waiver participant covered by s.51.61 Wis. Stats and HFS 94 including HFS 94.10, information and materials on the application and approval process for the use of restrictive measures are provided in Appendix R. Separate guidelines have been developed for different target groups.” (Medicaid Waivers Manual, 8.05)</p> <p><b>IRIS:</b> “The use of restraints requires written approval by the Department of Health Services (DHS) prior to implementation.” (IRIS Policy Manual, 4.3)</p> <p>“4.3A.1 Restrictive Measures Business Rules</p> <p>1. The Department of Health Services (DHS) does not permit the unapproved use of restrictive measures except in the case of an emergency. The emergency (unapproved) use of restrictive measures is only permitted when the following conditions are present:</p> <ul style="list-style-type: none"> <li>• An emergency exists;</li> <li>• A participant’s behavior poses an immediate threat of harm to self or others;</li> <li>• There is no approved behavior support plan for that participant that includes the planned use of restraint, isolation, or protective equipment intended to address this behavior or there is an approved plan but it has been found to be ineffective;</li> <li>• The behavior in question has either not occurred previously or could not have been reasonably foreseen to occur based on observations of the participant’s behavior.</li> </ul>	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<ol style="list-style-type: none"> <li>2. The IRIS Consultant Agency (ICA) must complete and submit an Incident Report – Medicaid Waiver Programs each time unauthorized or emergency restrictive measures are used.</li> <li>3. The IRIS Consultant is responsible to provide the participant or legal representative with education on the restrictive measures process using the Participant Education: Restrictive Measures form during the orientation process and annually.</li> <li>4. Each ICA is responsible to ensure that its IRIS Consultants receive Department-approved training encompassing the following information during the orientation process and annually: <ul style="list-style-type: none"> <li>• Utilizing the Long Term Care Functional Screen and other parts of the participant’s record as tools to identify behaviors;</li> <li>• Identifying behaviors in the home and community;</li> <li>• Developing strategies to support behaviors in the least restrictive way possible;</li> <li>• Developing communication skills related to discussing behaviors with families;</li> <li>• Identifying restrictive measures;</li> <li>• Following the guidelines and requirements for the use of restrictive measures and these work instructions; and</li> <li>• Developing strategies to replace challenging behaviors with positive behaviors.</li> </ul> </li> <li>5. The IRIS Consultant must discuss the effectiveness of the restrictive measures plan at every contact with the participant and/or legal representative whether by phone or email, or in person. These discussions must be documented in detail in the case notes.” (IRIS Work Instructions)</li> </ol>	
<p><b>§ 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.</b></p>	<p><b>Family Care:</b> “As a member, you have the right and responsibility to be a full partner in deciding what you need for your health and long-term support services, and in planning how those services will be provided to you.</p> <p>Being a full partner in your care plan means you have the right to:</p> <ul style="list-style-type: none"> <li>• Participate in decisions that affect your own care.</li> <li>• Choose to involve family members or other people that are important to you.</li> <li>• Describe your most important support needs, and what you want your life to be like.</li> <li>• Know the different services and supports that are available and how much they cost. You can also suggest other services or supports that you think would meet your needs.</li> <li>• Get help from your MCO to make choices about your services and supports.</li> </ul> <p>As a full partner, you also have the responsibility to:</p> <ul style="list-style-type: none"> <li>• Meet with your care team face-to-face to discuss your needs, outcomes and preferences.</li> </ul>	<p><b>Compliant</b></p>



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<ul style="list-style-type: none"> <li>• Choose among the cost-effective options that are available to meet your needs.</li> <li>• Identify the support your family and friends currently provide, and what they can continue to provide.” (Being a Full Partner-member focused document)</li> </ul> <p><b><i>COP/CIP/CLTS:</i></b>  “1. You have a right to be treated with dignity and respect. This includes the right to free association to see whom you want, when you want unless a court order states otherwise.  2. You have a right to control your life and the services you get as much as you are able. You have the right to choose where you live, if you live alone or with others and with whom you will live. You have the right to be told that if you choose to live in certain settings, you may lose your eligibility for funding under the Medicaid Waiver.  3. You have a right not to be hurt or threatened. You have the right to be free from abuse and neglect. You have a right to be free from restrictive measures and all unreasonable restraints. You have the right to refuse to take drugs you do not want to take unless ordered to do so by a court of law.  4. You have the right to privacy. Your right to privacy includes having information that is said or written about you kept confidential, the right to receive and open your own mail, to make and receive private phone calls and to have visitors in your private areas including your bedroom and have the door closed.  5. You have a right to see your file, have it corrected, and to get copies of reports in it.  6. You have the right to direct you own services within the rules of the waiver in which you are enrolled. You have the right to have the self-directed service option explained to you and made available.  7. You have the right to know what other rights apply to you. You may have rights because of where you live (e.g. in a group home (CBRF)), because a court was involved in your services, or because of the nature of your disability. Waiver agency staff are responsible for telling you about these rights and for making sure you are adequately informed about them.”</p> <p><b><i>IRIS:</i></b>  “1.2A Participant: The essential leadership role of participants in planning and purchasing goods, supports, and services is recognized within the IRIS program structures. The participant is the eligible individual who chooses IRIS as the program for needed publicly funded long-term care supports and services. In this manual, ‘participant’ means:</p> <ul style="list-style-type: none"> <li>• The participant acting independently on their own, or with the assistance of a person designated by the participant; or</li> <li>• A legal representative when the representative has authority to make pertinent decisions on behalf of the participant (e.g., guardian).</li> </ul>	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>The IRIS participant has three key roles in self-directing their goods, supports, and services in IRIS, as well as responsibilities related to those roles.</p> <p>1.2A.1 Decision-Making: Participants in the IRIS program have made a choice to self-direct all of their long-term care services and supports. This provides participants a high degree of choice and control over services and supports delivered. Participants develop their support and service plans, within their individual budget range, and direct the services and supports identified on their plans. Participants are responsible to work with their IRIS Consultant, the IRIS consultant agency and the IRIS fiscal employer agent to implement their plans.</p> <p>1.2A.2 Participant Budget Authority: Participants manage and direct an individual service budget. The person’s plan defines the goods and services that will be paid to meet their long-term care needs consistent with their approved support and service plan. Participants do not set the level of funds they have available; however, they do exercise choice over how those funds are spent. Participants are accountable for the use of IRIS funds consistent with their long-term care support and service plan, established policies and procedures, and the federal waiver authority for IRIS. Payment for authorized services and supports is made through the FEA. Participants do not receive the funds in their budget; rather payment is made through these third parties for authorized expenditures.</p> <p>1.2A.3 Participant Employer Authority: Participants may hire, manage and direct their paid workers or care providers. There are two ways in which IRIS participants can carry out their employer role. One is as a common law employer, and the other is as a co-employer with an agency. A common law employer role occurs when a participant serves as the employer of record and engages in all typical employer responsibilities. These responsibilities include recruiting and hiring workers; training, scheduling and directing workers; and reviewing and approving timesheets and other documentation. If the participant chooses to be a co-employer then the responsibility of the employer tasks is shared with a qualified agency, and that agency serves as the employer of record.” (IRIS Policy Manual)</p>	
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability-specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents.)</p> <p><b>Family Care:</b> “A. Member Choice 1. Information to Members The MCO shall inform members about the full range of provider choice available to them, including free choice of medical and</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>other providers that remain fee-for-service for Family Care members, as applicable.” (DHS-MCO Contract, Article VIII)</p> <p><b>CIP/COP/CLTS:</b> “All Medicaid waiver participants must be given a choice of qualified service providers when the person first applies for waiver services and upon request, at any time while the participant is receiving waiver services. Waiver participants must be informed of their right to choose from any willing and qualified providers during any review of the individual service plan. Information provided to waiver applicants and participants must include a description of all qualified providers available for the waiver-covered services they are authorized to receive.” (Medicaid Waivers Manual)</p> <p><b>IRIS:</b> IRIS is a fully self-directed program. IRIS participants make their own decisions regarding:</p> <ul style="list-style-type: none"> <li>• “The goods, supports, and services needed to help live the life he or she wants while meeting his or her long-term care outcomes.</li> <li>• The amount and location goods, supports, and services are provided, as well as decisions on the provider of these services.” (IRIS Policy Manual, 1.1C)</li> </ul>	

**§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 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 that the document provides protections that address eviction processes and appeals comparable to those provided under the</b></p>	<p>See setting-specific tables.</p>	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
jurisdiction’s landlord tenant law.		
§ 441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit: 1: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	See setting-specific tables.	
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	<p><b>Person-Centered Planning:</b> See all references above to person-centered planning.</p> <p>Additional reference: <b>Family Care:</b> Provider Network: “For residential care facilities, evidence of adequate capacity shall include identification of the availability of residential providers offering private rooms, and a process for moving an individual to a private room when one becomes available that is consistent with the member’s preferences.” (DHS-MCO Contract, Article VIII)</p>	<b>Compliant</b>
§ 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.	See setting-specific tables.	
§ 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.	See setting-specific tables.	
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	See setting-specific tables.	
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	MCOs must ensure that the provider network includes: “Services that are physically accessible and available on a timely basis.” (DHS-MCO contract, Article VIII)	
<p><b>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:</b></p> <p><b>1: Identify a specific and individualized need.</b></p> <p><b>2: Document the positive interventions and supports used prior to any modifications</b></p>	<p><b>Person-Centered Planning:</b> Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any conditions that are to be applied to the conditions defined in the settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents.)</p> <p><b>Family Care:</b> “The MCP shall document at least the following: e) For members residing in a provider-owned or controlled residential setting, the MCP must document that any modification of the standards listed under 42 C.F.R. § 441.301(4)(vi) A through D are supported by a specific assessed need and justified in the MCP. Specifically, this documentation must include: (1) the identification of a specific and</p>	<p><b>Compliant</b></p> <p>While we believe that the IRIS language complies with the rule, the language that is in the Family Care contract will be added to the IRIS Policy Manual with modifications that are consistent with the language used in IRIS.</p> <p>“The plan shall document at least the following: a) For participants residing in a provider-owned or controlled residential</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>to the person-centered service plan.</p> <p><b>3: Document less intrusive methods of meeting the need that have been tried but did not work</b></p> <p><b>4: Include a clear description of the condition that is directly proportionate to the specific assessed need.</b></p> <p><b>5: Include regular collection and review of data to measure the ongoing effectiveness of the modification.</b></p> <p><b>6: Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</b></p> <p><b>7: Include the informed consent of the individual.</b></p> <p><b>8: Include an assurance that interventions and supports will cause no harm to the individual.</b></p>	<p>individualized assessed need; (2) the positive interventions and supports used prior to any modifications to the MCP; (3) the less intrusive methods of meeting the need that have been tried but did not work; (4) a clear description of the condition that is directly proportionate to the specific assessed need; (5) the regular collection and review of data to measure the ongoing effectiveness of the modification; (6) the established time limits for periodic; reviews to determine if the modification is still necessary or can be terminated; (7) the informed consent of the individual and (8) an assurance that interventions and supports will cause no harm to the individual.” (DHS-MCO contract, Article V, C)</p> <p><i>IRIS:</i> “On an annual basis, participants and IRIS consultants reassess the needs and long-term care outcomes of the participant by evaluating the results of the annual LTC FS, the behavior assessment (when required), and the participant’s progress on the outcomes identified on the previous year’s ISSP. The participant and IRIS consultant collaborate to ensure the new ISSP is an accurate and current reflection of the participant’s needs and the ISSP adequately supports the participant’s long-term care outcomes with IRIS –funded services used as a last resort.” (IRIS Policy Manual, 4.2)</p>	<p>setting, the plan must document that any modification of the standards listed under 42 C.F.R. § 441.301(4)(vi) A through D are supported by a specific assessed need and justified in the plan. Specifically, this documentation must include: (1) the identification of a specific and individualized assessed need; (2) the positive interventions and supports used prior to any modifications to the plan; (3) the less intrusive methods of meeting the need that have been tried but did not work; (4) a clear description of the condition that is directly proportionate to the specific assessed need; (5) the regular collection and review of data to measure the ongoing effectiveness of the modification; (6) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated; (7) the informed consent of the individual; and (8) an assurance that interventions and supports will cause no harm to the individual.”</p>

## Residential Settings: Adult

Note regarding adult residential settings: The regulatory standards for 3-4 bed adult family homes, community-based residential facilities, and residential care apartment complexes do not prohibit them from being located in an institution or on the grounds of, or adjacent to, a public institution, but may include special criteria to be taken into account when community-based settings are collocated with institutional settings. The extent to which these criteria and other factors regarding specific settings comply with the rule will be evaluated as part of the heightened scrutiny process and are not assessed in the crosswalk tables.

### Certified Adult Family Home (AFH): DHS Standards and Administrative Code

- [Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes](#)
- [http://docs.legis.wisconsin.gov/code/admin\\_code/dhs/030/82](http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/82)

### Definitions

**Certified 1-2 Bed Adult Family Home:** A place where one or two adults reside and receive care, treatment, or services that are above the level of room and board. The AFH may be the primary domicile of the sponsor or certificate holder or may be operated by an agency using staff that may or may not live in the home.

**Adult Family Home Certified Under Wis. Admin. Code ch. DHS 82:** “Adult family home” or ‘home’ means a private residence in which care and maintenance above the level of room and board, but not including nursing care provided by the sponsor, are provided to developmentally disabled adults by a person whose primary domicile is that residence, provided that both of the following conditions apply:

- (a) The residence was licensed under s. 48.62, Stats., and Chapter DCF 56 as a foster home and all current adult residents resided in the residence at least 12 months before they reached 18 years of age or replaced former adult residents who resided in the residence sometime during the previous 12 months and who left the residence on a permanent basis; and
- (b) There are 3 or 4 developmentally disabled residents, or more than 4 if all are siblings, or the sponsor is currently licensed as a foster home for children and there is a combined total of no more than 4 developmentally disabled adults and children residing there, or more than 4 if all adults or all children are siblings.”

### Crosswalk Table 2: One-Two Bed Adult Family Home

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Physical Requirements:</b> “A 1-2 bed AFH may be located anywhere residences are permitted in the community, but should be located in anticipation of resident needs to get to employment opportunities or access community activities and supportive services. Considerations for location should minimize clustering numerous AFHs in close proximity.” (Standards, Article V)</p> <p>“Residents of Adult Family Homes retain all of their civil, legal and human rights. This includes their right to be served by the same governmental services as others in the community such as police, fire, rescue, building inspection, public health, protective services and other services. Sponsors, placing agencies, certifying agencies, guardians, family members and others should use these services when appropriate.” (Standards, Article X)</p>	<p><b>Compliant</b></p>



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p><b>Person-Centered Planning:</b> Placement decisions and person-centered plan must address how the home will provide opportunities for interactions with the community, including friends and other associates, and access to activities. (Summarized from Standards, Article IX)</p> <p><b>Rights:</b> Residents have the right to manage personal finances or choose a separate service provider to assist. The resident must have freedom to have and use his or her own possessions and have a secure place to store them. (Summarized from Standards, Article X)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 441.301(c)(4)(ii) 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></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p><b>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Physical Requirements:</b> The home environment must provide adequate space and features to allow for privacy. A resident’s bedroom may not be used by others for access to other areas in the home. The bedroom must be fully enclosed by floor to ceiling walls and a rigid door that shall have a lock if requested by the resident. (Summarized from Standards, Article V)</p> <p><b>Rights:</b> A resident of an adult family home has the right to be free from physical, sexual, verbal, or emotional abuse or neglect; to be treated with courtesy, dignity, and respect; to have physical and personal privacy; to have records treated confidentially, and to be free from seclusion and restraints unless approved by DHS pursuant to the guidelines governing the use of such measures published by DHS. Use of restrictive measures under emergency conditions as defined in these guidelines shall be reported to the certifying agency by the next business day. (Summarized from Standards, Article X)</p> <p>“Any form of coercion to discourage or prevent a resident or the resident’s guardian, if any, from exercising any of the rights under this section, including the right to file a grievance, is prohibited. Any form of coercion or retaliation by the sponsor, operator, staff, personnel from the sponsoring agency or any other agent of the Adult Family Home against a resident or the resident’s guardian for exercising any of the rights in this section is prohibited. This</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>includes a prohibition against coercion or retaliation against a service provider who assists a resident or the resident’s guardian in exercising any of the residents’ rights in this section. Violation of this provision may be grounds for termination of certification of the adult Family Home or the contract with the certification/funding agency.” (Standards, Article X)</p> <p>“For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p> <p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at: <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a> and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a> See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> “The sponsor or operator shall provide a safe, emotionally stable, homelike and humane environment which encourages maximum resident self-direction, independence and autonomy.” (Standards, Article IX)</p> <p><b>Person-Centered Planning:</b> Placement decisions and the person-centered plan that are developed by the case management agency must address how the home will provide opportunities for interactions with the community, including friends and relatives, and access to activities. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>“The sponsor or operator shall implement the service plan and assist each resident to plan and execute activities that address individual needs and preference. The sponsor or operator shall also provide residents opportunities for community presence and participation consistent with the resident’s overall service plan developed by the placement agency. These may include participation in cultural, religious, political, social and intellectual activities of the resident’s choice within the Adult Family Home and in the community. The sponsor or operator shall allow a resident to participate in any activities that the resident selects unless the activity involves an unacceptable risk of harm or is contrary to the</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>resident’s Adult Family Home service plan. Residents shall not be required or coerced to participate in any religious or other activities.” (Standards, Article IX)</p> <p><b>Rights:</b> A resident of an adult family home shall have the right:</p> <p>“To have the opportunity to make decisions relating to services, activities and other aspects of life in the Adult Family Home and community. No curfew, rule or other restrictions on a resident’s self-determination may be imposed unless specifically identified in the service agreement or the resident’s Adult Family Home service plan;”</p> <p>“To have private visitors and have adequate time and private space for visits and to meet with people of the resident’s choosing and choose social and community activities in which to participate;”</p> <p>“To participate or to decline to participate in religious activities of the resident’s choosing. No resident shall be required to engage in any religious activity;”</p> <p>“Each resident shall be provided the least restrictive conditions which allow the maximum amount of personal and physical freedom;” (Standards, Article X)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>

**§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 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</b></p>	<p>Each resident shall have a written agreement that is signed by, and provided to, each party. The agreement includes a “description of the space to be provided to the resident for sleeping, storage and any other uses,” the agreed upon rate, a statement of the resident’s rights and the terms of termination, including timeframes. The agreement is updated annually. (Summarized from Standards, Article IX)</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>		
<p>§ 441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit: 1: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p><b>Physical Requirements:</b> “The Adult Family Home shall provide space and adequate physical features such as doors and adequate interior sound control so residents can have privacy when the resident wishes to be alone and/or undisturbed.” A resident’s bedroom may not be used by others for access to other areas in the home. The bedroom must be fully enclosed by floor to ceiling walls and a rigid door that, if requested by the resident, shall have a lock that can be locked from the inside, and able to be opened from the outside in an emergency. (Summarized from Standards, Article V)</p> <p>Rights: A resident has the right “To have physical and personal privacy when receiving treatment and services, in the living arrangement, in caring for personal needs, including toileting, bathing and dressing and when he or she desires time alone.” (Standards, Article X)</p>	<p><b>Partially Compliant</b> Settings are only required to provide a lock at the request of the resident and the lock only needs to be lockable from inside the room.</p> <p><b>Remediation:</b> The 1-2 bed AFH provider standards will be revised to require the presence of locks on the doors to all living units. The locks must be operational unless contraindicated based on a person-centered plan. The standards will specify that only authorized staff have keys to the doors.</p>
<p>§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.</p>	<p><b>Person-Centered Planning:</b> “Residents shall not be required to share a bedroom,” but if a shared bedroom is preferred, it must be agreed to by all parties. (Summarized from Standards, Article V)</p>	<p><b>Compliant</b></p>
<p>§ 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.</p>	<p><b>Physical Requirements:</b> “To the extent that space allows, residents shall be allowed to bring their own bedroom furnishings and accessories and to personalize/individualize their room.” (Standards, Article V)</p>	<p><b>Compliant</b></p>
<p>§ 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>	<p><b>Rights:</b> A resident of an adult family home shall “... have the opportunity to make decisions relating to services, activities and other aspects of life in the Adult Family Home and community. No curfew, rule or other restrictions on a resident’s self-determination may be imposed unless specifically identified in the service agreement or the resident’s Adult Family Home service plan.” (Standards, Article X)</p> <p>The resident must “... be permitted reasonable access to a telephone to make and receive a reasonable number of telephone calls. The number and duration of the calls may be</p>	<p><b>Partially Compliant</b> Standards indicate that the service agreement can identify curfews or restrictions. Language does not specify access to food at any time.</p> <p><b>Remediation:</b> The 1-2 bed AFH provider standards will be revised to specify that the service agreement cannot</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>limited for legitimate management reasons, but the Adult Family Home shall provide every resident the opportunity to make at least one private, personal telephone call per day.”</p> <p>“The sponsor shall provide each resident with a quantity and variety of foods sufficient to meet the resident’s nutritional needs and preferences and to maintain his or her health.</p> <p>The sponsor shall provide or assure that each resident receives three (3) nutritious meals each day. Residents will have access to all foods and liquids unless otherwise specified in a behavior support plan or an approved DHS restrictive measures plan. The sponsor shall accommodate the dietary needs of those residents with a physical/medical condition requiring more or less frequent meals.” (Standards, Article IX)</p>	<p>include any restrictions unless identified in a person-centered plan, and that the individual has access to food at any time.</p> <p>The standards will be revised to clarify what is considered reasonable access to the phone.</p>
<p><b>§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Rights:</b> A resident may “... have private visitors and have adequate time and private space for visits and to meet with people of the resident’s choosing and choose social and community activities in which to participate.</p> <p>No curfew, rule or other restrictions on a resident’s self-determination may be imposed unless specifically identified in the service agreement or the resident’s Adult Family Home service plan.” (Standards, Article X)</p>	<p><b>Partially Compliant</b></p> <p>Standards indicate that residents have “adequate time” for visitors and that the service agreement can identify curfews or restrictions.</p> <p><b>Remediation:</b> The 1-2 bed AFH provider standards will be revised to require that residents may have visitors at any time and that the service agreement cannot include any restrictions unless identified in a person-centered plan.</p>
<p><b>§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.</b></p>	<p><b>Physical Requirements:</b> “The Adult Family Home shall be physically accessible to all residents placed there and to prospective residents considering placement there. Residents shall be able to enter, exit and move about in the Adult Family Home and get to their bedrooms, bathrooms, common living and dining areas, and kitchen without difficulty. Non-ambulatory residents placed in the Adult Family Home shall have access to all common areas including living rooms and dining areas. Home modifications such as ramps, grab bars, widened doorways, etc. provided to address the non-ambulatory resident’s assessed needs must be installed in the Adult Family Home prior to and as a condition of that resident’s placement. Failure to provide such modifications or adaptations may be grounds for termination of a placement.” (Standards, Article V)</p>	<p><b>Compliant</b></p>
<p><b>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</b></p>	<p><b>Person-Centered Planning:</b> Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any conditions that are to be applied to the conditions defined in the settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>plan. The following requirements must be documented in the person-centered service plan:</b></p> <p><b>1: Identify a specific and individualized need.</b></p> <p><b>2: Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</b></p> <p><b>3: Document less intrusive methods of meeting the need that have been tried but did not work</b></p> <p><b>4: Include a clear description of the condition that is directly proportionate to the specific assessed need.</b></p> <p><b>5: Include regular collection and review of data to measure the ongoing effectiveness of the modification.</b></p> <p><b>6: Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</b></p> <p><b>7: Include the informed consent of the individual.</b></p> <p><b>8: Include an assurance that interventions and supports will cause no harm to the individual.</b></p>	<p>in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	



**3-4 Bed Adult Family Home (AFH): Statute and Administrative Code**

- <http://docs.legis.wisconsin.gov/statutes/statutes/50>
- [http://docs.legis.wisconsin.gov/code/admin\\_code/dhs/030/88](http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88)

**Definition:** A place where three or four adults who are not related to the operator reside and receive care, treatment, or services that are above the level of room and board and that may include up to seven hours per week of nursing care per resident.

**Crosswalk Table 3: Three-Four Bed Adult Family Home**

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Physical Requirements:</b> “An adult family home shall be located so that residents can easily get to community activities and supportive services by walking or by means of convenient private or public transportation or the licensee shall ensure that residents receive the assistance necessary to enable them to get to those activities and services. The home shall be located in a residential area which is typical of residential areas in that community.” (Wis. Admin. Code § DHS 88.05)</p> <p><b>Person-Centered Planning:</b> Each resident must have an individual service plan that is developed in conjunction with the resident. Service plans must include how the provider will enable the resident “to participate in cultural, religious, political, social and intellectual activities within the home and community” and allow for services to be provided by other agencies. (Summarized from Wis. Admin. Code §§ DHS 88.05 and 88.06)</p> <p>“Services shall be directed to the goal of assisting, teaching and supporting the resident to promote his or her health, well-being, self-esteem, independence and quality of life.” These goals should include participation in leisure and recreational activities, employment, and other activities. (Summarized from Wis. Admin. Code § DHS 88.07)</p> <p><b>Rights:</b> Residents have the right to manage their own financial affairs, to retain and use personal clothing and effects, and have private visitors. (Summarized from Wis. Admin. Code § DHS 88.10)</p>	<p><b>Compliant</b></p>
<p>§ 441.301(c)(4)(ii) 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</p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	See Crosswalk Table 1 for references to contracts and waiver manuals.	
§ 441.301(c)(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p><b>Physical Requirements:</b> "The licensee shall provide a safe, emotionally stable, homelike and humane environment for residents. ...The licensee shall encourage resident's autonomy, respect a resident's need for physical and emotional privacy and take a resident's preferences, choices and status as an adult into consideration while providing care, supervision and training." (Wis. Admin. Code § DHS 88.07)</p> <p><b>Rights:</b> A resident shall have the right to be treated with courtesy, respect, and dignity; to physical and emotional privacy; to have records treated confidentially; to be free from physical, sexual, or mental abuse, neglect, and financial exploitation, or misappropriation of property; and to be free from seclusion and restraints unless approved by DHS pursuant to the guidelines governing use of restrictive measures. (Summarized from Wis. Admin. Code § DHS 88.10)</p> <p>"Any form of coercion to discourage or prevent a resident or the resident's guardian or designated representative from exercising any of the rights under this section is prohibited. Any form of coercion or retaliation against a resident or the resident's guardian or designated representative for exercising any of the rights in this section, or against a service provider who assists a resident or the resident's guardian or designated representative in exercising any of the resident's rights in this section, is prohibited." (Wis. Admin. Code § DHS 88.10)</p> <p>"For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place." (Wis. Admin. Code § DHS 94.10)</p> <p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a></p>	Compliant

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a> See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> “The licensee shall provide a safe, emotionally stable, homelike and humane environment for residents. The licensee shall encourage resident’s autonomy, respect a resident’s need for physical and emotional privacy and take a resident’s preferences, choices and status as an adult into consideration while providing care, supervision and training.” (Wis. Admin. Code § DHS 88.07)</p> <p><b>Person-Centered Planning:</b> “The licensee shall encourage a resident’s autonomy, respect a resident’s need for physical and emotional privacy and take a resident’s preferences, choices and status as an adult into consideration while providing care, supervision and training. The licensee shall plan activities and services with the residents to accommodate individual resident needs and preferences and shall provide opportunities for each resident to participate in cultural, religious, political, social and intellectual activities within the home and community. A resident may not be compelled to participate in these activities. The licensee shall allow a resident to participate in all activities that the resident selects unless contrary to the resident’s individualized service plan or the home’s program statement.” (Wis. Admin. Code § DHS 88.07)</p> <p><b>Rights:</b> The resident “... shall have opportunities to make decisions relating to care, activities and other aspects of life in the adult family home. No curfew, rule or other restrictions on a resident’s freedom of choice shall be imposed unless specifically identified in the home’s program statement or the resident’s individual service plan. An adult family home shall help any resident who expresses a preference for more independent living to contact any agency needed to arrange for it.” (Summarized from DHS 88.10)</p> <p>The resident has the right to “... meet with and participate in social and community activities at the resident’s own discretion” and “to participate in religious activities of the resident’s choice. No resident may be required to engage in any religious activity.” The resident shall be allowed to “have private visitors and have adequate time and private space for visits.” (Summarized from DHS 88.10)</p> <p><b>Clarification Regarding the AFH Program Statement:</b></p>	<p><b>Partially Compliant</b> The program statement serves an important purpose of describing the home and its capacity to serve individuals. In the event that the program statement includes “house rules” that conflict with the HCBS settings rule, clarification will be necessary for waiver agencies when helping members select a setting.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require the waiver agency to review the program statement for each three-four bed adult family home they consider contracting with to ensure that the program statement is compliant with the HCBS settings rule.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO Contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and the CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>“A home’s program statement shall describe the number and types of individuals the applicant is willing to accept into the home and whether the home is accessible to individuals with mobility problems. It shall also provide a brief description of the home, its location, the services available, who provides them and community resources available to residents who live within the home. A home shall follow its program statement. If a home makes any change in its program, the home shall revise its program statement and submit it to the licensing agency for approval 30 days before implementing the change.” (Wis. Admin. Code § DHS 88.03)</p> <p>As part of the initial licensing and ongoing survey process, Bureau of Assisted Living staff review the facility’s program statement to ensure it complies with the regulations, and also to ensure that any house rules, or other restrictions listed, do not violate a resident’s rights. Wisconsin Admin. Code § DHS 88.10(3) is clear that residents of an adult family home, except correctional clients, have basic rights that they do not lose when they enter an adult family home. Although Wis. Admin. Code § DHS 88.07 allows for some level of restriction, the restriction is typically within an individually developed care plan based on an assessed need with the appropriate level of approval.</p> <p>The Bureau of Assisted Living has not approved a program statement that violates a resident’s rights.</p>	
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p> <p>The individual service plan for the 3-4 bed AFH shall identify any services that are to be provided by outside agencies. (Summarized from Wis. Admin. Code § DHS 88.06)</p> <p><b>Rights:</b> The resident of a 3-4 bed AFH has a right “...to exercise complete choice of providers of physical health care, mental health care and pharmaceutical services.” (Wis. Admin. Code § DHS 88.10)</p>	<p><b>Compliant</b></p>

**§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>	<p>“An adult family home shall have a service agreement with each person to be admitted to the home except a person being admitted for respite care.” (Wis. Admin. Code § DHS 88.06)</p> <p>“The service agreement shall be dated and signed by the licensee and the person being admitted or that person’s guardian or designated representative.” The service agreement shall specify the parties to the agreement, services to be provided, charges for room, board and services, the terms of payments, the conditions for transfer or discharge, and a statement of resident rights and grievance procedures. (Summarized from Wis. Admin. Code § DHS 88.06)</p> <p>“A licensee may terminate a resident’s placement only after giving the resident, the resident’s guardian, if any, the resident’s service coordinator, the placing agency, if any, and the designated representative, if any, 30 days written notice. The termination of a placement shall be consistent with the service agreement under s. DHS 88.06(2)(c)7. The 30 day notice is not required for an emergency termination necessary to prevent harm to the resident or other household members.” (Wis. Admin. Code § DHS 88.08)</p>	<p><b>Compliant</b></p>
<p>§ 441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit: 1: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p><b>Physical Requirements:</b> A resident’s bedroom shall provide comfort and privacy, shall be enclosed by full height walls, and shall have a rigid door that the resident can open and close. A resident’s bedroom may not be used by anyone else to get to any other part of the home. Persons of the opposite sex shall not be required to occupy the same sleeping room. Accommodations shall be made for couples who wish to share a sleeping room. (Summarized from Wis. Admin. Code § DHS 88.05)</p> <p><b>Rights:</b> The resident has the right to “have physical and emotional privacy in treatment, living arrangements and in caring for personal needs, including toileting, bathing and dressing.” (Wis. Admin. Code § DHS 88.10)</p>	<p><b>Silent:</b> The rule is silent regarding the provision of locking doors on sleeping units.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be revised to require the presence of locks on the doors to all living units. The locks must be operational unless contraindicated based on a person-centered plan. The standards will specify that only appropriate staff have keys to the doors.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> </ul>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		<ul style="list-style-type: none"> <li>IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.</b></p>	<p>“Persons of the opposite sex shall not be required to occupy the same sleeping room. Accommodations shall be made for couples who wish to share a sleeping room.” (Wis. Admin. Code § DHS 88.05)</p> <p><b>Person-Centered Planning:</b> <b>Family Care</b> Provider Network: “For residential care facilities, evidence of adequate capacity shall include identification of the availability of residential providers offering private rooms, and a process for moving an individual to a private room when one becomes available that is consistent with the member’s preferences.” (DHS-MCO Contract, Article VIII)</p>	<p><b>Silent:</b> The rule is silent on the opportunity for choice of roommates, but personal preference for roommates and ability to choose a different setting if the individual is not satisfied with any potential roommates in a 3-4 bed setting, are the responsibility of the waiver agency in the person-centered planning process.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be revised to ensure that the waiver agency is notified if no roommate who is acceptable to the participant is currently living in the setting so that the person-centered plan can be modified.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>§ 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.</b></p>	<p><b>Rights:</b> The resident shall have the right to “retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner.” (Wis. Admin. Code § DHS 88.10)</p>	<p><b>Partially Compliant</b> Rule does not specifically address furnishings and décor—just personal possessions.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		<p>revised to ensure that residents are given the option to furnish or decorate sleeping and living units to the extent feasible within the terms of the agreement.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> “The licensee shall provide a safe, emotionally stable, homelike and humane environment for residents.” (Wis. Admin. Code § DHS 88.07)</p> <p>“A home shall provide a non-pay telephone for residents to make and receive telephone calls. The home may require that long distance calls be made at a resident’s own expense. Emergency telephone numbers, including numbers for the fire department, police, hospital, physician, poison control center and ambulance, shall be located on or near each telephone.” (Wis. Admin. Code § DHS 88.04)</p> <p>Residents are allowed to “make and receive a reasonable number of telephone calls of reasonable duration and in privacy.” (Wis. Admin. Code § DHS 88.10)</p> <p><b>Person-Centered Planning:</b> “The licensee shall encourage a resident’s autonomy, respect a resident’s need for physical and emotional privacy and take a resident’s preferences, choices and status as an adult into consideration while providing care, supervision and training.</p> <p>“The licensee shall plan activities and services with the residents to accommodate individual resident needs and preferences and shall provide opportunities for each resident to participate in cultural, religious, political, social and intellectual activities within the home and community. A resident may not be compelled to participate in these activities.”</p>	<p><b>Partially Compliant</b></p> <p>The program statement serves an important purpose of describing the home and its capacity to serve individuals. In the event that the program statement includes “house rules” that conflict with the HCBS settings rule, clarification will be necessary for waiver agencies when helping members select a setting. Language does not specify access to food at any time.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require the waiver agency to review the program statement for each three-four bed adult family home they consider contracting with to ensure that the program statement is compliant with the HCBS settings rule. Standards will identify that the person has access to food at any time.</p> <p>These standards will be incorporated in waiver</p>



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>“The licensee shall allow a resident to participate in all activities that the resident selects unless contrary to the resident’s individualized service plan or the home’s program statement.” (Wis. Admin. Code § DHS 88.07)</p> <p><b>Resident Care:</b> “A licensee shall provide each resident with a food sufficient to meet the resident’s nutritional needs and preferences and to maintain the resident’s health.”</p> <p>“The licensee shall provide to each resident or ensure that each resident receives 3 nutritious meals each day and snacks that are typical in a family setting.” (Wis. Admin. Code § DHS 88.07)</p> <p><b>Clarification Regarding the AFH Program Statement:</b>  “A home's program statement shall describe the number and types of individuals the applicant is willing to accept into the home and whether the home is accessible to individuals with mobility problems. It shall also provide a brief description of the home, its location, the services available, who provides them and community resources available to residents who live within the home. A home shall follow its program statement. If a home makes any change in its program, the home shall revise its program statement and submit it to the licensing agency for approval 30 days before implementing the change.” (Wis. Admin. Code § DHS 88.03)</p> <p>As part of the initial licensing and ongoing survey process, Bureau of Assisted Living staff review the facility’s program statement to ensure it complies with the regulations, and also to ensure that any house rules, or other restrictions listed, do not violate a resident’s rights. Wisconsin Admin. Code § DHS 88.10(3) is clear that residents of an adult family home, except correctional clients, have basic rights that they do not lose when they enter an adult family home. Although Wis. Admin. Code § DHS 88.07 allows for some level of restriction, the restriction is typically within an individually developed care plan based on an assessed need with the appropriate level of approval.</p> <p>The Bureau of Assisted Living has not approved a program statement that violates a resident’s rights.</p>	<p>manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definition manual.</li> </ul>
<p><b>§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Rights:</b> A resident has the right to “have private visitors and have adequate time and private space for visits.” (Wis. Admin. Code § DHS 88.10)</p>	<p><b>Partially Compliant</b>  The rule indicates that residents have “adequate time” for visitors.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		<p>revised to require that residents may have visitors at any time unless identified in a person-centered plan.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.</b></p>	<p><b>Physical Requirements:</b> “An adult family home shall be physically accessible to all residents of the home. Residents shall be able to easily enter and exit the home, to easily get to their sleeping rooms, a bathroom, the kitchen and all common living areas in the home, and to easily move about in the home. Additional accessibility features shall be provided, if needed to accommodate the physical limitations of a resident or if specified in the resident’s individual service plan.” (Wis. Admin. Code § DHS 88.05)</p>	<p><b>Compliant</b></p>
<p><b>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:</b></p> <ol style="list-style-type: none"> <li><b>1: Identify a specific and individualized need.</b></li> <li><b>2: Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</b></li> <li><b>3: Document less intrusive methods of meeting the need that have been tried but did not work</b></li> <li><b>4: Include a clear description of the condition that is directly proportionate to the specific assessed need.</b></li> <li><b>5: Include regular collection and review of data to measure the</b></li> </ol>	<p><b>Person-Centered Planning</b> – Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any modifications that are to be applied to the conditions defined in the settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>ongoing effectiveness of the modification.</p> <p>6: Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>7: Include the informed consent of the individual.</p> <p>8: Include an assurance that interventions and supports will cause no harm to the individual.</p>		

**Community-Based Residential Facility (CBRF): Statute and Administrative Code**

- <http://docs.legis.wisconsin.gov/statutes/statutes/50>
- [http://docs.legis.wisconsin.gov/code/admin\\_code/dhs/030/83.pdf](http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83.pdf)

**Definition:** A place where five or more adults who are not related to the operator or administrator and who do not require care above intermediate-level nursing care reside and receive care, treatment, or services that are above the level of room and board but that include no more than three hours of nursing care per week per resident.

**Crosswalk Table 4: Community-Based Residential Facility**

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Person-Centered Planning:</b> The plan must be based on an assessment that addresses the person’s “capacity for self-direction, including the ability to make decisions, to act independently and to make wants or needs known” and “social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts and vocational needs.” (Summarized from Wis. Admin. Code § DHS 83.35)</p> <p><b>Rights:</b> Every resident in a community-based residential facility has the right to “manage the resident’s own financial affairs, unless the resident delegates, in writing, such responsibility to the facility and the facility accepts the responsibility or unless the resident delegates to someone else of the resident’s choosing and that person accepts the responsibility.” (Wis. Stat. § 50.09)</p> <p>Licenses must protect the civil rights of residents. Residents have the right to make decision relating to care, activities, daily routines, and other aspects of life, which enhance the resident’s self-reliance and support the resident’s autonomy and decision-making. (Summarized from Wis. Admin. Code § DHS 83.32)</p>	<p><b>Compliant</b></p>
<p>§ 441.301(c)(4)(ii) 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.</p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy,</p>	<p><b>Physical Requirements:</b> “Bedrooms shall be designed and equipped to allow residents to achieve the highest level of independent functioning and shall be fully</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>dignity and respect, and freedom from coercion and restraint.</b></p>	<p>accessible to the resident.” Bedrooms must have “floor to ceiling walls with rigid construction swing-type doors... that open directly into a corridor, the resident's private living area or common living space.” (Wis. Admin. Code § DHS 83.54)</p> <p>Bathrooms must have floor to ceiling walls and have locks that operate from both sides, except for bathrooms that are accessible from a bedroom occupied only by one person. (Summarized from Wis. Admin. Code § DHS 83.55)</p> <p><b>Rights:</b> Residents have the right to “private and unrestricted communications with their family, physician or other medical provider, attorney, and any other person, unless documented as medically contraindicated.” The right to private and unrestricted communications includes the right to receive and send sealed, unopened correspondence without delay or censorship; reasonable access to a telephone for private communications and the opportunity for private visits. (Summarized from Wis. Stat. § 50.09)</p> <p>Residents have the right to be “treated with courtesy, respect and dignity by all employees of the facility and other providers of health care and pharmacists with whom the resident comes in contact.” (Summarized from Wis. Stat. § 50.09)</p> <p>Residents must be provided with “physical and emotional privacy in treatment, living arrangements, and in caring for personal needs” including, privacy for visits by spouse or domestic partner, or to share a room with a spouse or domestic partner if both are residents for the same facility; privacy concerning health care; confidentiality of health and personal records; and the right to approve or refuse their release to any individual outside the facility. (Summarized from Wis. Stat. § 50.09)</p> <p>“Any form of coercion to discourage or prevent a resident or the resident’s legal representative from exercising any of the rights under this subchapter is prohibited. Any form of retaliation against a resident or the resident’s legal representative for exercising any of the rights in this subchapter, or against an employee or any other person who assists a resident or the resident’s legal representative in the exercise of any of the resident rights in this subchapter, is prohibited.” (Wis. Admin. Code § DHS 83.32)</p> <p>In addition, each resident shall have all of the following rights: freedom from mistreatment; freedom from seclusion; freedom from chemical restraint; and freedom from physical restraints, except upon prior review and</p>	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>approval by DHS upon written authorization from the resident’s primary physician or advanced practice nurse prescriber. DHS may place conditions on the use of a restraint to protect the health, safety, welfare, and rights of the resident. (Summarized from Wis. Admin. Code § DHS 83.32)</p> <p>“For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p> <p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a>  See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> “Bedrooms shall be designed and equipped to allow the highest level of independent functioning and shall be accessible to the resident.” (Wis. Admin. Code § DHS 83.54)</p> <p>“Common dining and living space shall be internally accessible to all residents.” (Wis. Admin. Code § DHS 83.52)</p> <p><b>Person-Centered Planning:</b> The plan must be based on an assessment that addresses the person’s capacity for self-direction, including the ability to make decisions, to act independently and to make wants or needs known, and social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts, and vocational needs. (Summarized from Wis. Admin. Code § DHS 83.35)</p> <p>“The CBRF shall teach residents the necessary skills to achieve and maintain the resident’s highest level of functioning.” The CBRF shall provide or arrange services adequate to meet the needs of the residents including providing leisure time activities, facilitating participation in community activities, and encouraging and assisting</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>residents in maintaining family and social contacts. (Summarized from Wis. Admin. Code § DHS 83.38)</p> <p><b>Rights:</b> Residents have the right to make decisions relating to care, activities, daily routines, and other aspects of life that enhance the resident’s self-reliance and support the resident’s autonomy and decision making, and have the least restrictive conditions necessary to achieve the purposes of the resident’s admission. The CBRF may not impose a curfew, rule, or other restriction on a resident’s freedom of choice. (Summarized from Wis. Admin. Code § DHS 83.32)</p> <p>Residents shall not be required to perform services for the facility unless serving a therapeutic purpose in the resident’s care plan. Residents have the right to meet with, and participate in activities of social, religious, and community groups at the resident’s discretion, unless medically contraindicated in the resident’s medical record. (Summarized from Wis. Stat. § 50.09)</p>	
<p><b>441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>“Before or at the time of admission, the CBRF shall provide written information regarding services available and the charges for those services to each resident or the resident’s legal representative. This information shall include any charges for services not covered by the daily or monthly rate, any entrance fees, assessment fees, and security deposit.” The information must include an accurate description of the basic services provided, the rate charged for those services, and the method of payment and information about all additional services offered but not included in the basic services. The CBRF shall provide a written statement of the fees charged for each of these services. (Summarized from Wis. Admin. Code § DHS 83.29)</p> <p><b>Rights:</b> Residents have the right to “participate in the planning of care and treatment, be fully informed of care and treatment options and have the right to refuse any form of care or treatment unless the care or treatment has been ordered by a court.” (Wis. Admin. Code § DHS 83.32)</p> <p>Residents have the right to “receive adequate and appropriate care within the capacity of the facility” and to “use the licensed, certified or registered provider of</p>	<p><b>Compliant</b></p>



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>health care and pharmacist of the resident’s choice.” (Wis. Stat. § 50.09)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	

**§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</b></p>	<p>“Each resident shall have a written agreement that is signed by and provided to each party. The agreement includes a description of the space to be provided to the resident, the agreed upon rate, a statement of the resident’s rights and the terms of termination, including timeframes. The agreement is updated annually.” (Wis. Admin. Code § DHS 83.29)</p> <p>The agreement must include terms for resident notification to the CBRF of voluntary discharge, and reasons and notice requirements for involuntary discharge or transfer, including transfers within the CBRF. (Summarized from Wis. Admin. Code § DHS 83.31)</p>	<p><b>Compliant</b></p>
<p><b>§ 441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit: 1: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>	<p><b>Physical Requirements:</b> “Bedrooms must be designed and equipped to allow the highest level of independent functioning and shall be fully accessible to the resident.” Bedrooms must have floor to ceiling walls with rigid construction swing-type doors that open directly into a corridor, the resident’s private living area or common living space. (Summarized from Wis. Admin. Code § DHS 83.54)</p> <p>Bathrooms must have floor to ceiling walls and have locks that operate from both sides, except for bathrooms that are accessible from a bedroom occupied only by one person. (Summarized from Wis. Admin. Code § DHS 83.55)</p>	<p><b>Silent:</b> Regulations do not require that sleeping or living units are lockable. The standards will specify that only appropriate staff have keys to the doors.</p> <p>Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require the presence of locks on the doors to all living units. The locks must be operational unless contraindicated based on a person-centered plan and that</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		<p>only appropriate staff will have keys.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.</b></p>	<p>“Resident bedrooms shall accommodate no more than 2 residents per room.” (Wis. Admin. Code § DHS 83.54)</p> <p><b>Person-Centered Planning:</b>  <b>Family Care</b>  Provider Network: “For residential care facilities, evidence of adequate capacity shall include identification of the availability of residential providers offering private rooms, and a process for moving an individual to a private room when one becomes available that is consistent with the member’s preferences.” (DHS-MCO Contract, Article VIII)</p>	<p><b>Silent:</b> The rule is silent on the opportunity for choice of roommates, but personal preference for roommates, and ability to choose a different setting if the individual is not satisfied with any potential roommates in the setting, are the responsibility of the waiver agency in the person-centered planning process.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other program guidance (e.g., Waiver Manual) will be revised to ensure that the waiver agency is notified if no roommate who is acceptable to the participant is currently living in the setting so that the person-centered plan can be modified.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> </ul>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
		<ul style="list-style-type: none"> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> Every resident in a community-based residential facility shall have the right to retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner. (Summarized from Wis. Stat. § 50.09)</p> <p>If a resident does not provide the resident’s own bedroom furnishings, the CBRF shall provide appropriate furnishings to meet the needs of the resident. (Summarized from Wis. Admin. Code § DHS 83.43)</p>	<p><b>Compliant</b></p>
<p><b>§ 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.</b></p>	<p><b>Rights:</b> Licensees must protect the civil rights of residents. Residents have the right to make decision relating to care, activities, daily routines, and other aspects of life that enhance the resident’s self-reliance and support the resident’s autonomy and decision-making. (Summarized from Wis. Admin. Code § DHS 83.32)</p> <p>Residents have the right to “private and unrestricted communications with their family, physician or other medical provider, attorney, and any other person, unless documented as medically contraindicated.” The right to private and unrestricted communications includes the right to receive and send sealed, unopened correspondence without delay or censorship; reasonable access to a telephone for private communications; and the opportunity for private visits. (Summarized from Wis. Stat. § 50.09)</p> <p>The CBRF must provide each resident with palatable food that meets the recommended dietary allowance based on current guidelines, including at least three meals a day and a snack in the evening, or more often based on the resident’s dietary needs. If a resident is away during meal time, the CBRF shall offer food to the resident on the resident’s return. The CBRF shall make reasonable adjustments to the menu for individual resident likes, habits, customs, condition, and appetites. (Summarized from Wis. Admin. Code § DHS 83.41)</p>	<p><b>Partially Compliant</b> Language does not specify access to food at any time.</p> <p><b>Remediation:</b> Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to specify that the individual has access to food at any time.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definition manual.</li> </ul>
<p><b>§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Rights:</b> Residents have the right to private and unrestricted communications with their family, physician or other medical provider, attorney, and any other person, unless documented as medically contraindicated. The right to private and unrestricted communications includes the right to receive and send sealed, unopened correspondence without delay or censorship; reasonable access to a telephone for private</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	communications; and the opportunity for private visits. (Summarized from Wis. Stat. § 50.09)	
<p><b>§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.</b></p>	<p>The bedroom and congregate dining and living area for any resident requiring a specified level of care and who is blind or not fully ambulatory shall be on the first floor. (Summarized from Wis. Admin. Code § DHS 83.50)</p> <p>“The minimum common dining and living space shall be 60 square feet per ambulatory or semi-ambulatory resident or other occupant, and 90 square feet per non-ambulatory resident or other occupant.” (Wis. Admin. Code § DHS 83.52)</p> <p>Bedrooms shall be designed and equipped to allow residents to achieve the highest level of independent functioning and shall be fully accessible to the resident. Within the bedroom, each resident shall have, or be provided with a closet or wardrobe with clothes hanging rods and shelves, and drawer space adequate to reasonably meet the needs of the resident. The bedroom shall have adequate accessible space for a resident’s wheelchair or other adaptive or prosthetic equipment. (Summarized from Wis. Admin. Code § DHS 83.54)</p> <p>Toilet rooms and bathing areas shall be accessible and available to residents on each floor in facilities that service people at a specified level of need for assistance. (Summarized from Wis. Admin. Code § DHS 83.55)</p>	<p><b>Compliant</b></p>
<p><b>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:</b></p> <p><b>1: Identify a specific and individualized need.</b></p> <p><b>2: Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</b></p> <p><b>3: Document less intrusive methods of meeting the need that have been tried but did not work</b></p> <p><b>4: Include a clear description of the condition that is directly proportionate to the specific assessed need.</b></p> <p><b>5: Include regular collection and review of data to measure the ongoing effectiveness of the modification.</b></p>	<p><b>Person-Centered Planning:</b> Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any conditions that are to be applied to the conditions defined in the settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p> <p>“Assessment, individual service plan and evaluations. (1) ASSESSMENT. (a) Scope. The CBRF shall assess each resident’s needs, abilities, and physical and mental condition before admitting the person to the CBRF, when there is a change in needs, abilities or condition, and at least annually. The assessment shall include all areas listed under par. (c). This requirement includes individuals receiving respite care in the CBRF. For emergency admissions the CBRF shall conduct the assessment within 5 days after admission. (b) Information gathering. The CBRF shall base the assessment on the current diagnostic, medical and social history obtained from the person’s health care providers,</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>6: Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</b></p> <p><b>7: Include the informed consent of the individual.</b></p> <p><b>8: Include an assurance that interventions and supports will cause no harm to the individual.</b></p>	<p>case manager and other service providers. Other service providers may include a psychiatrist, psychologist, licensed therapist, counselor, occupational therapist, physical therapist, pharmacist or registered nurse. The administrator or designee shall hold a face-to-face interview with the person and the person's legal representative, if any, and family members, as appropriate, to determine what the person views as his or her needs, abilities, interests, and expectations.</p> <p>(c) Areas of assessment. The assessment, at a minimum, shall include all of the following areas applicable to the resident:</p> <ol style="list-style-type: none"> <li>1. Physical health, including identification of chronic, short-term and recurring illnesses, oral health, physical disabilities, mobility status and the need for any restorative or rehabilitative care.</li> <li>2. Medications the resident takes and the resident's ability to control and self-administer medications.</li> <li>3. Presence and intensity of pain.</li> <li>4. Nursing procedures the resident needs and the number of hours per week of nursing care the resident needs.</li> <li>5. Mental and emotional health, including the resident's self-concept, motivation and attitudes, symptoms of mental illness and participation in treatment and programming.</li> <li>6. Behavior patterns that are or may be harmful to the resident or other persons, including destruction of property.</li> <li>7. Risks, including, choking, falling, and elopement.</li> <li>8. Capacity for self-care, including the need for any personal care services, adaptive equipment or training.</li> <li>9. Capacity for self-direction, including the ability to make decisions, to act independently and to make wants or needs known.</li> <li>10. Social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts and vocational needs.</li> </ol> <p>(d) Assessment documentation. The CBRF shall prepare a written report of the results of the assessment and shall retain the assessment in the resident's record.</p> <p>(2) TEMPORARY SERVICE PLAN. Upon admission, the CBRF shall prepare and implement a written temporary service plan to meet the immediate needs of the resident, including persons admitted for respite care, until the individual service plan under sub. (3) is developed and implemented.</p> <p>(3) COMPREHENSIVE INDIVIDUAL SERVICE PLAN. (a) Scope. Within 30 days after admission and based on the assessment under sub. (1), the CBRF shall develop a comprehensive individual service plan for each resident.</p>	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>The individual service plan shall include all of the following:</p> <ol style="list-style-type: none"> <li>1. Identify the resident’s needs and desired outcomes.</li> <li>2. Identify the program services, frequency and approaches under s. DHS 83.38 (1) the CBRF will provide.</li> <li>3. Establish measurable goals with specific time limits for attainment.</li> <li>4. Specify methods for delivering needed care and who is responsible for delivering the care.</li> </ol> <p>(b) Development. The CBRF shall involve the resident and the resident’s legal representative, as appropriate, in developing the individual service plan and the resident or the resident’s legal representative shall sign the plan acknowledging their involvement in, understanding, of and agreement with the plan. If a resident has a medical prognosis of terminal illness, a hospice program or home health care agency, as identified in s. DHS 83.38 (2) shall, in cooperation with the CBRF, coordinate the development of the individual service plan and its approval under s. DHS 83.38 (2)(b). The resident’s case manager, if any, and any health care providers, shall be invited to participate in the development of the service plan.</p> <p>(c) Implementation. The CBRF shall implement and follow the individual service plan as written.” (Wis. Admin. Code § DHS 83.35)</p>	

**Residential Care Apartment Complex (RCAC): Statute and Administrative Code**

- <http://docs.legis.wisconsin.gov/statutes/statutes/50>
- [http://docs.legis.wisconsin.gov/code/admin\\_code/dhs/030/89](http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89)

**Definition:** A place where five or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen (including a stove), and individual bathroom, sleeping, and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal, and nursing services.

**Crosswalk Table 5: Residential Care Apartment Complex**

§ 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.

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Physical Requirements:</b> Wisconsin Admin. Code ch. DHS 89 is intended “to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities. This chapter is intended to ensure that all residential care apartment complexes provide each tenant with an independent apartment in a setting that is home-like and residential in character; make available personal, supportive and nursing services that are appropriate to the needs, abilities and preferences of individual tenants; and operate in a manner that protects tenants’ rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making including the right to accept risk.” (Wis. Admin. Code § DHS 89.11)</p> <p>“‘Residential care apartment complex’ or ‘facility’ means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services.” (Wis. Admin. Code § DHS 89.13)</p> <p><b>Rights:</b> The tenant has the right to choose services and the right to refuse services. The tenant has the right to receive visitors, meet with groups, or participate in activities of the tenant’s choice, to receive and send sealed mail, and to have a private phone installed in his or her independent apartment. (Summarized from Wis. Admin. Code § DHS 89.34)</p> <p>Each tenant has the right to: manage his or her own financial affairs, unless the tenant delegates responsibility to another person or the tenant has a guardian; have choice of his or her physician and other</p>	<p><b>Compliant</b></p>



Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>medical providers; and a choice of providers of supportive, personal, and nursing services from providers other than the residential care apartment complex, subject to the requirements of Wis. Admin. Code § DHS 89.24(2)(b). “These rights in no way limit or restrict any other rights of the individual under the U.S. Constitution, civil rights legislation or any other applicable statute, rule or regulation.” (Summarized from Wis. Admin. Code § DHS 89.34)</p>	
<p><b>§ 441.301(c)(4)(ii) 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></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p><b>441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Physical Requirements:</b> “‘Residential care apartment complex’ or ‘facility’ means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services.” (Wis. Admin. Code § DHS 89.13)</p> <p><b>Rights:</b> A tenant has the right “to have privacy in his or her independent apartment and when receiving supportive, personal or nursing services.” The tenant has the right “to be free from physical, sexual or emotional abuse, neglect or financial exploitation or misappropriation of property by the facility, its staff or any service provider under contract with the facility” and has the right to be free from coercion. (Summarized from Wis. Admin. Code §§ DHS 89.34 and 89.36)</p> <p>Because RCACs consist of independent apartments, the rule is based on the assumption that the tenant would not be subject to restraints or other restrictions. Although Wis. Admin. Code ch. DHS 89 is silent on the use of isolation or restraint, but for all community placements, “the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and</p>	<p><b>Compliant</b></p> <p>Although the RCAC regulations are silent on the subject of restraint, other Wisconsin and DHS policies related to restraint apply to waiver participants who live in RCACs and constitute compliance with the regulation.</p>

Federal Regulation (Title 41 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p> <p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a>  See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> “‘Residential care apartment complex’ or ‘facility’ means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services.” (Wis. Admin. Code § DHS 89.13)</p> <p><b>Person-Centered Planning:</b> Each tenant will have a service agreement based on an assessment conducted with the active participation of the tenant. The service agreement includes the type, amount, and frequency of any services to be provided to the tenant, any additional services that are available, and the activities and social connections the tenant will be assisted in maintaining. (Summarized from Wis. Admin. Code §§ DHS 89.26 and 89.27)</p> <p><b>Rights:</b> The tenant has the right to choose services and the right to refuse services. The tenant has the right to receive visitors, meet with groups or participate in activities of the tenant’s choice, to receive and send sealed mail, and to have a private phone installed in his or her independent apartment. (Summarized from Wis. Admin. Code § DHS 89.34)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>

§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>	<p>“‘Contract’ means all written agreements between the tenant and the residential care apartment complex, including the service agreement, the risk agreement and any rental or sales contract.” (Wis. Admin. Code § DHS 89.13)</p> <p>A residential care apartment complex shall enter into a mutually agreed-upon written service agreement with each of its tenants. The agreement shall include the services and the charges for any services in the service agreement and any additional services that are available for purchase. The agreement must also include the grounds for any termination of the agreement. (Summarized from Wis. Admin. Code § DHS 89.27)</p>	<p><b>Compliant</b></p>
<p>§ 441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit: 1: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p><b>Physical Requirements:</b> Each independent apartment shall have “an individual lockable entrance and exit. A single door may serve as both entrance and exit. Keys to the door to the independent apartment and to the residential care apartment complex shall be supplied to the tenant.” (Wis. Admin. Code § DHS 89.22)</p> <p>“‘Individual lockable entrance and exit’ means a door that provides access to an independent apartment and is equipped with an individually keyed lock which is operable from both inside and outside the unit and which the tenant can open, close and lock to ensure privacy.” (Wis. Admin. Code § DHS 89.13)</p>	<p><b>Silent:</b> Regulations do not specify that only appropriate staff have keys to the doors.</p> <p>Service provider standards in HCBS waivers and the accompanying contracts and other guidance will be revised to require that only appropriate staff have keys.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.	“Multiple occupancy of an independent apartment shall be limited to a spouse or a roommate chosen at the initiative of the tenant.” (Wis. Admin. Code § DHS 89.22)	Compliant
§ 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.	A tenant has the right “to furnish his or her independent apartment and to maintain personal possessions as space permits as long as the tenant does not unreasonably interfere with the other tenants' choices or endanger the health or safety of the other tenants.” (Wis. Admin. Code § DHS 89.34)	Compliant
§ 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>Wisconsin Admin. Code ch. DHS 89 is intended “to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities. This chapter is intended to ensure that all residential care apartment complexes provide each tenant with an independent apartment in a setting that is home-like and residential in character; make available personal, supportive and nursing services that are appropriate to the needs, abilities and preferences of individual tenants; and operate in a manner that protects tenants' rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making including the right to accept risk.” (Wis. Admin. Code § DHS 89.11)</p> <p>Each independent apartment shall have a kitchen that is “a visually and functionally distinct area within the apartment. The refrigerator shall have a freezer compartment. The sink shall have hot and cold running water.” (Wis. Admin. Code § DHS 89.22)</p> <p>“Each independent apartment shall be of adequate size and configuration to permit tenants to carry out, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storing clothing and other personal possessions; doing personal correspondence and paperwork; and entertaining visitors.” (Wis. Admin. Code § DHS 89.22)</p>	Compliant
§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	<b>Rights:</b> Tenants have the right “to receive visitors, meet with groups or participate in activities of the tenant's choice, including organizing and participating in tenant or family councils or groups provided that the health or safety of the other tenants is not endangered.” (Wis. Admin. Code § DHS 89.34)	Compliant
§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.	“Each independent apartment shall be of adequate size and configuration to permit tenants to carry out, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storing clothing and other personal possessions; doing personal correspondence and paperwork; and entertaining visitors.” (Wis. Admin. Code § DHS 89.22)	Compliant

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>“All public and common use areas of a residential care apartment complex shall be accessible to and useable by tenants who use a wheelchair or other mobility aid consistent with the accessibility standards contained in ch. SPS 362. All areas for tenant use within the facility shall be accessible from indoors.” (Wis. Admin. Code § DHS 89.22)</p>	
<p><b>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:</b></p> <p><b>1: Identify a specific and individualized need.</b></p> <p><b>2: Document the positive interventions and supports used prior to any modifications to the person centered service plan.</b></p> <p><b>3: Document less intrusive methods of meeting the need that have been tried but did not work</b></p> <p><b>4: Include a clear description of the condition that is directly proportionate to the specific assessed need.</b></p> <p><b>5: Include regular collection and review of data to measure the ongoing effectiveness of the modification.</b></p> <p><b>6: Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</b></p> <p><b>7: Include the informed consent of the individual.</b></p> <p><b>8: Include an assurance that interventions and supports will cause no harm to the individual.</b></p>	<p><b>Person-Centered Planning:</b> Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any conditions that are to be applied to the conditions defined in the settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>

## Residential Settings: Child

### Foster Care Homes: Statute and Administrative Code

- <http://docs.legis.wisconsin.gov/statutes/statutes/4893.pdf>
- [http://docs.legis.wisconsin.gov/code/admin\\_code/DCF/021\\_099/56.pdf](http://docs.legis.wisconsin.gov/code/admin_code/DCF/021_099/56.pdf)

**Definition:** “Foster care” means care and maintenance provided to a child in a foster home pursuant to a court order, voluntary placement agreement, or voluntary transition-to-independent-living agreement.

### Crosswalk Table 6: Foster Care Homes

**§ 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.**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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></p>	<p><b>Principles of Nurturing Care:</b> The foster parent shall provide nurturing care that:</p> <ul style="list-style-type: none"> <li>• “Socializes the child into family living and teaches social and community living skills, including accepting tasks and responsibilities.”</li> <li>• “Increases the child’s opportunities to develop decision-making skills and to make informed choices.”</li> <li>• “Gives the child room to grow and the maximum of personal and physical freedom appropriate to the child’s age and maturity.”</li> <li>• “Increases the child’s independence in performing tasks and activities by teaching skills that reduce dependence on caretakers.”</li> <li>• “Lets the child participate in community activities of the child’s choice, including sports and activities of school, community, social and religious groups, with this participation restricted only by reasonable curfew hours, cost considerations, a court order or for a reason agreed upon by the foster parent and the licensing and supervising agencies.”</li> <li>• “Increases the child’s opportunities to interact with diverse community populations.”</li> <li>• “Gives the child reasonable opportunity to voluntarily participate or not participate in religious practices, activities, and services of the child’s choice or the choice of the child’s parents. Any discrepancy between the child’s choice and the choice of the child’s parents shall be resolved by the child’s caseworker.”</li> <li>• “Teaches the child life skills in situations where the skills are used.”</li> <li>• “Provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child’s case plan, permanency plan, or treatment plan.”</li> </ul> <p>(Summarized from Wis. Admin. Code § DCF 56.09)</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	See Crosswalk Table 1 for references to contracts and waiver manuals.	
<p><b>§ 441.301(c)(4)(ii) 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></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability-specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p><b>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Principles of Nurturing Care:</b> The foster parent shall provide nurturing care that:</p> <ul style="list-style-type: none"> <li>• “Ensures the child is provided a humane physical and psychological environment.”</li> <li>• “Is respectful of the child as a person.”</li> <li>• “Does not discriminate against the child because of the child's race or cultural identification, sex, age, sexual orientation, color, creed, ancestry, national origin or disability.”</li> <li>• “Promotes cultural understanding and sensitivity in the child and respects the cultural traditions of the child's family.”</li> </ul> <p>(Summarized from Wis. Admin. Code § DCF 56.09)</p> <p><b>Physical Requirements:</b> Each bedroom occupied by a foster child must have a door for privacy and cannot be used for passage by others to another room, nor can it only be accessible through another occupied sleeping room. No more than four children may regularly occupy one bedroom. The door to each bathroom shall have a lock that can be opened from the outside in an emergency. (Summarized from Wis. Admin. Code § DCF 56.07)</p> <p><b>“Physical Restraint.</b></p> <p><b>(a)</b> A foster parent may not use any type of physical restraint on a foster child unless the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe.</p> <p><b>(b)</b> A foster parent shall attempt other feasible alternatives to de-escalate a child and situation before using physical restraint.</p> <p><b>(c)</b> A foster parent may not use physical restraint as disciplinary action, for the convenience of the foster parent, or for therapeutic purposes. “</p>	<p><b>Compliant</b></p>



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p><b>(d)</b> If physical restraint is necessary, a foster parent may only use the physical restraint in the following manner:</p> <ol style="list-style-type: none"> <li>1. With the least amount of force necessary and in the least restrictive manner to manage the imminent danger of harm to self or others.</li> <li>2. That lasts only for the duration of time that there is an imminent danger of harm to self or others.</li> <li>3. That does not include any of the following: <ol style="list-style-type: none"> <li>a. Any maneuver or technique that does not give adequate attention and care to protection of the child's head.</li> <li>b. Any maneuver that places pressure or weight on the child's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression.</li> <li>c. Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the child's head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as straddling or sitting on the child's torso.</li> <li>d. Any type of choke hold.</li> <li>e. Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance.</li> <li>f. Any technique that involves pushing on or into a child's mouth, nose, or eyes, or covering the child's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.” (Wis. Admin. Code § DCF 56.09)</li> </ol> </li> </ol> <p><b>Child’s Treatment Plan:</b> “The foster care provided for a child with a level of need of 3 or higher in a foster home with a certification of Level 3 to 5 shall do all of the following:</p> <ol style="list-style-type: none"> <li><b>(a)</b> Use a family-based and community-based approach to treatment for a child with physical, mental, medical, substance abuse, cognitive, intellectual, behavioral, developmental, or similar problems.</li> <li><b>(b)</b> Make efforts to change the behavior or ameliorate the condition that, in whole or in part, resulted in the child's separation from his or her family.</li> <li><b>(c)</b> Use specially selected and specifically trained foster parents who are the primary change agents in the treatment process and who have shared responsibility for implementing the child's treatment plan with other treatment team members.” (Wis. Admin. Code § DCF 56.13)</li> </ol>	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>DCF 56.09 (1G) specifically prohibits the use of restrictive measures with children in foster care unless ‘the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe.’ Under DCF 56.02 (2)(a), licensing agencies are prohibited from granting exceptions to the use of restrictive measures. 56.02 (2)(b) defines the Department exceptions panel, which reviews Restrictive Measures applications for children who reside in foster. The panel includes members from DCF and DHS to jointly review all requests for exceptions. The DCF exceptions panel adheres to the DHS Restrictive Measures Guidelines (below) and also prescribes the use of DHS Restrictive Measures application forms. Applications are jointly reviewed and approved/denied by the DCF Exceptions Panel.</p> <p>“For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p> <p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a>  See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 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.</b></p>	<p><b>Principles of Nurturing Care:</b> The foster parent shall provide nurturing care that:</p> <ul style="list-style-type: none"> <li>• “Socializes the child into family living and teaches social and community living skills, including accepting tasks and responsibilities.”</li> <li>• “Is respectful of the child as a person.”</li> <li>• “Increases the child's opportunities to develop decision-making skills and to make informed choices.”</li> <li>• “Gives the child room to grow and the maximum of personal and physical freedom appropriate to the child's age and maturity.”</li> </ul>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<ul style="list-style-type: none"> <li>• “Increases the child's independence in performing tasks and activities by teaching skills that reduce dependence on caretakers.”</li> <li>• “Lets the child participate in community activities of the child's choice, including sports and activities of school, community, social and religious groups, with this participation restricted only by reasonable curfew hours, cost considerations, a court order or for a reason agreed upon by the foster parent and the licensing and supervising agencies.”</li> <li>• “Increases the child's opportunities to interact with diverse community populations.”</li> <li>• “Gives the child reasonable opportunity to voluntarily participate or not participate in religious practices, activities, and services of the child's choice or the choice of the child's parents. Any discrepancy between the child's choice and the choice of the child's parents shall be resolved by the child's caseworker.”</li> <li>• “Teaches the child life skills in situations where the skills are used.”</li> <li>• “Provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child's case plan, permanency plan, or treatment plan.” (Summarized from Wis. Admin. Code § DCF 56.09)</li> </ul> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability-specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>

**§ 441.301(c)(4)(vi) PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 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</b></p>	<p>Not applicable to minor children who have been court ordered to be placed in a licensed foster home by an established licensing agency.</p>	<p><b>Not applicable</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>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 that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>		
<p>§ 441.301(c)(4)(vi)(B) Each individual has privacy in their sleeping or living unit: 1: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p><b>Physical Requirements:</b> Each bedroom occupied by a foster child shall have a door for privacy, a window that allows natural light to enter, and adequate ventilation. A sleeping room that someone must pass through to get to another part of the building may not be used for a foster child. A foster child may not regularly sleep in a room to which access can be gained only through another occupied sleeping room. (Summarized from Wis. Admin. Code § DCF 56.07)</p>	<p><b>Silent:</b> Requirement is not fully applicable to children under 12 years who are court ordered to be placed into foster care.</p>
<p>§ 441.301(c)(4)(vi)(B) 2: Individuals sharing units have a choice of roommates in that setting.</p>	<p><b>Sleeping Arrangements:</b></p> <ul style="list-style-type: none"> <li>• “Each foster child shall be provided with a separate bed, except 2 related children of the same sex over the age of one and under 12 years of age may share a double or larger bed.”</li> <li>• “Each infant child, birth to 12 months of age, shall sleep alone in a crib, bassinet, or playpen.”</li> <li>• “No foster child one year of age or older may regularly share a bedroom with an adult unless a physician determines that it is medically necessary and the licensing agency approves.”</li> <li>• “No foster child 6 years of age or older may regularly share a bedroom with another child of the opposite sex.”</li> <li>• “No more than four children may regularly occupy one bedroom.” (Summarized from Wis. Admin. Code § DCF 56.07)</li> </ul>	<p><b>Partially Compliant</b> Requirement not fully applicable to children under age 12 years who are court ordered to be placed into foster care.</p>
<p>§ 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.</p>	<p><b>Care of Foster Children:</b> The foster home provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child's case plan, permanency plan, or treatment plan.</p> <p>Children must be allowed access to clothing and written and recorded materials and other items appropriate to the child’s age and comprehension. A foster child’s personal belongings may not be damaged or destroyed. (Summarized from Wis. Admin. Code § DCF 56.09)</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 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.</b></p>	<p><b>Care of Foster Children:</b> “The foster home provides daily schedules, routines, environments, and interactions similar to those of other children of the same age and in accordance with the child's case plan, permanency plan, or treatment plan.” (Wis. Admin. Code § DCF 56.09)</p> <p><b>Principles of Nurturing Care:</b> The foster parent shall provide nurturing care that:</p> <ul style="list-style-type: none"> <li>• “Increases the child's opportunities to develop decision-making skills and to make informed choices.”</li> <li>• “Gives the child room to grow and the maximum of personal and physical freedom appropriate to the child's age and maturity.”</li> <li>• “Increases the child's independence in performing tasks and activities by teaching skills that reduce dependence on caretakers.”</li> <li>• “Lets the child participate in community activities of the child's choice, including sports and activities of school, community, social and religious groups, with this participation restricted only by reasonable curfew hours, cost considerations, a court order or for a reason agreed upon by the foster parent and the licensing and supervising agencies.”</li> <li>• “Increases the child's opportunities to interact with diverse community populations.” (Summarized from Wis. Admin. Code § DCF 56.09)</li> </ul> <p><b>Food:</b></p> <ul style="list-style-type: none"> <li>• “The foster parent shall ensure that each foster child receives at least 3 meals a day. Meals a child receives as part of a meals program at school may be counted. A school-age foster child who does not participate in a school lunch program shall be provided a sack lunch or be provided lunch at the foster home or shall otherwise have lunch arranged for by or with the approval of the foster parent.”</li> <li>• “The foster parent shall ensure that each foster child is provided a quantity and variety of foods sufficient to meet the child’s nutritional needs and to maintain his or her health and growth.”</li> <li>• “No foster child may be forced to eat against his or her wishes except by order of and under the supervision of a physician.” (Summarized from Wis. Admin. Code § DCF 56.09)</li> </ul>	<p><b>Compliant</b></p>
<p><b>§ 441.301(c)(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.</b></p>	<p>“Permits a child to receive mail, to make and to receive a reasonable number of telephone calls and to visit with family, friends and others unless a visit is contraindicated by the child’s case plan, by a court order or by another controlling document.” (Wis. Admin. Code § DCF 56.09)</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(vi)(E) The setting is physically accessible to the individual.</p>	<p><b>Physical Environment/Exterior Access:</b> “If necessary for a child to access the foster home where the child is placed, at least one entrance to the foster home shall be level or ramped in accordance with ch. SPS 362 and in a manner that provides safe access for the child.”</p> <p>“Doorways and passageways to the common rooms of the foster home, a complete bathroom, and the child’s bedroom shall meet standards relating to accessibility in ch. SPS 362 if either of the following apply:</p> <ol style="list-style-type: none"> <li>1. The child uses a wheelchair.</li> <li>2. The child has significant mobility limitations and is too big to be safely carried.”</li> </ol> <p>If the home serves a child with mobility impairment, the child cannot: be required to sleep in the top level of a bunk bed or sleep in finished basement bedroom or second floor. At least one bathroom shall be constructed in conformity with Wis. Admin. Code § SPS 362. (Summarized from Wis. Admin. Code § DCF 56.07)</p>	<p><b>Compliant</b></p>
<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:</p> <ol style="list-style-type: none"> <li>1: Identify a specific and individualized need.</li> <li>2: Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</li> <li>3: Document less intrusive methods of meeting the need that have been tried but did not work</li> <li>4: Include a clear description of the condition that is directly proportionate to the specific assessed need.</li> <li>5: Include regular collection and review of data to measure the ongoing effectiveness of the modification.</li> <li>6: Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</li> <li>7: Include the informed consent of the individual.</li> </ol>	<p>“A licensing agency may impose additional safety conditions upon a licensee if the licensee cares for a child under one year of age or a child with mental or physical disabilities when the age, impaired judgment, or mobility of the child creates additional safety risks.” (Wis. Admin. Code § DCF 56.08)</p> <p><b>Assessment:</b> “A placing agency shall assess each foster child before placement in a foster home or within 30 days after the child's placement. A placing agency shall assess each foster parent within 30 days after the child's placement in the foster home.” (Wis. Admin. Code § DCF 56.22)</p> <p><b>Standardized Assessment Tool:</b> “The standardized assessment tool shall include a list of items that may have a direct impact on service planning for the child and the child’s foster parent. The list of items included in the standardized assessment tool shall assist with evaluation of all of the following:</p> <ol style="list-style-type: none"> <li>1. The child's functioning, including all of the following: <ol style="list-style-type: none"> <li>a. The impact of trauma on the child.</li> <li>b. Life functioning, including physical, mental, and dental health; relationships with family members; and social skills.</li> <li>c. Functioning in a child care or school setting.</li> <li>d. Behavioral and emotional needs.</li> <li>e. Risk behaviors.</li> <li>f. Strengths.</li> <li>g. The effect of the culture of the child and the child's family on service provision.” (Wis. Admin. Code § DCF 56.22)</li> </ol> </li> </ol>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>8: Include an assurance that interventions and supports will cause no harm to the individual.</b></p>	<p><b>Reassessment Every Six Months:</b> “A placing agency shall reassess each foster child and the child's foster parent within 6 months after the child's last assessment or reassessment. The placing agency, licensing agency, or foster parent may request a reassessment more frequently.” (Wis. Admin. Code § DCF 56.22)</p> <p><b>Child’s Treatment Plan:</b> “The foster care provided for a child with a level of need of 3 or higher in a foster home with a certification of Level 3 to 5 shall do all of the following:</p> <ul style="list-style-type: none"> <li>(a) Use a family-based and community-based approach to treatment for a child with physical, mental, medical, substance abuse, cognitive, intellectual, behavioral, developmental, or similar problems.</li> <li>(b) Make efforts to change the behavior or ameliorate the condition that, in whole or in part, resulted in the child's separation from his or her family.</li> <li>(c) Use specially selected and specifically trained foster parents who are the primary change agents in the treatment process and who have shared responsibility for implementing the child's treatment plan with other treatment team members.” (Wis. Admin. Code § DCF 56.13(8))</li> </ul> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	



## Nonresidential Settings: Adult

**Note:** The regulatory standards for adult day care do not prohibit adult day care centers from being located in an institution or on the grounds of, or adjacent to, a public institution, but includes special criteria to be taken into account when adult day care is collocated with institutional settings. The extent to which these criteria and other factors regarding specific settings comply with the rule will be evaluated as part of the heightened scrutiny process and are not assessed in the crosswalk tables.

**Adult Day Care (ADC): DHS Standards** (<https://www.dhs.wisconsin.gov/regulations/adultdaycare/regulations.htm>)

**Definition:** A day program that provides the elderly and other adults with services when their caregivers are at work or need relief. Only those adult day care programs seeking to serve one or more participants with waiver funding are required to be certified.

### Crosswalk Table 7: Adult Day Care

**§ 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.**

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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></p>	<p><b>Physical Requirements:</b> “The adult day care setting is typical of or strongly resembles the locations where adults in that community customarily congregate for social, recreational or association activities (e.g., clubs, church halls, private homes, lodges, and restaurants). The building is consistent with the environment in terms of size, architectural style and type (urban vs. rural) and would be attractive and inviting to members of that community. The setting, programs and physical environment will enhance the dignity and individual respect of participants.” (Standards, Section IV.)</p> <p><b>Person-Centered Planning:</b> Participants should be involved in the planning and implementation of indoor and outdoor activities, including access and involvement in the general community. (Summarized from ADC Standards, Section I.D.)</p> <p><b>Rights:</b> A participant at an adult day care has the right to participate in the development of one’s service plan and to refuse to participate in any particular activity. (Summarized from ADC Standards, Section 1.A.(5))</p>	<p><b>Compliant</b></p> <p>While the SMA thinks that the standards for adult day care are compliant, the SMA will revise service provider standards in HCBS waivers and the accompanying contracts and other guidance to require that adult day care centers provide informational resources and referrals for anyone who is interested in employment or other activities in the community.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 441.301(c)(4)(ii) 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></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p><b>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Rights:</b> “A participant at an Adult Day Care has the rights to be treated with respect and dignity; to be free from physical or verbal abuse, to participate in the development of one’s service plan; to refuse to participate in any particular activity, and to privacy and confidentiality.” (Standards, Section 1.A.(5))</p> <p>“For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p> <p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a></p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> “The facility shall be designed in such a way that it is accessible and functional in meeting the identified needs of the adult population it serves. At least 50 square feet of usable floor space for each participant exclusive of passageways, bathrooms, lockers, office, storage areas, staff room, furnace rooms, and parts of rooms occupied by stationary equipment must be provided. Sufficient furniture and equipment for use by participants that provides comfort and safety, and is appropriate for an adult population with physical</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>disabilities, visual and mobility limitations, and cognitive impairments.” (Standards, Section III.D.)</p> <p><b>Person-Centered Planning:</b> Adult day care programs must have an assessment to get to know the individual and create an individualized service plan to meet the individual’s needs and choices. Plans must be reviewed and updated every six months. (Summarized from ADC Standards, Section I.C.)</p> <p><b>Rights:</b> A participant at an adult day care has the rights to participate in the development of one’s service plan and to refuse to participate in any particular activity.” (Summarized from ADC Standards, Section 1.A.(5))</p>	
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b>  <b>Program Level:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p> <p><b>Setting Level:</b> Adult day care program’s must specify program services, support, and providers of each when conducting participant assessments, creating service plans, and developing individualized program services. (Summarized from ADC Standards, Section I.C. and Section I.D.)</p>	<p><b>Compliant</b></p>

**Family Adult Day Care (Family ADC): Department Standards**

[Family Adult Day Care Certification Standards](#)

**Definition:** Care provided for part of a day for small groups of no more than six adults in a home of a provider.

**Crosswalk Table 8: Family Adult Day Care**

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Physical Requirements:</b> The family adult day care is certified in a provider’s home and reflects the community setting of the family home. “The conditions of the home shall be such that participants are cared for in a safe, sanitary and comfortable environment with adequate space and equipment to accommodate a program of activities and rest that meets the needs of the participants.” (Standards, Section III.A.)</p> <p><b>Person-Centered Planning:</b> “Participants should have opportunities to attend appropriate community activities.” (Standards, Section I.C.)</p> <p><b>Rights:</b> A participant at a family adult day care program has the rights to participate in the development of one’s service plan and to refuse to participate in any particular activity. (Summarized from Family ADC Standards, Section 1.A.(2))</p>	<p><b>Compliant</b></p> <p>While the SMA thinks that the standards for Family Adult Day Care are compliant, the SMA will revised service provider standards in HCBS waivers and the accompanying contracts and other guidance to require that Family Adult Dare Care sites provide informational resources and referrals for anyone who is interested in employment or other activities in the community.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p>§ 441.301(c)(4)(ii) 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</p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
settings, resources available for room and board.		
<p><b>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Rights:</b> A participant at an Adult Day Care has the rights to be treated with respect and dignity; to be free from physical or verbal abuse, to participate in the development of one’s service plan; to refuse to participate in any particular activity, and to privacy and confidentiality. (Summarized from Family ADC Standards, Section 1.A.(2))</p> <p>“For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p> <p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a></p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Compliant</b></p>
<p><b>§ 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.</b></p>	<p><b>Physical Requirements:</b> The Family Adult Day Care must have adequate space and equipment for activities and rest that meets the needs of the participants; table space and sufficient seating for each participant shall be provided. (Summarized from Family ADC Standards, Section III.A.)</p> <p><b>Person-Centered Planning:</b> Family adult day care program’s must have an assessment to get to know the individual and create an individualized service plan to meet the individual’s needs and interests within 30 days of admission. Plans must be reviewed and updated annually or more often if changes in a participant warrant. (Summarized from Family ADC Standards, Section I.B.(3))</p> <p><b>Rights:</b> A participant at a family adult day care has the rights to participate in the development of one’s service plan and to refuse to participate in any particular activity.” (Summarized from Family ADC Standards, Section 1.A.(2))</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</p>	<p><b>Person-Centered Planning:</b></p> <p><b>Program Level:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p> <p><b>Setting Level:</b> A family adult day care program must specify program services and daily charges, including additional services and fees; such as transportation, baths, personal cares, etc. Family adult day care standards note that additional services may be arranged for or provided by the program including transportation, social services, personal cares, medication administration, nursing services, health monitoring, physical therapy, etc.” (Summarized from Family ADC Standards, Section I.A.(1))</p>	<p>Compliant</p>

## Day Habilitation Service Settings: Waiver Service Standards

**Definition:** Day habilitation services are the provision of regularly scheduled activities in a nonresidential setting, separate from the member’s private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that enhance social development and develop skills in performing activities of daily living and full community citizenship.

**Crosswalk Table 9: Day Habilitation**

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Physical Requirements:</b> “Day habilitation may be furnished in a variety of settings in the community except for the member’s residence. Day habilitation services are not limited to fixed-site facilities but may take place in stores, restaurants, libraries, parks, recreational facilities, community centers or any other place in the community.” (Language is from DHS-MCO contract, Addendum IX; policy documents for other waivers contain similar language)</p> <p><b>Person-Centered Planning:</b> “Day habilitation services are the provision of regularly scheduled activities in a nonresidential setting, separate from the member’s private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills that enhance social development and develop skills in performing activities of daily living and full community citizenship. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, greater independence and personal choice.” (DHS-MCO Contract, Addendum IX)</p> <p>“Day habilitation services focus on enabling the member to attain or maintain his or her maximum potential and shall be coordinated with any needed therapies in the member’s person-centered services and support plan, such as physical, occupational, or speech therapy.” (DHS-MCO Contract, Addendum IX)</p> <p>“Day habilitation may not provide for the payment of services that are vocational in nature (i.e., for the primary purpose of producing goods or performing services).” (DHS-MCO contract, Addendum IX; policy documents for other waivers contain similar language)</p>	<p><b>Silent:</b> The waiver standards do not address the fixed-site settings in which day habilitation services are provided.</p> <p><b>Remediation:</b> The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site day habilitation services.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p>§ 441.301(c)(4)(ii) 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</p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in</p>	<p><b>Compliant</b></p>



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
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.	<p>all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p><b>Contracts with Providers:</b> “The subcontractor agrees otherwise to preserve the full confidentiality of records, in accordance with Article XIII.A., Member Records, page 188, and protect from unauthorized disclosure all information, records, and data collected under the subcontract. Access to this information shall be limited to persons who, or agencies such as the Department and CMS which, require information in order to perform their duties related to this contract.” (DHS-MCO contract, Article VIII)</p> <p><b>Rights:</b> Waiver agencies “must have written policies regarding the enrollee rights specified in this section, including but not limited to:</p> <ol style="list-style-type: none"> <li>1. Being treated with respect and with due consideration for his/her dignity and privacy.</li> <li>2. Receiving information on available treatment options and alternatives, presented in a manner appropriate to the enrollee’s condition and ability to understand.</li> <li>3. Participating in decisions regarding health and long-term care, including the right to refuse treatment and the right to request a second opinion.</li> <li>4. Being free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.</li> <li>5. Being able to request and receive a copy of his/her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. § 164.” (DHS-MCO contract, Article X)</li> </ol> <p>“An exploration with the member of the member’s preferences in regard to privacy, services, caregivers, and daily routine, including, if appropriate, an evaluation of the member’s need and interest in acquiring skills to perform activities of daily living to increase his/her capacity to live independently in the most integrated setting.” (DHS-MCO contract, Article V)</p> <p><b>COP/CIP/CLTS</b></p> <ol style="list-style-type: none"> <li>“1. You have a right to be treated with dignity and respect. This includes the right to free association to see whom you want, when you want unless a court order states otherwise.</li> <li>2. You have a right to control your life and the services you get as much as you are able. You have the right to choose where you live, if you live alone or with others and with whom you will live. You have the right to be</li> </ol>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>told that if you choose to live in certain settings, you may lose your eligibility for funding under the Medicaid Waiver.</p> <p>3. You have a right not to be hurt or threatened. You have the right to be free from abuse and neglect. You have a right to be free from restrictive measures and all unreasonable restraints. You have the right to refuse to take drugs you do not want to take unless ordered to do so by a court of law.</p> <p>4. You have the right to privacy. Your right to privacy includes having information that is said or written about you kept confidential, the right to receive and open your own mail, to make and receive private phone calls and to have visitors in your private areas including your bedroom and have the door closed.</p> <p>5. You have a right to see your file, have it corrected, and to get copies of reports in it.</p> <p>6. You have the right to direct you own services within the rules of the waiver in which you are enrolled. You have the right to have the self-directed service option explained to you and made available.</p> <p>7. You have the right to know what other rights apply to you. You may have rights because of where you live (e.g., in a group home (CBRF), because a court was involved in your services, or because of the nature of your disability. Waiver agency staff are responsible for telling you about these rights and for making sure you are adequately informed about them.”</p> <p>Providers must acknowledge that they are subject to state and federal laws and regulations, and must understand and abide by applicable standards as a condition of participation in home and community-based services under the Medicaid program.</p> <p><b>IRIS</b></p> <p>Item 8: “Medicaid Confidentiality Policies and Procedures: To maintain the confidentiality of all records or other information relating to each participant’s status as a waiver participant and items or services the participant receives from the Provider.”</p> <p>“For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p>	

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a>  See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 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.</b></p>	<p><b>Person-Centered Planning:</b> Waiver agency: Placement decisions and person-centered plans that are developed by the case management agency must address how the activities of the day will provide opportunities for interactions with the community, including friends and relatives, and access to activities. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p> <p>Service setting: “Day habilitation services provide assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills that enhance social development and develop skills in performing activities of daily living and full community citizenship. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, greater independence and personal choice.</p> <p>“Day habilitation services focus on enabling the member to attain or maintain his or her maximum potential and shall be coordinated with any needed therapies in the member’s person-centered services and support plan, such as physical, occupational, or speech therapy.</p> <p>“Day habilitation may not provide for the payment of services that are vocational in nature (i.e., for the primary purpose of producing goods or performing services). But an individual may also receive educational, supported employment and prevocational services.” (DHS-MCO contract, Addendum IX)</p>	<p><b>Silent:</b> The waiver standards do not address the fixed-site settings in which day habilitation services are provided.</p> <p><b>Remediation:</b> The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site day habilitation services.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p>	<p><b>Silent:</b> The waiver standards do not address the fixed-site settings in which day habilitation services are provided.</p> <p><b>Remediation:</b> The SMA will use the findings of the nonresidential provider self-</p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	See Crosswalk Table 1 for references to contracts and waiver manuals.	<p>assessment and site visits to develop standards for fixed-site day habilitation services.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>

## Prevocational Services: Waiver Service Definition

**Definition:** Prevocational services are designed to create a path to integrated community-based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

**Crosswalk Table 10: Prevocational Services**

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Physical Requirements:</b> “Prevocational services are designed to create a path to integrated community based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Prevocational services involve the provision of learning and work experiences where a member can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated, community settings. Services are expected to occur over a defined period of time as determined by the member and his/her care planning team in the ongoing member-centered planning process. Services are expected to specifically involve strategies that enhance a member’s employability in integrated, community settings.”</p> <p>“Prevocational services may be delivered in a variety of locations in the community and are not limited to fixed-site facilities.</p> <p>“Prevocational services, regardless of how and where they are delivered, are expected to help people make reasonable and continued progress toward participation in at least part-time, integrated employment.”</p> <p>“Participation in prevocational services is not a pre-requisite for individual or small group supported employment services. Members who receive prevocational services may also receive educational, supported employment and/or day services. A member’s care plan may include two or more types of nonresidential services.” (Language is from DHS-MCO contract, Addendum IX; policy documents for other waivers contain similar language) See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Silent:</b> The waiver standards do not address the fixed-site settings in which prevocational services are provided.</p> <p><b>Remediation:</b> The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site prevocational service settings.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p>§ 441.301(c)(4)(ii) The setting is selected by the individual from among setting options including non-disability specific settings and</p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>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></p>	<p>disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Contracts with Providers:</b> “The subcontractor agrees otherwise to preserve the full confidentiality of records, in accordance with Article XIII.A., Member Records, page 188, and protect from unauthorized disclosure all information, records, and data collected under the subcontract. Access to this information shall be limited to persons who, or agencies such as the Department and CMS which, require information in order to perform their duties related to this contract.” (DHS-MCO contract, Article VIII)</p> <p><b>Rights:</b> “The MCO must have written policies regarding the enrollee rights specified in this section, including but not limited to:</p> <ol style="list-style-type: none"> <li>1. Being treated with respect and with due consideration for his/her dignity and privacy.</li> <li>2. Receiving information on available treatment options and alternatives, presented in a manner appropriate to the enrollee’s condition and ability to understand.</li> <li>3. Participating in decisions regarding health and long-term care, including the right to refuse treatment and the right to request a second opinion.</li> <li>4. Being free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.</li> <li>5. Being able to request and receive a copy of his/her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. § 164.” (DHS-MCO contract, Article X)</li> </ol> <p>“An exploration with the member of the member’s preferences in regard to privacy, services, caregivers, and daily routine, including, if appropriate, an evaluation of the member’s need and interest in acquiring skills to perform activities of daily living to increase his/her capacity to live independently in the most integrated setting.” (DHS-MCO contract, Article V)</p> <p><b>COP/CIP/CLTS</b></p> <ol style="list-style-type: none"> <li>“1. You have a right to be treated with dignity and respect. This includes the right to free association to see whom you want, when you want unless a court order states otherwise.</li> <li>2. You have a right to control your life and the services you get as much as you are able. You have the right to</li> </ol>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>choose where you live, if you live alone or with others and with whom you will live. You have the right to be told that if you choose to live in certain settings, you may lose your eligibility for funding under the Medicaid Waiver.</p> <p>3. You have a right not to be hurt or threatened. You have the right to be free from abuse and neglect. You have a right to be free from restrictive measures and all unreasonable restraints. You have the right to refuse to take drugs you do not want to take unless ordered to do so by a court of law.</p> <p>4. You have the right to privacy. Your right to privacy includes having information that is said or written about you kept confidential, the right to receive and open your own mail, to make and receive private phone calls and to have visitors in your private areas including your bedroom and have the door closed.</p> <p>5. You have a right to see your file, have it corrected, and to get copies of reports in it.</p> <p>6. You have the right to direct you own services within the rules of the waiver in which you are enrolled. You have the right to have the self-directed service option explained to you and made available.</p> <p>7. You have the right to know what other rights apply to you. You may have rights because of where you live (e.g., in a group home (CBRF)), because a court was involved in your services, or because of the nature of your disability. Waiver agency staff are responsible for telling you about these rights and for making sure you are adequately informed about them”</p> <p>Providers must acknowledge that they are subject to state and federal laws and regulations, and must understand and abide by applicable standards as a condition of participation in home and community-based services under the Medicaid program.</p> <p><b>IRIS:</b> Item 8: “Medicaid Confidentiality Policies and Procedures: To maintain the confidentiality of all records or other information relating to each participant’s status as a waiver participant and items or services the participant receives from the Provider.”</p> <p>“For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.” (Wis. Admin. Code § DHS 94.10)</p>	



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS. Guidelines on restraints and isolation are found at:  <a href="https://www.dhs.wisconsin.gov/publications/p02572.pdf">https://www.dhs.wisconsin.gov/publications/p02572.pdf</a>  and <a href="https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm">https://www.dhs.wisconsin.gov/regulations/waiver-variance-assisted-living.htm</a>  See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	
<p><b>§ 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.</b></p>	<p>“Prevocational services are designed to create a path to integrated community based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Prevocational services involve the provision of learning and work experiences where a member can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated, community settings. Services are expected to occur over a defined period of time as determined by the member and his/her care planning team in the ongoing member-centered planning process. Services are expected to specifically involve strategies that enhance a member's employability in integrated, community settings.” (DHS-MCO Contract, Addendum IX)</p> <p><b>Person-Centered Planning:</b> Placement decisions and person-centered plan that are developed by the case management agency must address how the activities of the day will provide opportunities for interactions with the community, including friends and relatives, and access to activities. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p>	<p><b>Silent:</b> The waiver standards do not address the fixed-site settings in which prevocational services are provided.</p> <p><b>Remediation:</b> The SMA will use the findings of the nonresidential provider self-assessment and site visits to develop standards for fixed-site prevocational service settings.</p> <p>These standards will be incorporated in waiver manuals either directly or by reference. These policy documents include:</p> <ul style="list-style-type: none"> <li>• DHS-MCO contract for Family Care, Partnership, and PACE.</li> <li>• The Medicaid Waivers Manual for CIP, COP, and CLTS waivers.</li> <li>• IRIS policies, work instructions, and service definitions.</li> </ul>
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management and consultation (for the IRIS self-directed waiver). Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>See Crosswalk Table 1 for references to contracts and waiver manuals.</p> <p>“Personal care provided to a member during the receipt of prevocational services may be included in the reimbursement paid to the prevocational services</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	provider, or may be covered and reimbursed under another waiver service so long as there is no duplication of payment." (DHS-MCO contract. Addendum IX)	

## Nonresidential Settings: Child

### Children Day Services—Licensed Family Child Care: Statute and Administrative Code

[https://docs.legis.wisconsin.gov/code/admin\\_code/DCF/201\\_252/250](https://docs.legis.wisconsin.gov/code/admin_code/DCF/201_252/250)

**Definition:** A facility where a person provides care and supervision for less than 24 hours a day for at least four and not more than eight children who are not related to the provider.

**Crosswalk Table 11: Licensed Family Child Care**

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p>“This chapter is promulgated under the authority of s. 48.67, Stats., to carry out licensing requirements under s. 48.65, Stats., for family child care centers. The purpose of the chapter is to protect the health, safety and welfare of children being cared for in family child care centers.” (Wis. Admin. Code § DCF 250.01)</p> <p><b>Physical Requirements:</b> “Family child care centers located in a building that is not a one or two-story family dwelling shall conform to the applicable Wisconsin commercial building codes. A copy of a building inspection report evidencing compliance with the applicable building codes shall be submitted to the department prior to the department’s issuance of a license.” (Wis. Admin. Code § DCF 250.06)</p> <p><b>Program Planning and Scheduling:</b> “A provider shall plan activities so that each child may be or do all of the following:</p> <ol style="list-style-type: none"> <li>1. Be successful and feel good about himself or herself.</li> <li>2. Use and develop language.</li> <li>3. Use large and small muscles.</li> <li>4. Use materials and take part in activities that encourage creativity.</li> <li>5. Learn new ideas and skills.</li> <li>6. Participate in imaginative play.</li> <li>7. Be exposed to a variety of cultures.</li> <li>8. Develop literacy skills.” (Wis. Admin. Code § DCF 250.07)</li> </ol>	<p><b>Compliant</b></p>
<p>§ 441.301(c)(4)(ii) 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,</p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>“The center shall permit parents to visit and observe at any time during the center's hours of operation, unless</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
for residential settings, resources available for room and board.	access is prohibited or restricted by court order.” (Wis. Admin. Code § DCF 250.04)	
§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p><b>Confidentiality:</b> “The licensee shall ensure that all of the following occur:</p> <ul style="list-style-type: none"> <li>• Persons having access to children’s records do not discuss or disclose personal information regarding the children and facts learned about the children and their relatives. This subdivision does not apply to any of the following: <ul style="list-style-type: none"> <li>○ The parent or person authorized in writing by the parent to receive the information.</li> <li>○ Any agency assisting in planning for the child when informed written parental consent has been given.</li> <li>○ Agencies authorized under Wis. Stat. § 48.78.</li> </ul> </li> <li>• A parent, upon request, has access to all records and reports maintained on his or her child.” (Wis. Admin. Code § DCF 250.05)</li> </ul> <p><b>Reporting Child Abuse:</b> “A licensee or provider who knows or has reasonable cause to suspect that a child has been abused or neglected as defined in ss. 48.02 (1) and 48.981 (1), Stats., shall immediately contact the county department of social services or human services or local law enforcement agency in compliance with s. 48.981, Stats.” (Wis. Admin. Code § DCF 250.04)</p> <p>“The licensee shall document that each provider and substitute has received training at least every 2 years in all of the following:</p> <ol style="list-style-type: none"> <li>1. Child abuse and neglect laws.</li> <li>2. How to identify children who have been abused or neglected.</li> <li>3. The procedure for ensuring that all known or suspected cases of child abuse or neglect are immediately reported to the proper authorities.” (Wis. Admin. Code § DCF 250.04) <p><b>Child Guidance:</b> “(a) Each family child care center shall provide positive guidance and redirection for the children and shall set clearly specified limits for the children. A provider shall help each child develop self-control, self-esteem and respect for the rights of others.</p> <p>(b) If a provider uses time-out periods to deal with unacceptable behavior, time-out periods may not exceed 5 minutes or be used for children under age 3. Time-out procedures shall be included in the center's written child guidance policy.</p> <p>(c) Actions that may be psychologically, emotionally or physically painful, discomfoting, dangerous or potentially injurious are prohibited. Examples of prohibited actions include all of the following:</p> </li></ol>	Compliant

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<ol style="list-style-type: none"> <li>1. Spanking, hitting, pinching, shaking, slapping, twisting, throwing, or inflicting any other form of corporal punishment on the child.</li> <li>2. Verbal abuse, threats or derogatory remarks about the child or the child's family.</li> <li>3. Physical restraint, binding or tying the child to restrict the child's movement or enclosing the child in a confined space such as a closet, locked room, box or similar cubicle.</li> <li>4. Withholding or forcing meals, snacks or naps.</li> <li>5. Actions that are cruel, aversive, humiliating or frightening to the child.</li> </ol> <p>(d) A child may not be punished for lapses in toilet training." (Wis. Admin. Code § DCF 250.07)</p>	
<p><b>§ 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.</b></p>	<p><b>Program Planning and Scheduling:</b> "A provider shall plan activities so that each child may be or do all of the following:</p> <ol style="list-style-type: none"> <li>1. Be successful and feel good about himself or herself.</li> <li>2. Use and develop language.</li> <li>3. Use large and small muscles.</li> <li>4. Use materials and take part in activities that encourage creativity.</li> <li>5. Learn new ideas and skills.</li> <li>6. Participate in imaginative play.</li> <li>7. Be exposed to a variety of cultures.</li> <li>8. Develop literacy skills." (Wis. Admin. Code § DCF 250.07)</li> </ol> <p>"(b) A provider shall plan daily activities according to the age and developmental level of each child in care and shall include a flexible balance of all of the following:</p> <ol style="list-style-type: none"> <li>1. Daily indoor and outdoor activities when a child is in care for more than 3 hours except that outdoor activities are not required during inclement weather or when not advisable for health reasons.</li> <li>2. Active and quiet play.</li> <li>3. Protection from excess fatigue and over stimulation.</li> <li>4. Individual and group activities.</li> </ol> <p>(c) Television, including videotapes and DVDs, may be used only to supplement the daily plan for children. No child may be required to watch television." (Wis. Admin. Code § DCF 250.07)</p>	<p><b>Compliant</b></p>
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p>	<p><b>Compliant</b></p>

**Children Day Services—Licensed Group Child Care Center: Statutes and Administrative Code**

[https://docs.legis.wisconsin.gov/code/admin\\_code/dcf/201\\_252/251](https://docs.legis.wisconsin.gov/code/admin_code/dcf/201_252/251)

**Definition:** A facility where a person for less than 24 hours a day provides care and supervision for nine or more children who are not related to the provider.

**Crosswalk Table 12: Licensed Group Child Care Center**

§ 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.

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p>§ 441.301(c)(4)(i) The setting is integrated in and supports full 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.</p>	<p><b>Program Planning and Scheduling:</b> “Each group child care center shall have a written program of activities which are suitable for the developmental level of each child and each group of children. The program shall provide each child with experiences which will promote all of the following:</p> <ol style="list-style-type: none"> <li>1. Self-esteem and positive self-image.</li> <li>2. Social interaction.</li> <li>3. Self-expression and communication skills.</li> <li>4. Creative expression.</li> <li>5. Large and small muscle development.</li> <li>6. Intellectual growth.</li> <li>7. Literacy.” (Wis. Admin. Code § DCF 251.07)</li> </ol>	<p><b>Compliant</b></p>
<p>§ 441.301(c)(4)(ii) 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.</p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>“(b) The center shall permit parents to visit and observe at any time during the center’s hours of operation, unless access is prohibited or restricted by court order.</p> <p>(c) The center shall make opportunities available at least twice each year for parent and staff communication regarding the child’s adjustment to the program, and the child’s growth and development.</p> <p>(d) If religious training is part of the center program, reference to the religious component shall be included in any publicity and in the education policy. This information shall be shared with parents.</p> <p>(e) The center shall provide a summary of this chapter to the parents of each child upon the child’s enrollment.</p> <p>(f) A copy of this chapter shall be posted or available in an area of the center where parents are likely to see it.</p> <p>(g) A copy of the child care policies of the center shall be made available to the parents in an area of the center accessible to parents. Personnel policies need not be included.” (Wis. Admin. Code § DCF 251.04)</p>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
<p><b>§ 441.301(c)(4)(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Confidentiality:</b> “(a) The licensee shall ensure that: (a) persons having access to children’s records do not discuss or disclose personal information regarding the children and facts learned about the children and their relatives. This does not apply to:</p> <ol style="list-style-type: none"> <li>1. The parent or a person authorized in writing by the parent to receive the information.</li> <li>2. Any agency assisting in planning for the child when informed written parental consent has been given.</li> <li>3. Agencies authorized under Wis. Stat. § 48.78.</li> </ol> <p>(b) A parent, upon request, has access to all records and reports maintained on his or her child.” (Wis. Admin. Code § DCF 251.04)</p> <p><b>Reporting Child Abuse:</b> “(a) A licensee, employee or volunteer at a child care center who knows or has reasonable cause to suspect that a child has been abused or neglected, shall immediately contact the county department of social services or human services or a local law enforcement agency, as required by Wis. Stat. § 48.981.</p> <p>(b) The licensee, shall ensure that every employee and volunteer who comes in contact with the children at the child care center has received training every 2 years in all of the following:</p> <ol style="list-style-type: none"> <li>1. Child abuse and neglect law.</li> <li>2. How to identify children who have been abused or neglected.</li> <li>3. The procedure for ensuring that known or suspected cases of child abuse or neglect are immediately reported to the proper authorities. (Wis. Admin. Code § DCF 251.04)</li> </ol> <p><b>Child Guidance:</b> “(b) Each child care center shall a written policy which provides for positive guidance, redirection and the setting of clear-cut limits for the children. The policy shall be designed to help a child develop self-control, self-esteem and respect for the rights of others.</p> <p>(c) If a center uses time-out periods to deal with unacceptable behavior, time-out periods may not exceed 5 minutes and the procedure shall be included in the center’s child guidance policy.</p> <p>(d) Use of time-out periods is prohibited for children under 3 years of age.</p> <p>(e) Actions that may be psychologically, emotionally or physically painful, discomfoting, dangerous or potentially injurious are prohibited. Examples of prohibited actions include all of the following:</p> <ol style="list-style-type: none"> <li>1. Spanking, hitting, pinching, shaking, slapping, twisting, throwing, or inflicting any other form of corporal punishment.</li> <li>2. Verbal abuse, threats or derogatory remarks about the child or the child’s family.</li> </ol>	<p><b>Compliant</b></p>



Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>3. Physical restraint, binding or tying the child to restrict the child's movement or enclosing the child in a confined space such as a closet, locked room, box or similar cubicle.</p> <p>4. Withholding or forcing meals, snacks or naps.</p> <p>5. Actions that are cruel, aversive, humiliating or frightening to the child.</p> <p>(f) A child may not be punished for lapses in toilet training." (Wis. Admin. Code § DCF 251.07)</p>	
<p><b>§ 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.</b></p>	<p><b>Program Planning and Scheduling:</b> "(a) Each group child care center shall have a written program of activities which are suitable for the developmental level of each child and each group of children. The program shall provide each child with experiences which will promote all of the following:</p> <ol style="list-style-type: none"> <li>1. Self-esteem and positive self-image.</li> <li>2. Social interaction.</li> <li>3. Self-expression and communication skills.</li> <li>4. Creative expression.</li> <li>5. Large and small muscle development.</li> <li>6. Intellectual growth.</li> <li>7. Literacy.</li> </ol> <p>(b) The program schedule shall be planned to provide a flexible balance each day of:</p> <ol style="list-style-type: none"> <li>1. Active and quiet activities.</li> <li>2. Individual and group activities.</li> <li>3. Indoor and if the center is in operation more than 3 hours per day, outdoor activities.</li> </ol> <p>(c) Television may be used only to supplement the daily plan for children. No child may be required to watch television. Other activities shall be available.</p> <p>(d) Routines such as toileting and eating and intervals between activities shall be planned to avoid keeping children waiting in lines or assembled in large groups.</p> <p>(e) The program shall provide all of the following:</p> <ol style="list-style-type: none"> <li>1. Reasonable regularity in eating, napping and other routines.</li> <li>2. Daily periods when a variety of experiences are concurrently available for the children to select their own activities.</li> <li>3. Protection from excess fatigue and over stimulation.</li> <li>4. If a center is in operation for more than 3 hours per day, daily outdoor activities except during inclement weather or when not advisable for health reasons.</li> </ol> <p>(f) Child care workers shall give children individual attention.</p> <p>(g) A center that is open in the early morning and late afternoon shall have a written plan for activities which meet the individual needs of the children during those time periods. The plan shall include:</p> <ol style="list-style-type: none"> <li>1. Provision of opportunities for the children to rest and eat.</li> <li>2. Use of materials and engagement in activities which for the most part do not duplicate materials or</li> </ol>	<p><b>Compliant</b></p>

Federal Regulation (Title 42 C.F.R.)	Areas of Compliance in State Standards	Assessment of Compliance/Need for Systemic Remediation
	<p>activities planned for the major part of the program.” (Wis. Admin. Code § DCF 251.07)</p> <p>A center shall provide equipment and supplies according to the following criteria:</p> <ol style="list-style-type: none"> <li>1. Child development shall be fostered through selection of a variety of equipment that will: <ol style="list-style-type: none"> <li>a. Provide large muscle development.</li> <li>b. Provide construction activities and for development of manipulative skills.</li> <li>c. Encourage social interaction.</li> <li>d. Provide intellectual stimulation.</li> <li>e. Encourage creative expression.</li> </ol> </li> <li>2. A center shall provide sufficient indoor play equipment to allow each child a choice of at least 3 activities involving equipment when all children are using equipment.</li> <li>3. A center shall provide sufficient outdoor play equipment to allow each child at least one activity involving equipment when all children are using equipment. (Wis. Admin. Code § DCF 251.07)</li> </ol>	
<p><b>§ 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Person-Centered Planning:</b> Person-centered planning is supported by conflict-free care management. Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs. (Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)</p> <p>“A center serving school-age children shall have a planned program which provides a change from the routine of school through provision of:</p> <ol style="list-style-type: none"> <li>1. Rest and quiet areas.</li> <li>2. Recreational activities, including outdoor and active play.</li> <li>3. Freedom for children to select and plan their own activities.” (Wis. Admin. Code § DCF 251.095)</li> </ol>	<p><b>Compliant</b></p>

**APPENDIX 4**  
**Wisconsin HCBS Heightened Scrutiny Settings**  
**Submitted to CMS 4-02-2021**  
(Public comment period completed 2-22-2021 to 3-24-2021)

	<b>Facility Name</b>	<b>Type</b>	<b>City</b>	<b>Zip</b>
1	Aspirus Cedar Lane	CBRF	Medford	54451
2	Autumn Village	RCAC	Menomonie	54751
3	Birch Way	CBRF	Seymour	54165
4	Bluff Haven Assisted Living	CBRF	Prairie Du Chien	53821
5	Bornemann North	CBRF	Green Bay	54302
6	Bornemann South	CBRF	Green Bay	54302
7	Chai Point Assisted Living	CBRF	Milwaukee	53202
8	Christian Community Home Of Osceola	CBRF	Osceola	54020
9	Clearview Community Group Home	AFH 3-4	Juneau	53039
10	Country Ridge	RCAC	Pigeon Falls	54760
11	Covenant Oaks	CBRF	Madison	53705
12	Crest View Great Lakes	CBRF	New Lisbon	53950
13	Dove Healthcare - Osseo	RCAC	Osseo	54758
14	Four Winds Lodge	CBRF	Verona	53593
15	Francis House	CBRF	Milwaukee	53172
16	Heritage Center	CBRF	Stoughton	53589
17	Hillview Senior Living -- Mondovi	CBRF	Mondovi	54755
18	Hillview Terrace	RCAC	La Crosse	54601
19	Homme Residential Wittenberg	CBRF	Wittenberg	54499
20	Kitty Rhoades Memorial Memory Care Center	CBRF	New Richmond	54017
21	Lakeview Care Partners At Waterford	CBRF	Waterford	53185
22	Legacy Senior Living Center Inc.	RCAC	Ladysmith	54848
23	Luther Manor	CBRF	Marinette	54143
24	Manawa Assisted Living	CBRF	Manawa	54949
25	Monarch Meadows (St. Joseph, Trinity Terrace)	CBRF	New London	54961
26	NewCare Residence	CBRF	Crivitz	54114
27	North Terrace Assisted Living	RCAC	Markesan	53946
28	Northview Heights	CBRF	Juneau	53039
29	Orchard View Terrace	CBRF	New Richmond	54017
30	Oregon Healthcare and Rehabilitation	CBRF	Oregon	53575
31	Pine Valley Assisted Living Center	CBRF	Richland Center	53581
32	Point Manor	CBRF	Stevens Point	54481
33	Pride TLC Therapy and Living Campus	CBRF	Weston	54476
34	Renaissance Appleton	RCAC	Appleton	54911
35	Ridge Crest Manor	CBRF	Colfax	54730
36	Schmitt Woodland Hills Inc.	CBRF	Richland Center	53581
37	Seasons (The)	CBRF	Plum City	54761
38	Sheboygan Senior Community Inc.	CBRF	Sheboygan	53083
39	St Anne's Providence Court CBRF	CBRF	Milwaukee	53222
40	St Anne's Mission Court CBRF	CBRF	Milwaukee	53222
41	St Camillus	CBRF	Wauwatosa	53226
42	Timber Oaks	CBRF	Union Grove	53182
43	Tivoli Terrace at St Anne's Salvatorian Campus	RCAC	Milwaukee	53222
44	Trailview Adult Family Home	AFH 3-4	Juneau	53039
45	Trinity Terrace	CBRF	New London	54961
46	Trinity Village Assisted Living	RCAC	Milwaukee	53223
47	Woodland Care CBRF	CBRF	Owen	54460