## HOME AND COMMUNITY-BASED SERVICES (HCBS) SETTINGS RULE BENCHMARKS: LEVEL 5 FOSTER HOMES

The HCBS settings rule (<u>42 CFR § 441.301(4)</u>) was published in 2014 by the Centers for Medicare & Medicaid Services (CMS). The federal requirements define the qualities of settings eligible for reimbursement for Medicaid home and community-based services. Under these requirements, the Wisconsin Department of Health Services (DHS) must ensure that level 5 foster home providers of Children's Long-Term Support (CLTS) Program Children's Foster Care services meet and remain in compliance with the HCBS settings rule requirements. These benchmarks ensure DHS assesses HCBS settings rule compliance consistently across Medicaid programs.

by the provide facility other s of indiv institution	Heightened Scrutiny <b>C.R. § 441.301(c)(5)(v):</b> Any other locations that have qualities of an institutional setting, as determined Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that es inpatient institutional treatment, or is located in a building that is also a publicly or privately operated that provides inpatient institutional treatment, or immediately adjacent to, a public institution, or any setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community viduals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an ion unless the Secretary determines through heightened scrutiny, based on information presented by ate or other parties, that the setting does not have the qualities of an institution and that the setting does he qualities of home and community-based settings.	Method of Assessment / Compliance Determination
Α.	When the setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment ( <i>skilled nursing facility (SNF), intermediate care facility for individuals with intellectual disabilities (ICF/IID), institute for mental disease (IMD), hospital)</i> , the setting must have a heightened scrutiny review, overcome the presumption of institutionalization, and meet additional Home and Community-Based Setting Rule Benchmarks:	DHS compliance review

	<ol> <li>The HCBS setting demonstrates a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage.</li> <li>The HCBS setting is selected by the individual from setting options including non-disability options. The setting options are documented in the long-term care service and support plan and are based on individual needs and preferences.</li> <li>All staff working in the HCBS setting receive initial and ongoing training on the HCBS Settings Rule's requirements, practices, and principles.</li> <li>If institution staff are assigned to support HCBS staff or provide services to people in the HCBS setting, they must meet the same qualifications and training requirements as HCBS staff.</li> <li>Setting has policies and practices in place to ensure that staff in HCBS setting are not pulled to work in the institution unless an equally qualified staff person is available to replace them, with no gap in coverage in the HCBS setting.</li> </ol>	
В.		DHS compliance review
	<ul> <li>options. The setting options are documented in the long-term care service and support plan and are based on individual needs and preferences.</li> <li>3. All staff working in the HCBS setting receive initial and ongoing training on the HCBS Settings Rule's requirements, practices, and principles.</li> </ul>	
	<ul> <li>4. If institution staff are assigned to support HCBS staff or provide services to people in the HCBS setting, they must meet the same qualifications and training requirements as HCBS staff.</li> <li>5. Setting has policies and practices in place to ensure that staff in HCBS setting are not pulled to work in the institution unless an equally qualified staff person is available to replace them, with</li> </ul>	
	no gap in coverage in the HCBS setting.	

	*"Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. For purposes of this regulation, a public institution is an inpatient facility that is financed and operated by a county, state, municipality, or other unit of government. A privately owned nursing facility is not a public institution.	
such of	<b>.R. § 441.301(c)(4):</b> Home and community-based settings must have all of the following qualities and ther qualities as the Secretary determines to be appropriate, based on the needs of the individual as ed in their person-centered service plan:	Method of Assessment / Compliance Determination
1.	Setting staff responds to the needs and preferences of residents receiving HCBS, as identified in their level 5 foster home/foster care treatment plan and CLTS Program individual service plan (ISP), in a timely manner.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
HCBS integra	<b>.R. § 441.301(c)(4)(i):</b> The setting is integrated in and supports full access of people receiving Medicaid to the greater community, including opportunities to seek employment and work in competitive ted settings, engage in community life, control personal resources, and receive services in the unity, to the same degree of access as people not receiving Medicaid HCBS.	Method of Assessment / Compliance Determination
2.	Setting supports access to a variety of community <sup>1</sup> -based activities that provide psycho-social value to residents based on their person-centered assessments and plans. Examples of where such activities can take place may include, but are not limited to: <ul> <li>Parks</li> <li>Schools and/or colleges/universities</li> <li>Library</li> <li>Community center</li> <li>Job center</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>

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

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	<ul><li>Restaurants</li><li>Stores</li></ul>	
3.	Setting supports opportunities for interaction inside and outside the setting with people from the broader community who do not have a disability and are not paid to provide support.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
4.	Setting provides residents the same degree of access to the community as people not receiving HCBS, including staff and household members.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
5.	<ul> <li>Setting provides or supports resident access to transportation between the setting and the broader community, including to paid employment in all the following ways:</li> <li>The setting provides and supports access to accessible public transportation, when available.</li> <li>If the setting provides its own transportation, the setting provides transportation when requested by the resident within the established setting parameters.</li> <li>The setting provides information on and supports access to additional transportation options.</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
6.	<ul> <li>Setting provides:</li> <li>A secure place for residents receiving HCBS to store their personal belongings.</li> <li>Opportunity for residents receiving HCBS to choose where they keep their monetary resources in the same ways as people not receiving HCBS. A setting may not require access to, or control of, resident funds.</li> <li>Unrestricted access to personal funds held by the setting.</li> <li>Decision-making opportunities for spending one's own money.</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>

7.	For residents who want to work or are working, setting supports the resident's opportunities to seek and maintain competitive integrated employment. <sup>2</sup>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
non-dis identific prefere	<b>.R. § 441.301(c)(4)(ii):</b> The setting is selected by the individual from among setting options including sability specific settings and an option for a private unit* in a residential setting. The setting options are ed and documented in the person-centered service plan and are based on the individual's needs, ences, and, for residential settings, resources available for room and board.	Method of Assessment / Compliance Determination
8.	Setting has a process for notifying the participant's CLTS Program Support and Service Coordinator (SSC)/County Waiver Agency (CWA) if the participant expresses desire to consider other setting options. Note: The CWA is responsible for informing the participant and/or their legal decision-maker of residential options and documenting them in the ISP.	DHS compliance review
9.	Setting allows prospective residents the opportunity to tour the setting.	DHS compliance review
	<b>.R. § 441.301(c)(4)(iii):</b> Ensures an individual's rights of privacy, dignity and respect, and freedom from on and restraint.	Method of Assessment / Compliance Determination

<sup>&</sup>lt;sup>2</sup> Department of Health Services and Department of Workforce Development Competitive Integrated Employment (CIE) Definition

10.	<ul> <li>Setting ensures:</li> <li>All information about residents receiving HCBS services is kept private and confidential.</li> <li>Staff receive training on privacy and confidentiality upon hire and annually thereafter.</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
11.	Setting ensures the level 5 foster home/foster care treatment plan and CLTS Program ISP, including behavior support plans, are implemented in such a way as to not impede the rights of other residents.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
12.	<ul> <li>Setting ensures staff remain discreet and respectful at all times, including: <ul> <li>Addressing residents in the way they would like to be addressed including resident's preferred pronouns, name, nickname, and title.</li> <li>Not talking about a resident receiving services in the presence of others.</li> <li>Not discussing residents as if they were not present.</li> </ul> </li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
13.	<ul> <li>Settings using restraints or restrictive measures must:         <ul> <li>Use them in accordance with the <u>CLTS Program Manual (P-02256)</u> and <u>Instructions and Requirements for the Use of Protective Equipment and Mechanical Restraints in Children's Long-Term Support Programs (P-02616).</u></li> <li>Report any unapproved or emergency use of restrictive measures to the participant's SSC/CWA.</li> </ul> </li> </ul>	DHS compliance review
14.	Setting notifies residents of their rights orally and in writing upon initial placement and annually.	Foster care licensing in accordance with <u>Wis. Stat. ch. 48</u> and <u>Wis. Admin.</u>

		<u>Code ch. DCF</u> <u>56</u>
indep	F.R. § 441.301(c)(4)(iv): Optimizes, but does not regiment, individual initiative, autonomy, and endence in making life choices, including but not limited to, daily activities, physical environment, and hom to interact.	Method of Assessment / Compliance Determination
15.	Setting offers opportunities to experience activities that promote new learning related to areas of interest identified by the resident receiving HCBS.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
16.	Setting provides and supports age-appropriate tasks and activities both inside and outside the setting that are comparable to tasks and activities for people of similar ages, skills, abilities, and desires, who do not receive HCBS. Supports include using adaptive aids, technology, communication approaches, and accommodations.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
17.	Residents receiving HCBS can decline to participate in activities.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
18.	Setting ensures that residents who receive HCBS make meaningful informed choices in their daily activities, which align with their personal goals, interests, and needs. Meaningful choices may be reflected in a variety of ways including: <ul> <li>Person-centered assessments</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u>

	<ul> <li>Formal interviews</li> <li>Informal discussion with residents receiving HCBS</li> <li>Consideration of input from legal decision-maker or others as identified by the resident</li> </ul>	Code ch. DCF 56
<b>42 C.F</b> them.	<b>R. § 441.301(c)(4)(v):</b> Facilitates individual choice regarding services and supports, and who provides	Method of Assessment / Compliance Determination
19.	<ul> <li>Residents who receive HCBS may choose to receive services and supports in the same places as others without disabilities and are not mandated to use services provided or suggested by the setting. This includes:</li> <li>Medical treatments and therapies</li> <li>Other preferred services, such as hair care, nails care, etc.</li> <li>Religious services and activities</li> <li>Day habilitation services (e.g. CLTS Program Day Services) and other services</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
HCBS Settings Rule Modifications The Centers for Medicare and Medicaid Services (CMS) has issued Home and Community-Based Setting (HCBS) rules allowing		

The Centers for Medicare and Medicaid Services (CMS) has issued Home and Community-Based Setting (HCBS) rules allowing modifications to specific setting rules in certain circumstances. **The benchmarks with a + (plus sign) may have a HCBS Settings Rule Modification**. These are the only HCBS requirements to which modifications may be applied.

In some cases a benchmark is federally allowed to have a HCBS Settings Rule Modification but does not need a modification because it's incorporated into foster care licensing standards (<u>Wis. Admin. Code ch. DCF 56</u>); these benchmarks are noted with a ++ (two plus signs). Foster care licensing standards ensure:

- The foster parent provides nurturing care that:
  - Socializes the child into family living and teaches social and community living skills, including accepting tasks and responsibilities. (Wis. Admin. Code § DCF 56.09(1)(am))
  - Increases the child's opportunities to develop decision-making skills and to make informed choices. (Wis. Admin. Code § DCF 56.09(1)(bm))
  - Gives the child room to grow and the maximum of personal and physical freedom appropriate to the child's age and maturity. (Wis. Admin. Code § DCF 56.09(1)(c))

- Increases the child's independence in performing tasks and activities by teaching skills that reduce dependence on caretakers. (Wis. Admin. Code § DCF 56.09(1)(cm))
- 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. (Wis. Admin. Code § DCF 56.09(1)(f))
- Increases the child's opportunities to interact with diverse community populations. (Wis. Admin. Code § DCF 56.09(1)(fm))
- 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. (Wis. Admin. Code § DCF 56.09(1)(g))
- Teaches the child life skills in situations where the skills are used. (Wis. Admin. Code § DCF 56.09(1)(gm))
- 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(1)(hm))
- The foster parent applies the reasonable and prudent parent standard when making decisions concerning a foster child's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities under s. DCF 56.09 (2m). (Wis. Admin. Code § DCF 56.05(1)(c)1.o.)
  - "Reasonable and prudent parent standard" means a standard for use in making decisions regarding a child's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities that is characterized by careful and sensible parental decisions that maintain the health, safety, best interests, and cultural, religious, and tribal values of the child while at the same time encouraging the emotional and developmental growth of the child. (Wis. Admin. Code § DCF 56.03(34m))

When implementing a HCBS Settings Rule Modification, requirements (1)-(8) listed below must be documented in the participant's level 5 foster home/foster care treatment plan and CLTS Program ISP.

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

(1) Identify a specific and individualized assessed need.

<ul> <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> <li>(8) Include an assurance that interventions and supports will cause no harm to the individual.</li> </ul>		
20.	If a resident needs a HCBS Settings Rule Modification, the modification is based on the resident's individualized, assessed needs and is documented in their level 5 foster home/foster care treatment plan and CLTS Program ISP in accordance with 1-8 above.	DHS compliance review
21.	If a resident has a HCBS Settings Rule Modification documented in their CLTS Program ISP, the setting implements the HCBS modification as outlined.	DHS compliance review
	<b>R. § 441.301(c)(4)(vi):</b> In a provider-owned or controlled residential setting, in addition to the qualities at <u>801(c)(4)(i)</u> through <u>(v)</u> , the following additional conditions must be met:	
42 C.F.R. § 441.301(c)(4)(vi)(A): The unit or dwelling* is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.		
22.	The setting must ensure that each resident has a signed agreement.	Wisconsin foster care regulations in accordance

		with <u>Wis. Stat.</u> <u>ch. 48</u>
42 C.F approp *For le	<b>F.R. § 441.301(c)(4)(vi)(B):</b> Each individual has privacy in their sleeping or living unit.* <b>F.R. § 441.301(c)(4)(vi)(B)(1):</b> Units have entrance doors lockable by the individual, with only briate staff having keys to doors. Evel 5 foster homes, "sleeping or living unit" means the resident's bedroom or other areas of the level 5 home.	Method of Assessment / Compliance Determination
23.	<ul> <li>Residents have privacy in their sleeping or living unit. Setting ensures:</li> <li>++Residents receiving HCBS have privacy when receiving assistance with personal cares.</li> <li>++Residents are afforded privacy in communications with others including phone calls, video calls, messages, mail, email, etc.</li> <li>+It does not utilize electronic monitoring in resident rooms, bathrooms, or other areas where services and supports are provided, or common areas including living and dining areas.</li> </ul>	DHS compliance review and foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
24.	<ul> <li>+Each resident's bedroom has a:</li> <li>Lockable entrance door that can be utilized by the resident.</li> <li>Key that has been provided to the resident.</li> </ul>	DHS compliance review
25.	++Setting staff knock and receive permission before entering a resident's bedroom except in the case of an emergency.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
26.	+Setting maintains and implements a list of which staff have access to resident or master keys to the resident's living and sleeping unit.	DHS compliance review

<b>42 C.F.R. § 441.301(c)(4)(vi)(B)(2):</b> Individuals sharing units* have a choice of roommates in that setting. *For level 5 foster homes, "units" means bedrooms.		Method of Assessment / Compliance Determination
27.	+A resident sharing their bedroom must have a choice of roommates.	DHS compliance review
living u	<b>. R. § 441.301(c)(4)(vi)(B)(3):</b> Individuals have the freedom to furnish and decorate their sleeping or nits* within the lease or other agreement. vel 5 foster homes, "sleeping or living unit" means the resident's bedroom or other areas of the level 5 nome.	Method of Assessment / Compliance Determination
28.	++Setting allows residents to furnish and decorate their bedroom within the bounds of the lease or service agreement. The lease or service agreement cannot fully restrict the resident's right to furnish and decorate their bedroom.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
	42 C.F.R. § 441.301(c)(4)(C): Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.	
29.	++Setting allows residents full access to the kitchen with cooking facilities, dining area, the laundry room, and furniture that meets the physical needs of the residents in shared areas.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>

30.	<ul> <li>++Setting provides residents access to food and drink at any time and ensures a dignified, age-appropriate dining experience. This includes: <ul> <li>A resident's ability to choose when and where they eat including a private option for dining.</li> <li>A resident's access to food and drink at any time.</li> <li>No restrictions to the type or frequency of food or drink consumed by the resident.</li> </ul> </li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
31.	<ul> <li>++Setting allows residents to choose and control their schedule and activities including:</li> <li>When they wake up, eat, and go to bed. Residents are not required to mirror the setting schedule.</li> <li>When they leave and return to the setting. The setting will accommodate scheduled and unscheduled activities and will not impose a setting-wide curfew.</li> <li>When and for how long they access personal electronic devices including computers, tablets, cell phones, and other personal communication devices.</li> <li>Who they interact with and for how long. Residents may spend as much of their free time as they like with whomever they choose.</li> <li>Community-based and setting-based options for where services and activities take place.</li> <li>An immediate and independent access method of entrance to the home.</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
32.	++Setting does not have rules to restrict freedom of movement inside or outside the setting that can be considered different than people not receiving HCBS.	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
42 C.F.	.R. § 441.301(c)(4)(vi)(D): Individuals are able to have visitors of their choosing at any time.	Method of Assessment / Compliance Determination
33.	<ul> <li>++Setting allows residents to have visitors of their choosing whenever they wish.</li> <li>The setting does not have suggested or recommended visiting hours.</li> <li>The setting does not prohibit overnight guests in the resident's bedroom.</li> </ul>	Foster care licensing in accordance with

	(The setting can place restrictions on extended stays which should be included in the lease or level 5 foster home service agreement).	<u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
34.	<ul> <li>++Setting provides:</li> <li>A private, unsupervised place to meet visitors and</li> <li>Allows residents to meet with visitors in their bedroom.</li> </ul>	Foster care licensing in accordance with <u>Wis. Admin.</u> <u>Code ch. DCF</u> <u>56</u>
42 C.F	<b>.R. § 441.301(c)(4)(vi)(E):</b> The setting is physically accessible to the individual.	Method of Assessment / Compliance Determination
35.	Setting must be physically accessible to all current residents and to prospective residents accepted for placement in the home.	Foster care licensing in accordance with