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| **DEPARTMENT OF HEALTH SERVICES**Division of Medicaid ServicesF-02383C (01/25/2021) |  | **STATE OF WISCONSIN** |
| **EVIDENTIARY ASSESSMENT AND SUMMARY****Home and Community-Based Services (HCBS) Settings Rule****Heightened Scrutiny Review – 3-4 Bed Adult Family Homes (AFH)**  |
| Facility Name | Facility Type  |
| Facility Name | Choose an item. |
| Corporate Name (if applicable) | License/Certification #  | County |
|  |  |  |
| Facility Address  | City | State | Zip Code |
|  |  |  |  |
| Primary Contact Name | Primary Contact Direct Phone (include area code) | Primary Contact Email Address |
|  |  |  |
| Facility Website Address |
|  |
| **Reason for Institutional Presumption** |
| [ ]  Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Click or tap here to enter text.[ ]  Settings on the grounds of, or adjacent to, a public institution. Name of institution: Click or tap here to enter text.[ ]  Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services. |

The Centers for Medicare and Medicaid Services’ (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If a Wisconsin assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Medicaid Services (DMS) conducts a heightened scrutiny review.

DMS believes that Facility Name has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below.

To reinforce the extent to which Wisconsin’s licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

**Facility Summary**Enter Facility Summary

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| **The setting is integrated in and supports full access to the greater community** [42 CFR § 441.301(c)(4)(i)]. |
| The community considers the setting a part of their community and does not associate the setting with institutional services. |
| **Compliance within Wisconsin State Standards and Regulations**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](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/05)) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting. |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/07)) 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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Activities are individualized or include more than just setting-based group activities. |
| **Compliance within Wisconsin State Standards and Regulations**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](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/06)) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The setting supports access to community activities through its own transportation or coordination of transportation options. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |

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| Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings. |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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)From contract between DHS and specific MCOs:V. Care Management:C. Assessment and Member-Centered Planning ProcessC.1. Comprehensive AssessmentC.1.(c) Documentation: The comprehensive assessment will include documentation by the IDT staff of:C.1.(c)(viii) 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.C.3. Member-Centered PlanningC.3.(c)(iv)(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.VII. Services A. General Provisions 1. Comprehensive Service Delivery Systemc. Serve to maintain community connections, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, and that are cost effective.Addendum I It is the DHS’s “expectation under this contract that benefits will be fully integrated and will afford options that foster opportunities for interaction and 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 while supporting each member’s individual outcomes and recognizing each member’s preferences.” |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals are able to control their personal resources. |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |

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| The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]. |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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) Wisconsin has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are responsible for discussing choice of service settings with the waiver participant and family/guardian to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. In practice, the waiver agencies are complying with this requirement, and documenting and monitoring the choice of settings in the member-centered plan or IRIS support and service plan, as applicable.In Wisconsin, the choice of setting requirement is not the initial responsibility of the provider setting. Rather the choice of setting takes place through the person-centered planning process at the waiver agency level. Waiver agencies are certified by DHS and work within the requirements of contracts with DHS. Through ongoing monitoring, Wisconsin will ensure that individuals maintain the right to choose where they reside.Additionally, Wisconsin has protections in place through *Pre-Admission Consultation (PAC)*: <https://www.dhs.wisconsin.gov/adrc/pros/pac.htm>.“Pre-admission consultation is a service provided by Aging and Disability Resource Centers (ADRCs) to individuals who are in the process of considering or making a decision about the need to move out of his or her home in order to receive the help they need to remain independent and safe. Sometimes people are unaware that there are services and supports that can be provided right in their own home, often making a move unnecessary. Those who want to move into a nursing home or assisted living facility (such as a community based residential facility or residential care apartment complex), can find it difficult to know which facility would be the best for them or a loved one.” |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]. |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/03/1))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)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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)] |
| **Compliance within State Standards** |
| 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](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/03/1))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](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/10))**Person-Centered Planning*** Options of services, providers, and settings, including non-disability specific settings, are offered to participants in all Wisconsin HCBS programs.

(WI Statewide Transition Plan; Summarized from Wis. HCBS waivers, waiver-specific contracts, and policy documents.)* Residents have the right to “use the licensed, certified or registered provider of health care and pharmacist of the resident’s choice.” ([Wis. Stat. § 50.09](https://docs.legis.wisconsin.gov/statutes/statutes/50/i/09))

The resident “… shall have opportunities to make decisions relating to care, activities and other aspects of life in the adult family home. 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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Thesetting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)] |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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](https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/07))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)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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)] |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The setting ensures an individual’s rights of privacy, dignity and respect, and freedom form coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]. |
| **Compliance within State Standards** |
| 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.” 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.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](https://docs.legis.wisconsin.gov/statutes/statutes/50/I/09)).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. (Summarized from Wis. Admin. Code § DHS 88.05)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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)] |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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 reasonable access to a telephone for private communications; and the opportunity for private visits. (Summarized from Wis. Stat. § 50.09). |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals have access to food at any time. |
| **Compliance within Wisconsin State Standards and Regulations** |
| Resident Care: “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.”“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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services:* The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws.
* 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. [42 CFR § 441.301(c)(4)(vi)(A)]
 |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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)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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| **Overcoming Institutional Presumption** |
| The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Each individual has privacy in their sleeping or living unit. |
| **Compliance within Wisconsin State Standards and Regulations** |
| 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. (Statewide Transition Plan; Summarized from Wis. Stat. § 50.09).Requirements of initial and ongoing licensure in Wisconsin includes verification by DHS Division of Quality Assurance surveyors that the setting (DQA, [F-02138](https://www.dhs.wisconsin.gov/forms/f02138.pdf), HCBS Compliance Review):* Provides lockable key entry doors on all resident rooms, and individual keys to all residents.
* Has a policy ensuring that staff uses facility keys to enter a resident’s room only under circumstances agreed upon with the resident.
 |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. |
| **Compliance within Wisconsin State Standards** |
| Locks on living unit doors allow the resident to exercise his or her right to privacy and personal choice. Staff in each residential setting should always knock and receive permission prior to entering a resident’s living space. DHS expects the residential setting to have a policy ion place to ensure that staff always knock and receive permission prior to entering a resident’s room or personal living space to respect residents’ rights to privacy. Please refer to DHS’ [Frequently Asked Questions (FAQs) about Door Locks in Adult Long-Term Care Residential Settings](https://www.dhs.wisconsin.gov/publications/p01817.pdf) for additional lock-related information. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals sharing units have a choice of roommates in that setting. |
| **Compliance within Wisconsin State Standards and Regulations** |
| Requirements of initial and ongoing licensure in Wisconsin includes verification by DHS Division of Quality Assurance surveyors that residents have choice of roommates (DQA, [F-02138](https://www.dhs.wisconsin.gov/forms/f02138.pdf), HCBS Compliance Review): Family Care Provider Network, I. Access to Providers: “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, I(6)d](https://www.dhs.wisconsin.gov/familycare/mcos/2018-generic-final.pdf)) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)] |
| **Compliance within State Standards**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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)] |
| **Compliance within State Standards**“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) |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| **Operational Distinction** |
| The setting demonstrated meaningful operational distinction between the institution and the community–based setting, such as minimal administrative and financial interconnectedness. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning. |
| [ ]  Met [ ]  Unmet [ ]  Not ApplicableEnter Evidence Here |
| **DHS Recommendation** |
| DHS finds that Facility Name possesses the required home and community–based characteristics and overcomes the presumption of having institutional qualities. |
| Enter text |

Please note that these findings are preliminary only and must receive final approval from CMS.

**Ongoing Compliance**

The DMS Bureau of Assisted Living (BAL) has incorporated the HCBS settings rule into its current assisted living survey process and activities. ([DQA Implementation of Home and Community-Based Services Settings Rule in Residential Assisted Living Facilities](https://www.dhs.wisconsin.gov/publications/p01826.pdf))

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DQA Provider Search webpage](https://www.dhs.wisconsin.gov/guide/provider-search.htm) and the provider directories available at the [Consumer Guide to Health Care – Finding and Choosing an Assisted Living Facility webpage](https://www.dhs.wisconsin.gov/guide/assisted-living.htm).

State licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits, by the state licensing authority, or by the entity that certified the provider if not regulated by the state. As part of these periodic licensing or certification reviews, the credentialing entity will also review the setting for continued HCBS compliance. Providers will be required to address any HCBS rule deficiencies.

Each participant in a Medicaid home and community-based waiver program is further protected through the state’s long-term care ombudsman program, which has regular access to the assisted living setting. [Wisconsin’s Board on Aging & Long Term Care](http://longtermcare.wi.gov/%20on%20Aging%20%26%20Long%20Term%20Care): The Board on Aging and Long Term Care advocates for the interests of Wisconsin's long-term care consumers, informs those consumers of their rights and educates the public about health care systems and long-term care. The Board also operates the [Long Term Care Ombudsman](http://longtermcare.wi.gov/section_detail.asp?linkcatid=1953&linkid=1014&locid=123&sname=), and [Volunteer Ombudsman](http://longtermcare.wi.gov/category.asp?linkcatid=1959&linkid=1014&locid=123) services.