



Home and Community-Based Services (HCBS) Settings Rule

Overview of Compliance in Wisconsin

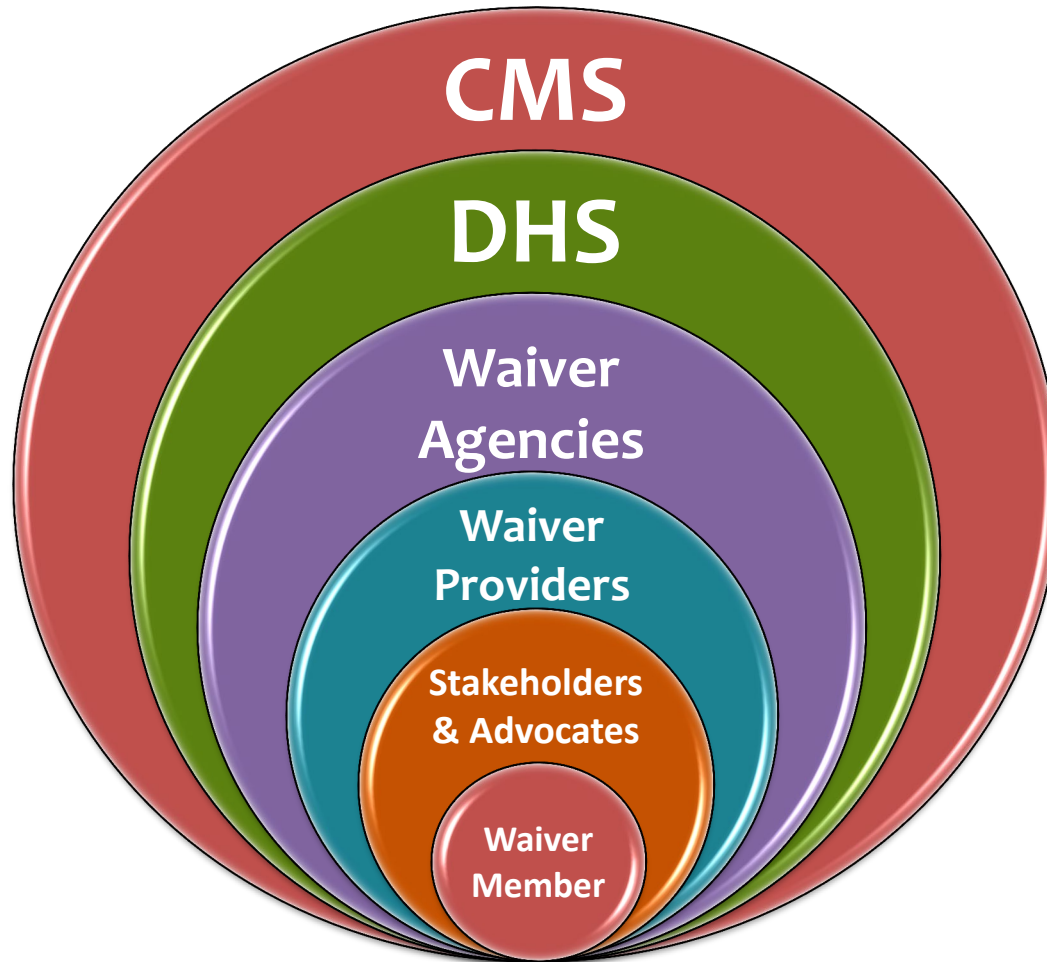


HCBS – Individual Choice

“We believe that it is fundamental for individuals to have the control to make their own choices.”

Department of Health and Human Services (DHHS)
Centers for Medicare and Medicaid Services (CMS)
42 C.F.R. Part 430, 431 et al., pg. 2965
www.gpo.gov/fdsys/pkg/FR-2014-12-31/content-detail.html

HCBS Compliance and Accountability



HCBS Settings Rule – Intent

Per the Centers for Medicare & Medicaid Services (CMS), the intent of the HCBS Settings Rule is that individuals receiving Medicaid-funded HCBS have the opportunity to receive those services in a manner that:

- Protects and enhances individual choice.
- Promotes community integration.
- Provides additional protections.
- Improves the quality of services.

CMS is very clear in its definition and expectations of the person-centered planning process.

CMS' Definition of HCBS Setting

- Gives individual choice of settings options, including non-disability-specific settings and an option for a private unit in a residential setting (dependent on the individual's resources)
- Facilitates individual choice regarding services and supports, and who provides them
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

HCBS – Person-Centered Planning

The Settings Rule requires a person-centered service plan for each individual receiving Medicaid HCBS. The person-centered planning process:

- Is driven by the individual.
- Includes people chosen by the individual.
- Provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible.
- Is timely and occurs at times and locations of convenience to the individual.

HCBS Expectations – Settings

- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.
- Optimize individual choice, initiative, autonomy, and independence in making life choices.
- Ensure the person receives services in and access to the greater community to the same degree as people not receiving Medicaid HCBS.
- Provide opportunities to seek employment and work in competitive integrated settings.

Residential Settings Requirements

- Each individual has privacy in his or her sleeping or living unit.
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed.
- Individuals sharing units have choice of roommates.
- Individuals have the freedom to furnish and decorate sleeping or living units within the limits of the lease or other agreement.

Residential Settings Requirements

- Individuals have freedom and support to control their schedules and activities and access to food at any time.
- Individuals may have visitors at any time.
- Setting is physically accessible to the individual.

HCBS Residential Settings

CMS additional requirements (provider owned or controlled):

Must be owned, rented, or occupied under a legally enforceable agreement, which provides the individual with the same responsibilities and protections from eviction as tenants under applicable landlord tenant laws

Modifications to HCBS Requirements

Any modifications in implementing HCBS criteria must be justified, documented, and supported by an assessed need in the person-centered plan. Specifically:

- Identify a specific and individualized assessed need.
- Describe positive interventions and supports used prior to modification.
- List the less intrusive methods tried.
- Describe the condition that is directly proportionate to the specified need.
- Describe how the modification is directly proportionate to the specific assessed need.

CMS Expectation of Wisconsin

Systemic assessment:

- Identify every type of home and community-based program setting in the state where HCBS are provided and where beneficiaries reside.
- Submit a statewide transition plan that describes Wisconsin's process for ensuring HCBS compliance for each setting within existing 1915(c) programs.

CMS Expectation of Wisconsin

Systemic assessment (continued):

- The statewide transition plan needs to include a clear description of each assessment activity by setting type and detail on the state's methodologies for conducting the assessments and determining setting compliance within the requirements.

DHS Waiver Services Within The Rule

Wisconsin Long-Term Support Programs

Family Care
IRIS (Include, Respect, I Self Direct)
Community Options Program
Program

Family Care Partnership
Children's Waiver
Community Integration

Residential Waiver Services

Community-based residential facilities (CBRFs)
Adult family homes (AFHs; 1-2 beds and 3-4 beds)
Residential care apartment complexes (RCACs)
Level 5 exceptional treatment foster homes (children's long-term support only)

Nonresidential Waiver Services

Adult day care centers
Prevocational services
Day habilitation services
Children's day services settings

Statewide Transition Plan – Systemic Assessments

Standards:

Statutes, licensing and certification regulations, waivers, waiver regulations, provider manuals, provider training materials, guidelines, policy and procedure manuals

Waiver policies that apply across settings:

Family Care contract, Medicaid Waiver Manual, IRIS policy documents, member or participant waiver handbooks

Statewide Transition Plan – Systemic Assessments

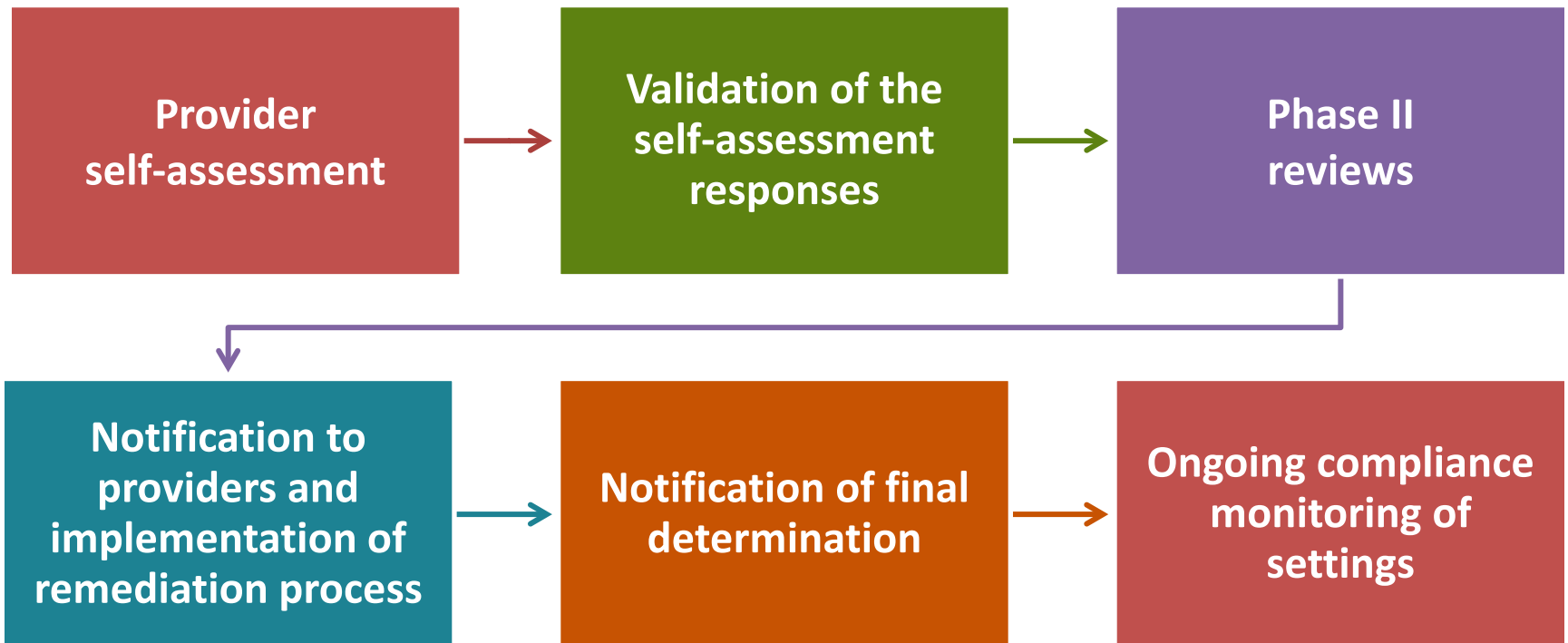
Participant rights protections that apply across settings:

Chapter 51 and restrictive measure policies

HCBS Expectations – Site Assessments

- Site assessments should be sufficiently rigorous as to be a reliable indicator of setting compliance.
- Site assessments should be completed early enough in the transition period to allow time for remediation and to ensure full compliance of both residential and nonresidential settings by deadline.
- Once the assessments have been completed, the statewide transition plan must be amended to provide the public an opportunity to comment on the assessment outcomes.

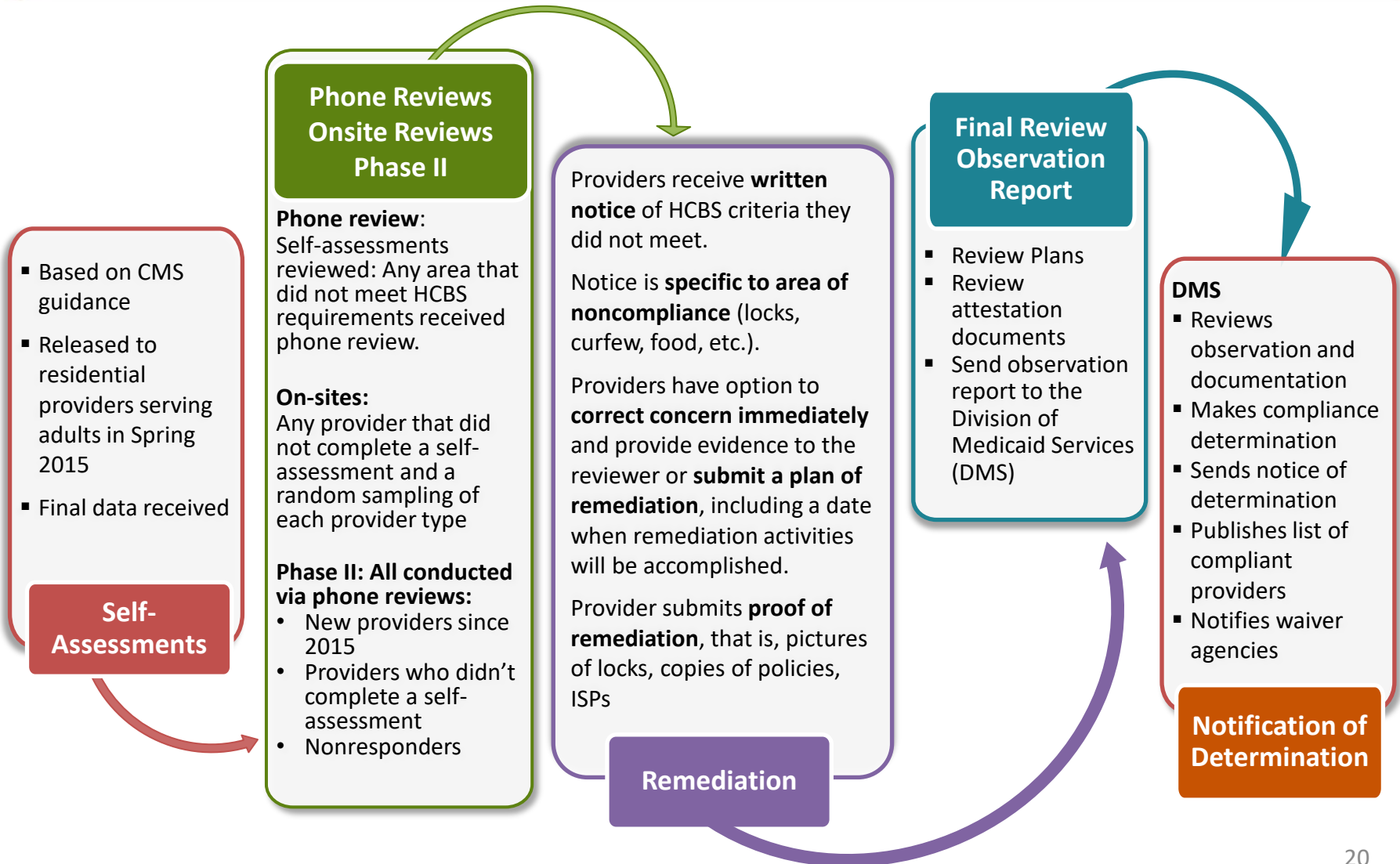
WI HCBS Provider Assessment Process



Transition Plan – CMS Initial Approval

- CMS provided initial approval of Wisconsin's statewide transition plan on July 14, 2017.
- Final approval will occur when DHS has completed the full provider assessment process.
- While CMS did extend the federal transition period, DHS will not delay the implementation process for providers to reach compliance.

WI HCBS Provider Assessment Process



HCBS Nonresidential Settings

CMS intent—choice, community integration, additional protections, quality of services, person-centered planning

- Does the program have characteristics that isolate participants from the broader community?
- Do participants have the same level of access to their community as individuals not receiving Medicaid HCBS?

HCBS Nonresidential Settings

- Do participants have the opportunity to seek employment and work in competitive settings?
- Does the setting provide opportunities for participants to control their personal resources?

HCBS Heightened Scrutiny

Settings presumed to have institutional qualities:

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

Heightened Scrutiny

- Wisconsin is able to present evidence to the U.S. Department of Health and Human Services (HHS) at the federal level to justify that some settings have the qualities of an HCBS setting and not the qualities of an institution.
- Wisconsin intends to determine on a case-by-case basis whether it will present evidence to HHS for their review.

Heightened Scrutiny Process

Settings that are identified as meeting heightened scrutiny must provide documentation and evidence to overcome the institutional presumption, including:

- Policies and practices.
- Physical distinction.
- Operational distinction.
- Staffing.

1-2 Bed AFH Ongoing Compliance

- WI Medicaid standards for certified 1-2 bed AFHs updated to reflect HCBS rule.
- Agencies that certify 1-2 bed AFHs must ensure that providers meets HCBS requirements.
- HCBS compliance must be documented by waiver agency within AFH certificate.
- Waiver agencies must ensure that person-centered planning occurs with provider input.
- Waiver agency person-centered plan requires annual on-site visit.

Division of Quality Assurance (DQA) Ongoing Compliance Process*

New facilities:

- Additional supporting documents and attestation statements for HCBS are already on facility applications.
- DQA will review facility compliance during the licensing or certification process and make recommendations to DMS when a licensing decision is made. DMS will make the final decision if a facility is HCBS compliant.

*Only applies to facilities licensed or certified by DQA

DQA Ongoing Compliance Process*

New facilities (continued):

- If the facility is identified as needing heightened scrutiny, DMS will conduct the heightened scrutiny process.
- An HCBS compliance decision does NOT guarantee a contract with a waiver agency.

*Only applies to facilities licensed or certified by DQA

DQA Ongoing Compliance Process*

Existing facilities requesting an HCBS compliance decision:

- New HCBS request form will be available on the DHS website:
www.dhs.wisconsin.gov/regulations/assisted-living/hcbs.htm
- Facility will submit the HCBS request form and supply the supporting documentation to DQA.

*Only applies to facilities licensed or certified by DQA

DQA Ongoing Compliance Process*

Existing facilities requesting an HCBS compliance decision (continued):

- DQA will do a desk review and notify the facility of the HCBS compliance determination.
- If the facility is identified as heightened scrutiny, DMS will conduct the heightened scrutiny process.
- An HCBS compliance decision does **not** guarantee a contract with a waiver agency.

*Only applies to facilities licensed or certified by DQA

DQA Ongoing Compliance Process*

DQA Surveys for HCBS-Compliant Facilities

DQA will verify that the facility remains in compliance with HCBS regulations, including heightened scrutiny facilities.

- The DQA survey process remains the same.
- State regulations are in alignment with HCBS. No change in how these regulations would be cited.

*Only applies to facilities licensed or certified by DQA

DQA Ongoing Compliance Process*

DQA Surveys for HCBS-Compliant Facilities

Six area of HCBS regulations were identified as not having a match to state regulations:

- Access to funds
- Visitors
- Decorate living unit
- Locks on living unit and associated policies
- Choice of roommates
- No exceptions to resident rights training

*Only applies to facilities licensed or certified by DQA

DQA Ongoing Compliance Process*

DQA Surveys for HCBS-Compliant Facilities

Facility will receive notification of any remediation for noncompliance in the following areas:

- Access to funds
- Visitors
- Decorate living unit
- Locks on living unit and associated policies
- Choice of roommates
- No exceptions to resident rights training

*Only applies to facilities licensed or certified by DQA

DQA Ongoing Compliance Process*

Miscellaneous

- DQA processes are not changing; new HCBS criteria were added.
- DQA WAVE (Waiver, Approval, Variance, and Exception) committee **cannot** grant waivers and variances of HCBS-specific rules; however, if there is an equivalent state code, the state code waiver and variance process remains the same.
- DQA and DMS will establish a system to ensure that provider-specific HCBS compliance information is documented and published.

*Only applies to facilities licensed or certified by DQA

For More Information

Statewide Transition Plan

www.dhs.wisconsin.gov/publications/p01839.pdf

DHS HCBS Website

www.dhs.wisconsin.gov/hcbs/index.htm

CMS HCBS Website

www.medicare.gov/medicaid/hcbs/index.html

CMS HCBS Regulatory Requirements Summary

www.medicare.gov/medicaid/hcbs/downloads/requirements-for-home-and-community-settings.pdf

Questions: dhshcbssettings@dhs.wisconsin.gov.