



Implementation of Federal Home and Community-Based Services Settings Rule in Wisconsin

Information and Process Outline for Nonresidential Services Providers

In 2014, the Centers for Medicare & Medicaid Services (CMS) released new federal requirements regarding the qualities of settings that are eligible for reimbursement for Medicaid home and community-based services (HCBS). Under the new requirements, the Wisconsin Department of Health Services (DHS) must ensure that nonresidential providers meet the HCBS settings rule requirements. The information in this communication includes an outline of the CMS requirements and the process DHS has designed to comply with the requirements.

Overview of the HCBS Settings Final Rule (42 C.F.R. § 441.301(c)(4) and § 441.710)

All nonresidential HCBS settings must meet the following qualifications:

- Is integrated in, and supports full access to, the greater community.
- Provides opportunities to seek employment, work in competitive integrated settings, engage in community life, and control personal resources.
- Ensures that individuals receive services in and access to the greater community to the same degree of access as individuals not receiving HCBS.
- Is selected by the individual from among setting options, including non-disability specific settings.
- Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitates individual choice regarding services and supports, and who provides them.

The HCBS settings rule applies to the following Medicaid waiver programs:

- Family Care
- Family Care Partnership
- IRIS (Include, Respect, I Self-Direct)
- Children's Long-Term Support Waiver

Adult and children's nonresidential HCBS settings subject to the rule:

- Adult day care
- Adult day habilitation service settings
- Group-supported employment settings
- Prevocational service settings
- Children's day service settings

Compliance Review Process

A compliance review process has been established and is being implemented by DHS. The comprehensive assessment evaluates and confirms nonresidential provider compliance with the requirements of the federal HCBS settings rule. Components of the review include:

- DHS requires every provider delivering HCBS within a facility-based setting or group-supported employment setting to conduct a thorough self-assessment of the setting, including opportunities the setting offers people who receive services.

- DHS released the online nonresidential provider self-assessment tool in October 2016. A paper version of the tool was available on request for providers preferring to use that format. Nonresidential providers completed the tool for each site they operated. The self-assessment measures a provider's current status with the HCBS settings rule.
- DHS will review each submitted self-assessment to make a preliminary determination of compliance. The information submitted on the self-assessment will not solely determine the setting's compliance. If a provider has not yet completed a self-assessment, this will be done with the reviewer, along with the collection of information needed to determine compliance, during the onsite visit.
- Providers will be contacted to arrange a site visit and informed of any documents they may need to provide during the visit. Providers will be required to produce documentation of the accuracy of their self-assessment tool responses.
- DHS will conduct on-site validation visits. During these visits, reviewers validate the information provided in the self-assessment form. They also make observations regarding the nonresidential provider's compliance with federal HCBS settings rule requirements.
- The onsite validation visit will include a general observation of the setting, staff interviews, participant interviews, and a documentation review of the provider's records. The format of the interview questions, observations, and records review follows the self-assessment form.
- Reviewers will conduct site visits using a validation tool to ensure all settings are evaluated on the same criteria. Settings must be able to provide evidence at the time of the on-site compliance review. Evidence includes, but is not limited to:
 - Provider practices, procedures, and policies
 - Licensure or certification
 - Participant handbook
 - Individual support and service plan
 - Staff training curriculum
 - Training schedule
- During the on-site visit, reviewers do not issue citations or negotiate interpretations related to the requirements. The reviewer only makes observations regarding the setting's compliance with the federal HCBS settings rule.
- All HCBS settings rule requirements must be met in order to be found compliant with the federal rule.

Remediation

After the on-site visit, there will be a review of the findings. Each setting will be informed in writing of any unmet requirements, including actions the provider must take to become compliant. Required actions may include submitting additional documentation, implementing new or updated policies and procedures, physical modifications, or updating an individual's person-centered service plan with the individual's involved parties.

A provider may respond directly to the review findings with evidence of remediation and compliance or submit a proposed plan to come into compliance over a defined period of time. Upon provider notification that their remediation plan has been implemented, DHS will reassess and validate that setting's compliance.

Failure to submit or complete the remediation plan will put the setting at risk of noncompliance. A notice of noncompliance is not an order for a setting to close. Noncompliance means that the setting will not be reimbursed for services to Medicaid waiver participants.