

HCBS Settings Rule Update: Corrective Action Plan

Provider Forum
October 15, 2024

Objectives:

Overview of HCBS Settings Rule in Wisconsin



Overview of Heightened Scrutiny Settings



Overview of our Corrective Action Plan



Plan to Address Findings



Application to DQA-Regulated Residential Providers

Overview of the HCBS Settings Rule in Wisconsin

Overview of Federal Regulation

- 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).
- HCBS waivers provide opportunities for Medicaid beneficiaries to receive services in their community rather than in institutions or other isolated settings.
- Each state was required to develop and implement a [Statewide Transition Plan](#) to ensure members receive services in HCBS Settings Rule Compliant Settings.
- The HCBS Settings Rule went into effect on 03/17/2023.

HCBS Settings Rule Overview

The HCBS Settings Rule was created to ensure that every person in certain Medicaid-funded programs has full access to the benefits of community living.

- The rule protects the individual's autonomy to make choices and to control the decisions made in their lives through person-centered planning.
- Providers that accept Medicaid waiver funding are responsible for understanding and implementing the HCBS Settings Rule.

DHS Medicaid Waiver Settings

Wisconsin Long-Term Support Programs

Family Care (FC)

**IRIS (Include, Respect,
I Self-Direct)**

Family Care Partnership (FCP)

Children's Long-Term Support Waiver

Family Care and IRIS Waiver Settings

Adult day care centers (ADCC)

Prevocational services

Group supported employment

Day habilitation services

Adult Family Homes (AFH) (1-2 & 3-4 beds)

Residential Care Apartment Complexes (RCAC)

Community Based Residential Facilities (CBRF)

Ongoing Compliance

- MCO and ICA/FEA's role in ongoing compliance.
- DQA is responsible for CBRFs, 3-4 bed AFHs, RCACs, and ADCCs. Agencies and individuals can use DQA's provider search to assure HCBS compliance of these settings:
<https://www.dhs.wisconsin.gov/guide/provider-search.htm>
- 1-2 bed AFHs – DMS reviews compliance for IRIS participants. MCOs review compliance for FC, FCP and PACE members.
- DMS reviews compliance for adult day service settings, prevocational services, group supported employment, and CLTS day settings.

Overview of Heightened Scrutiny Settings

HCBS Heightened Scrutiny

Applies to settings presumed by CMS to have institutional qualities: 42 CFR 441.301(c)(5)(v)

- Prong 1: Settings providing inpatient treatment that are publicly or privately owned
- Prong 2: Settings on the grounds of, or adjacent to, a public institution
- Prong 3: Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services

Heightened Scrutiny Requirements



Settings subject to heightened scrutiny must meet all the same HCBS requirements as other settings.



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

1. Distinct policies and practices that support HCBS.
2. Physical distinction.
3. Operational distinction.
4. Distinct staffing/training.

Heightened Scrutiny Settings

DHS identified 48 residential settings that met Heightened Scrutiny criteria.

These settings were submitted to CMS for review on April 2, 2021.

CMS completed site visits for a sample of these settings and provided a [findings report](#).

DHS continues to review settings for heightened scrutiny.

Overview of our Corrective Action Plan

Remediation and Corrective Action Plan (CAP)

- Per direction CMS sent to all states, DHS submitted a corrective action plan to provide extra time to ensure all heightened scrutiny settings have completed any identified remediation.
- CMS and Wisconsin worked together to finalize a CAP based on the CMS Site Visit Report and our remaining work related to heightened scrutiny settings.
- This work includes applying CMS' findings to all residential settings, not just to heightened scrutiny settings.
- Wisconsin received the approved CAP from CMS on 09/12/2023.
- The [CAP](#) applies to both the Family Care and IRIS waivers.

Summary of CAP

Category Name	Category Milestone(s) Summary
1. Forthcoming Heightened Scrutiny Activities	Multiple milestones related to completing heightened scrutiny reviews of the 20 settings not yet submitted to CMS.
2. Current Heightened Scrutiny Activities	Responding to the CMS feedback on the settings submitted in 04/2021 once that feedback is received
3. Heightened Scrutiny Site Visit	Addressing the findings from the CMS heightened scrutiny site visits

3. Heightened Scrutiny Site Visit: Summary of Setting Related Findings

- Staff trained in person centered planning and the HCBS Settings Rule (only applicable to heightened scrutiny settings)
- Ability to decorate living unit
- Access to visitors
- Freedom from coercion and restraint
- Door locks
- Access to food at any time
- Autonomy in making choices
- Individualized activities available in setting and community
- Ability to control schedule
- Transportation for community integration
- Access to Competitive Integrated Employment

3. Heightened Scrutiny Site Visit: Summary of MCO / ICA Related Findings

- Choice of setting documented in plan for members or participants with court ordered restrictions
 - ◆ We plan to provide technical assistance in this area
- For members and participants in provider owned or controlled residential settings, modifications to the residential HCBS Settings requirements must be documented per the requirements in the individual's Medicaid plan. No restrictions should be in place that are not documented.

3. Heightened Scrutiny Site Visit: Overview

DHS must apply the CMS Site visit findings:

- to the 6 settings CMS visited
- to similarly situated heightened scrutiny settings
- to the overall process of all providers of HCBS in the state (heightened scrutiny and non-heightened scrutiny settings)

Plan to Address Findings

Address Setting Specific Findings

Heightened Scrutiny Settings

- Developing a plan for remediation of the heightened scrutiny settings already submitted to CMS
- We have identified which MCOs and ICAs have members / participants in these settings

DQA-Regulated Settings

- Collaborating with DQA to address findings for all CBRFs, RCACs, and 3-4 bed AFHs

1-2 Bed Adult Family Homes

- Addressing findings for all 1-2 bed AFHs through the revised 1-2 bed AFH standards

Address MCO / ICA Related Findings

1

Update policies and contract language to ensure the correct requirements are in place related to person-centered planning and the HCBS Settings rule

2

Determine the best method to ensure that both the provider's plan and Medicaid plan assess and document modifications and to ensure the setting is following those plans

3

Roll out implementation of new policies and processes to MCOs, ICAs, and Providers

Application to DQA-Regulated Residential Providers

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- DQA will continue to incorporate surveying to the HCBS Settings Rule for providers that have requested and received an HCBS Compliance determination.
 - ◆ Settings providing only short-term respite services such as crisis CBRFs that only contract with an MCO to provide respite are not required to be compliant with the HCBS Settings Rule to receive respite waiver funding.

Application to DQA-Regulated Residential Providers

- DQA will enhance the survey process for HCBS Settings Rule Providers by surveying to revised HCBS Settings Rule Benchmarks for areas of the rule that do not directly align with state administrative code or state statute.
- The revised HCBS Settings Rule Benchmarks are anticipated to be effective in 2025. We will communicate an effective date prior to surveying to the new benchmarks
- During the first 6 months of implementation, DQA will provide technical assistance only, and will not issue HCBS Notice of Violations.

Changes to the HCBS Settings Rule Survey for All HCBS Compliant Providers

CURRENT DQA SURVEY

- Access to Personal Funds
- Locks on Living Units
- Visitors
- Decorate Living Units
- Choice of Roommates
- No exceptions to resident rights training

REVISED DQA SURVEY

All current areas plus:

- HCBS Settings Rule Modifications (i.e. restrictions) documented in the Medicaid plan
- Engage in community life and seek employment
- Choice of setting
- Privacy in living unit

Changes to the HCBS Settings Rule Survey for Heightened Scrutiny Providers

CURRENT PROCESS

- DMS completes the initial heightened scrutiny review including submitting for public comment and submitting for CMS for a final determination
- Once approved by CMS, DQA surveys the provider like all other HCBS Compliant providers

REVISED PROCESS

- DMS completes the initial heightened scrutiny review including submitting for public comment and submitting for CMS for a final determination
- Once submitted to CMS, DQA will survey the same as other providers plus one new benchmark:
 - ◆ Staff training on HCBS Settings Rule

In Conclusion

- Today's presentation is an overview of upcoming changes.
- Providers do not need to begin implementing the new benchmarks at this time.
- DMS is continuing to work with MCOs and IRIS on the new changes so we can have a smooth implementation period.
- DQA and DMS will provide more information on when the implementation period will begin.
 - ◆ Providers will have 6 months from when the revised benchmarks are effective until HCBS Notice of Violations will be issued.



Questions