

# HCBS Settings Rule Updates

Long Term Care Advisory Council  
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# Agenda

1. Revised HCBS Settings Rule 1-2 Bed Adult Family Home (AFH) Benchmarks
2. 1-2 Bed AFH Heightened Scrutiny Process and Benchmarks
3. New HCBS Settings Rule Training

# Revised HCBS Settings Rule 1-2 Bed AFH Benchmarks

# 1-2 Bed AFH HCBS Benchmarks

- Benchmarks updated to reflect CMS guidance and feedback and to match the revised 1-2 Bed AFH Standards
- Reformatted with 1-2 Bed Standard citations
- Updated to reflect HCBS Settings Rule Modification Requirements

# 1-2 Bed AFH HCBS

## Benchmarks continued

- MCOs continue to be responsible for certified 1-2 Bed AFH HCBS compliance for Family Care and Family Care Partnership
- DMS continues to be responsible for 1-2 Bed AFH homes utilized by IRIS participants
- Updated benchmarks will be required to be utilized in the 1-2 Bed AFH certification process

# 1-2 Bed AFH HCBS

## Benchmarks continued

<b>42 C.F.R. § 441.301(c)(4): Home and community-based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:</b>		<b>Reference in 1-2 Bed AFH Standards</b>
1.	Setting staff responds to the needs and preferences of residents receiving HCBS, as identified in their AFH and long-term care person-centered service and support plans, in a timely manner.	References will be provided throughout document once the AFH standards are finalized.
<b>42 C.F.R. § 441.301(c)(4)(i): The setting is integrated in and supports full access of people receiving Medicaid HCBS to 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, to the same degree of access as people not receiving Medicaid HCBS.</b>		<b>Reference in 1-2 Bed AFH Standards</b>
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 style="list-style-type: none"> <li>• Parks</li> <li>• Schools and/or colleges/universities</li> <li>• Library</li> <li>• Community center</li> <li>• Job center</li> <li>• Restaurants</li> <li>• Stores</li> </ul>	

# 1-2 Bed AFH HCBS

## Benchmarks continued

### HCBS Settings Rule Modifications

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. When implementing a HCBS Settings Rule Modification, requirements (1)-(8) listed below must be documented in the individuals long-term care and AFH person-centered services and support plans. The benchmarks with an \* require an approved exception request before an HCBS Settings Rule Modification may be implemented by the AFH.

**42 C.F.R. § 441.301(c)(4)(vi)(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), 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.**
- (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.**
- (3) Document less intrusive methods of meeting the need that have been tried but did not work.**
- (4) Include a clear description of the condition that is directly proportionate to the specific assessed need.**
- (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.**
- (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.**
- (7) Include the informed consent of the individual.**
- (8) Include an assurance that interventions and supports will cause no harm to the individual.**

20.	If a resident needs an HCBS Settings Rule Modification, the modification is based on the resident's individualized, assessed needs and is documented in the resident's long-term care and AFH person-centered service plans in accordance with 1-8 above.	
21.	If a resident has an HCBS Settings Rule Modification documented in the resident's long-term care person centered services plan, the setting implements the HCBS modification as outlined.	

# 1-2 Bed AFH HCBS

## Benchmarks continued

- Example of a benchmark that requires an Exception Request and then an HCBS Settings Rule Modification if a modification is needed:

24.	<p>+*Each resident's bedroom has a:</p> <ul style="list-style-type: none"><li>• Lockable entrance door that can be utilized by the resident.</li><li>• Key that has been provided to the resident.</li></ul> <p>For more information see: <a href="https://www.wisconsin.gov/frequently-asked-questions-about-door-locks-in-adult-long-term-care-residential-settings">Frequently Asked Questions about Door Locks in Adult Long-Term Care Residential Settings (wisconsin.gov)</a></p>
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- Example of a benchmark that requires only an HCBS Settings Rule Modification

29.	<p>+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.</p>
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# 1-2 Bed AFH Heightened Scrutiny Process and Benchmarks

# 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

# 1-2 Bed AFH Heightened Scrutiny

- If the certifying agency determines that a 1-2 Bed AFH requires a Heightened Scrutiny review, they are responsible for completing the initial Heightened Scrutiny process utilizing the 5 new Heightened Scrutiny benchmarks
- To date, DHS is not aware of any certified 1-2 Bed AFHs that fall under this criteria

# 1-2 Bed AFH Heightened Scrutiny:

Benchmarks A and B on the 1-2 bed AFH Benchmarks are used to determine if a provider requires a Heightened Scrutiny review

A.	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)</i> , <i>intermediate care facility for individuals with intellectual disabilities (ICF/IID)</i> , <i>institute for mental disease (IMD)</i> , <i>hospital</i> ), the setting must have a heightened scrutiny review, overcome the presumption of institutionalization, and meet the additional Home and Community-Based Setting Rule Benchmarks: Heightened Scrutiny for Nonresidential Providers and 1-2 Bed Adult Family Homes.
B.	When the setting is in a building on the grounds of, or immediately adjacent to, a public institution that provides inpatient institutional treatment, the setting must have a heightened scrutiny review, overcome the presumption of institutionalization, and meet the additional Home and Community-Based Setting Rule Benchmarks: Heightened Scrutiny for Nonresidential Providers and 1-2 Bed Adult Family Homes. <i>"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.</i>

# 1-2 Bed AFH Heightened Scrutiny

**42 C.F.R. § 441.301(c)(5)(v):** Any other locations that have qualities of an institutional setting, as determined by the Secretary. [Prong 1] Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or [Prong 2] in a building on the grounds of, or immediately adjacent to, a public institution, or [Prong 3] any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

1.	The HCBS setting demonstrates a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage.
2.	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.
3.	All staff working in the HCBS setting receive initial and ongoing training on the HCBS Settings Rule's requirements, practices, and principles.
4.	<p>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.</p> <p>In Nonresidential settings, this includes training that matches setting-specific benchmark requirements found at: <a href="#">HCBS Settings Rule: Compliance for Nonresidential Services Providers   Wisconsin Department of Health Services</a></p> <p>In a 1-2 Bed AFH, the training must comply with Article VI.A.8 of the <a href="#">Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes</a></p>
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 no gap in coverage in the HCBS setting.

# Next Steps for HCBS Benchmarks

- DHS will e-mail the LTCAC the proposed 1-2 bed AFH and heightened scrutiny benchmarks after this meeting.
- LTCAC will have two weeks to provide feedback on the revised benchmarks.
- Send feedback to [dhshcbssettings@dhs.wisconsin.gov](mailto:dhshcbssettings@dhs.wisconsin.gov) by 05/29/2024.

# New HCBS Settings Rule Training

# HCBS Settings Rule Training Development

- DHS is working with UW Green Bay to develop an HCBS Settings Rule training as part of the [Certified Direct Care Professional Program](#).
- The target training audience will be direct care professionals working in HCBS Settings serving all 3 of our waiver programs (Family Care/Family Care Partnership, IRIS, and Childrens Long Term Support Waiver (CLTS)).



# Volunteers Requested

- DMS is requesting volunteers from the LTCAC to review and provide feedback on the training before it is finalized.
- The target timeline is to have a draft ready to review in May or June of this year.
- Interested members of the LTCAC can e-mail Kaycee to volunteer by this Friday (05/17/2024) at [dhshcbssettings@dhs.wisconsin.gov](mailto:dhshcbssettings@dhs.wisconsin.gov).