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## Home and Community-Based Settings (HCBS) Activity Update

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## Background

Home and community-based settings (HCBS) rule:

- The Centers for Medicare and Medicaid Services (CMS) gave states until March 17, 2019, to come into compliance with the settings provisions.
- Other provisions required immediate compliance.

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## **CMS Stated Purpose of the Rule**

Ensure individuals receiving (waiver) services have full access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate.

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## **Residential Waiver Services Most Affected by the Rule**

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

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## **Non-Residential Waiver Services Most Affected by the Rule**

- Adult day care centers
- Prevocational services (such as those provided by sheltered workshops)
- Day habilitation services
- Children's day services settings

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## **Division of Long Term Care Programs Affected**

- Family Care
- Family Care Partnership
- IRIS (Include, Respect, I Self-Direct)
- Community Options Program
- Community Integration Program
- Children's waivers

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## CMS Definition of Home and Community-Based Setting

- Integrates, and supports access to, the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

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## CMS Definition of Home and Community-Based 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)
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them

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## Residential Settings (Provider Owned or Controlled)

CMS additional requirements:

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

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## Residential Settings: Additional Requirements

- Each individual has privacy in her or his 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.

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## Residential Settings: Additional Requirements

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

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## Modifications to Additional Requirements

Per CMS, modifications to additional requirements must be:

- Supported by specific assessed need.
- Justified in the person-centered service plan.
- Documented in the person-centered service plan (the rule specifies what specifically must be documented).

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## Settings Not Home and Community Based

Settings that are not home and community based:

- Nursing facilities
- Institutions for mental diseases (IMD)
- Intermediate care facilities for individuals with intellectual disabilities (ICF-IID)
- Hospitals

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## Presumed Not Home and Community Based

CMS presumes these settings are not home and community based:

- Settings in a publicly or privately owned facility providing inpatient treatment
- 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 Medicaid HCBS

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## Heightened CMS Scrutiny

- States submit evidence to the secretary of the federal Department of Health and Human Services (DHHS) demonstrating that the setting has the qualities of a HCBS setting and not the qualities of an institution.
- The DHHS secretary determines, based on a heightened scrutiny review of the evidence, whether the setting meets the requirements for HCBS settings and does not have the qualities of an institution.

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## Residential Provider Assessment Activities

- Provider self-assessment
- Validation of the self-assessment response
- Implementation of a remediation process for providers
- Relocation of waiver participants from non-compliant settings
- Ongoing monitoring and re-evaluation of settings by waiver agencies

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## Residential Self-Assessment Tool

- Based on CMS guidance
- Focused on those things within the purview of the residential provider, not responsibilities of the waiver agency under person-centered planning
- Released to providers serving adults in spring 2015, efforts made to get full response from providers online and on paper forms
- Roughly 4,300 settings responded

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## Validation Activities

A team of reviewers has recently been trained to validate that the requirements of the rule are met. The validation will be conducted in two ways:

- The reviewers will analyze the self-assessments.
- The reviewers will conduct site visits.

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## Self-Assessment Review

- The team of reviewers will review all self-assessments submitted by settings providers to validate that the requirements of the rule are met.
- Providers may receive a phone call to clarify answers provided in the self-assessment.
- If remediation is needed, the provider will receive notification by mail.

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## Onsite Validation Visits

The reviewers will conduct onsite validation visits to providers who:

- Did not complete a self-assessment. (Note: Children's providers did not complete a self-assessment.)
- Were randomly selected.

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## Onsite Validation Visits

- Providers selected for an onsite validation visit will receive a letter in the mail notifying them of the site visit. Providers will be asked to:
  - Complete a form identifying the publicly funded residents in the facility and return it within 10 days.
  - Provide access to documentation during the site visit (examples: policies and procedures, training curricula, individual service plans).
- DHS reviewers will schedule the onsite visit date and time with the provider.

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## Timeline

- Residential self-assessments have been received and are currently undergoing review.
- Site visit letters to residential settings and children's residential settings providers are expected to be mailed in batches. The first batch is anticipated to be mailed in the next week and periodically thereafter.

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## Remediation

- Providers will receive written notice of HCBS criteria they do not meet.
- The notice will be specific to the area (for example, locks on doors, access to food, curfew).
- Providers will have the option to do one of the following:
  - Correct the concern immediately, and provide evidence to the reviewer.
  - Submit a plan to remediate the concern, and provide a date by which the remediation activity will be completed.

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## Remediation

- A follow-up site visit will be used only if other means of verification are not practical.
- All remediation activities are to be completed by December 31, 2017.

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## Wrap Up

- Non-residential settings will be asked to complete the self-assessment process soon. A letter and instructions will be mailed to these providers.
- Questions can be submitted to [DSHCBSsettings@dhs.wisconsin.gov](mailto:DSHCBSsettings@dhs.wisconsin.gov).

