



of Wisconsin Disability Organizations

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## Recommendations for Applying CMS' New Home and Community-Based Services Rule to Residential Settings

July 25, 2014

This is a companion piece to the Survival Coalition Recommendations Regarding Non-Residential, Including Vocational Settings issued in May, 2014. Given the Wisconsin DHS intent to publish its initial transition plan for implementation of the new Home and Community-Based Services (HCBS) rules on or about July 30, we do not expect these recommendations to necessarily be reflected in that document. We believe sharing these recommendations now will assist all stakeholders, including DHS, as the transition plan for the HCBS waivers in process of requesting CMS approval by 12/31/2014 is reviewed and revised prior to the expected submission to CMS by October 1.

### Intent of the Rule

*It ensures the individual receives services in a community to the same degree of access as individuals not receiving Medicaid Home and Community Based Services. **That is the bar that this rule sets for integration for individuals in the community.** It is a significant and important measure that people should keep in mind whenever they discuss this rule.<sup>1</sup>*

*- Ralph Lollar, Director, Division of Long Term Services and Supports, CMS*

### Fundamental Recommendations for Residential Settings

We recommend that Wisconsin implement both the letter and intent of two fundamental requirements for residential settings:

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<sup>1</sup> Transcript of June 24, 2014 NCOA Webinar on Implementation of the HCBS rule, page 3.

- 1. The setting is selected by the individual from among setting options including non-disability specific settings** and an option for a private unit in a residential setting.<sup>2</sup>
- 2. The setting is integrated in and supports full access of individuals 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 individuals not receiving Medicaid HCBS.**<sup>3</sup>

We recommend Wisconsin's initial transition plan include the following set of interrelated engagement and administrative activities to respond to these requirements:

- 1. Recommendations to ensure the residential setting is selected by the individual from among setting options including non-disability specific settings.**
  1. Provide opportunities to visit all different types of settings, including non-disability specific settings, and to meet with individuals who receive support in such settings; and to receive information in understandable formats on the specific settings
  2. Include documentation on how the individual has been provided this information and these opportunities, and documentation of the choice selected.

The following set of recommendations are based upon CMS resources and guidance on meeting the HCBS settings requirement, including the *Regulatory Requirements for Home and Community-Based Settings*<sup>4</sup> and *Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community*<sup>5</sup>. CMS has made clear in the final rule and in its comments about the rule that the simple fact of being a congregate setting does not preclude a setting from being eligible for HCBS. However, their *Guidance on Settings That Isolate* includes the following statement<sup>6</sup>:

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

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<sup>2</sup> 42 CFR Part 441.301(c)(4)(ii)

<sup>3</sup> 42 CFR Part 441.301(c)(4)(i)

<sup>4</sup><http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Requirements-for-Home-and-Community-Settings.pdf>

<sup>5</sup><http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Settings-that-isolate.pdf>

<sup>6</sup> Ibid. Page 1.

Wisconsin Community Based Residential Facilities and Adult Family Homes are designed to have these two characteristics, and each such setting needs to be assessed. The following recommendations respond to specific qualities that are required to be assessed and conditions that must be met for a place to be an appropriate setting in which an individual lives and calls home and to be eligible to receive HCBS funding, and to the responsibilities of the State, Counties and MCOs in ensuring individual choice and integration of residential settings and ensuring providers meet the required conditions within these settings.

**2. Recommendations to ensure each residential setting is integrated in and supports full access 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 individuals not receiving Medicaid HCBS.**

- A. Add the HCBS Regulatory Requirements for HCBS Settings listed in Appendix A as service standards for CBRF, AFH and Community Supported Living within the proposed waiver renewals.
- B. Add the HCBS Regulatory Requirements for HCBS Settings listed in Appendix A to CBRF Licensing Standards, AFH Certification Standards for 1-4 Bed Corporate Homes, and AFH Certification Standards for 1-2 Bed Owner Occupied Homes.
- C. Ensure person-centered plans developed with the individual by Counties, IRIS or MCOs include
  - 1. A choice of residential settings as described in Recommendation 1F above;
  - 2. A choice of a private unit within a residential setting, commensurate to a person's resources available for room and board;
  - 3. Documentation of the options presented to and the option selected by the individual;
  - 4. For any modification of the requirements described in Appendix A, justification and documentation of the specific assessed need as described in Appendix B.
- D. Develop and provide information and a self-assessment process to share with all individuals in all residential settings based upon the new rule requirements. This process would include but would not be limited to the specific list of items specified in the rule as described in Appendix A, and the option for a non-disability specific setting and for a private room in a residential setting.
- E. Develop and implement a self-assessment process for all AFH and CBRF and any other residential provider<sup>7</sup> based upon the specific list of items specified in the rule as described in Appendix A.

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<sup>7</sup> There are currently 1532 3-4 bed AFH with a capacity of 5935 beds licensed for people with developmental disabilities; 630 AFH with a capacity of 2438 for people with physical disabilities; 576 CBRF with a capacity of 5183 beds for people with developmental disabilities; and 489 CBRF with a capacity of 8079 beds for people with physical disabilities; information on 1-2 bed AFH is not centrally collected by Wisconsin DHS. Many facilities are licensed or certified for more than one target group, thus the actual number of people in these facilities is less than the total number of

- F. Develop, implement and fully fund a process of objective, conflict-free assessment of all HCBS funded residential settings to determine the extent to which they meet the requirements for HCBS funded settings described in Appendix A. We recommend this process be
1. created in concert with advocates and providers;
  2. identify needed sanctions and plans of correction, including termination of funding;
  3. be prioritized based upon concerns noted by individuals and settings within their self-assessment process;
  4. be applied over the five years of the transition plan.
- G. Engage all stakeholders in developing and sharing learning on deepening community connections and community membership for individuals in residential settings. This is essential learning to implement the intent of the rule, and is learning that is growing within Wisconsin.<sup>8</sup>

We recognize that the workload required to implement these recommendations is commensurate to the profound change and transformation intended by this rule. Our member organizations stand prepared to work enthusiastically in concert with Wisconsin DHS and other stakeholders in co-creating this transformation and continuing Wisconsin's leadership towards enabling all those who receive long term support in our communities the opportunity to lead fulfilling lives as citizens and members of our communities.

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beds. Nonetheless, this is a significant number of settings that will need to modify the manner in which they provide support to those they serve.

<sup>8</sup> See, for example, the work on *Commonunity* within Community Care of Central Wisconsin, <http://www.communitycareofcentralwisconsin.org/>.

## Appendix A

### Requirements for Home and Community-Based Settings Residential Providers<sup>9</sup>

1. The setting supports full access of individuals to the greater community to the same degree of access as individuals not receiving Medicaid HCBS.
2. The setting is physically accessible to the individual.
3. Each individual in the setting either owns the place or has a signed lease or written legally enforceable agreement with tenant/landlord protection to document protections that address eviction processes and appeals comparable to those provided under Wisconsin's landlord tenant law.
4. The setting ensures each individual's rights of privacy, dignity and respect, and freedom so that each individual
  - a. has, if sharing a unit, the right to choose a roommate;
  - b. has a unit with entrance doors lockable by the individual, with only appropriate staff having keys to doors;
  - c. has access to make private calls, text, email at his or her own preference and convenience;
  - d. is free from coercion and restraint;
  - e. has the freedom to decorate sleeping or living units within the lease or other agreement;
  - f. can control personal resources.
5. The setting optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment and with whom to interact so that each individual can
  - a. engage in community life with family, friends and others;
  - b. have visitors of their choosing at any time, with access to private areas for visiting;
  - c. choose when and where to eat, have access to food at any time, and choose with whom to eat or to eat alone;
  - d. have support to control their own schedules and activities, including engaging spontaneously in unscheduled activities.

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<sup>9</sup> These requirements are those for which HCBS service providers are to be held accountable. They are taken from 42 CFR 441.301(c)(4), and do not include related requirements that are the responsibility of the State or agencies with which the state contracts for the administration of HCBS (e.g., Counties and MCOs).

## Appendix B

### Modification of Requirements for HCBS Residential Services

Any modification of the conditions specified in Appendix A above, 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:<sup>10</sup>

- A. Identify a specific and individualized assessed need.
- B. Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- C. Document less intrusive methods of meeting the need that have been tried but did not work.
- D. Include a clear description of the condition that is directly proportionate to the specific assessed need.
- E. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- F. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- G. Include the informed consent of the individual.
- H. Include an assurance that interventions and supports will cause no harm to the individual.

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<sup>10</sup> from 42 CFR 441.301(c)(2)(xiii) (A-H)