

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**WISCONSIN DID NOT COMPLY WITH
FEDERAL WAIVER
AND STATE REQUIREMENTS
AT ALL 20 ADULT
DAY SERVICE CENTERS REVIEWED**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Gloria L. Jarmon
Deputy Inspector General
for Audit Services

October 2018
A-05-17-00030

Office of Inspector General

<https://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at <https://oig.hhs.gov>

Section 8M of the Inspector General Act, 5 U.S.C. App., requires that
OIG post its publicly available reports on the OIG website.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable,
a recommendation for the disallowance of costs incurred or claimed,
and any other conclusions and recommendations in this report represent
the findings and opinions of OAS. Authorized officials of the HHS
operating divisions will make final determination on these matters.

Report in Brief

Date: October 2018
Report No. A-05-17-00030

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

We conducted health and safety reviews of Head Start grantees, regulated childcare facilities, and family adult foster care homes in Minnesota. The reviews in Minnesota identified multiple health and safety issues, and we chose the Family Care program (the program) to determine whether there may be similar health and safety risks affecting vulnerable adults receiving services in Wisconsin certified adult day care centers (centers). The program funds home and community-based services, such as services received at a center, for older family members and for adults with physical or developmental disabilities.

Our objective was to determine whether Wisconsin complied with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program.

How OIG Did This Review

Of the 126 centers in Wisconsin where vulnerable adults received services through the program for the quarter ended December 2016, we selected 20 centers for our review. We selected the centers on the basis of their geographic location, capacity, and history of health- and safety-related violations identified by the State. We conducted 19 unannounced site visits and 1 announced visit from July 26 through October 18, 2017.

Wisconsin Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Service Centers Reviewed

What OIG Found

Wisconsin did not comply with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program. All 20 of the centers we reviewed did not comply with State certification requirements. In total, we found 208 instances of noncompliance with health and safety and administrative requirements.

Wisconsin said that instances of noncompliance occurred partly because of low staffing levels that did not allow State surveyors to make recertification visits every 2 years. Additionally, Wisconsin officials confirmed that the certification checklist was outdated and lacked clarity on certain requirements, and certification requirements were not in the Wisconsin Administrative Rules. Wisconsin also said that there was minimal attendance by center personnel at State- or trade association-sponsored voluntary training programs. Finally, center personnel indicated the need for improved State agency communication and more guidance related to the specific center certification requirements.

What OIG Recommends and Wisconsin Comments

We recommend that Wisconsin (1) ensure that the 208 instances of noncompliance with health and safety and administrative requirements identified in this report are corrected, (2) consider revising staffing standards and caseload thresholds for State surveyors, (3) update the certification checklist and promulgate rules as required by Wisconsin Statutes, (4) identify and address reasons for low attendance by center personnel at training programs, and (5) increase State agency guidance related to center requirements.

Wisconsin partially concurred with our first two recommendations and concurred with our remaining three recommendations. We maintain that our findings and recommendations remain valid. Regarding our recommendation to ensure instances of noncompliance are corrected, we noted that all 12 centers where knives or chemicals were accessible served populations with medical conditions (e.g., dementia or developmental disability) that could pose a danger to themselves or others. Regarding our recommendation to consider revising staffing standards, 8 of the 20 centers with substantial instances of noncompliance had their last State agency inspection at least 2 years before our visits. More frequent inspections by additional staff would likely decrease the instances of noncompliance.

TABLE OF CONTENTS

INTRODUCTION.....	1
Why We Did This Review.....	1
Objective.....	1
Background.....	1
Family Care Program	2
Wisconsin Adult Day Care	2
How We Conducted This Review	3
FINDINGS.....	3
Centers Did Not Comply With Health and Safety Requirements.....	4
Centers Did Not Comply With Administrative Requirements.....	5
Causes of Noncompliance With State Certification Requirements	6
RECOMMENDATIONS	6
STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE	7
State Agency Comments.....	7
Office of Inspector General Response	7
APPENDICES	
A: Audit Scope and Methodology	9
B: Federal and State Requirements	10
C: Instances of Noncompliance at Each Center	23
D: State Agency Comments	24

INTRODUCTION

WHY WE DID THIS REVIEW

The Office of Inspector General has conducted health and safety reviews of Head Start grantees;¹ regulated childcare facilities, including two reviews in Minnesota;² and regulated family adult foster care homes in Minnesota.³ Those reviews in Minnesota identified multiple health and safety issues that put children and vulnerable adults at risk.⁴ We chose the Family Care program (the program) to determine whether there may be similar health and safety risks affecting vulnerable adults receiving services in certified Wisconsin adult day care centers (centers).

The Wisconsin Department of Health Services (State agency) operates the program under a Federal waiver to its Medicaid State plan. The program funds home and community-based services, such as services received at a center, for older family members and for adults with physical or developmental disabilities.

OBJECTIVE

Our objective was to determine whether the State agency complied with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program.

BACKGROUND

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. In Wisconsin, the State agency administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover.

¹ *Review of 24 Head Start Grantees' Compliance With Health and Safety Requirements* (A-01-11-02503, issued December 2011).

² *Some Minnesota Childcare Home Providers Did Not Always Comply With State Health and Safety Licensing Requirements* (A-05-14-00021, issued March 2015) and *Some Minnesota Childcare Centers Did Not Always Comply With State Health and Safety Licensing Requirements* (A-05-14-00022, issued March 2015).

³ *Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed* (A-05-16-00044, issued October 2017).

⁴ The Oxford Dictionary defines a vulnerable adult as a person needing special care, support, or protection because of age, disability, or risk of abuse or neglect.

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services (HHS) to waive certain Medicaid statutory requirements so that a State may offer home and community-based services to a State-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage of long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services that allow them to remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurance that necessary safeguards will be taken, including implementing adequate standards for provider participation, to protect the health and welfare of individuals served under the waiver and to assure financial accountability for funds expended for those services.⁵ The State agency must also provide assurances that State certification requirements are met for services or for individuals furnishing services that are provided under the waiver.⁶

Family Care Program

The State agency operates the program, administered by resource centers and care management organizations, under a 1915(c) waiver to its Medicaid State plan. The program funds home and community-based services, such as services received at a center, for older family members and for adults with physical or developmental disabilities.

Wisconsin Adult Day Care

In Wisconsin, adult day care is a service provided for part of a day in a group setting to adults who need an enriched health-supportive or social experience or who may need assistance with activities of daily living, supervision, or protection. Services may include personal care and supervision, provision of meals, medical care, transportation, and activities designed to meet physical, social, and leisure-time needs.

To protect the health and safety of vulnerable adults, the State agency, as the certifying agency for centers, must ensure that the centers follow certification requirements established in its application for waiver services. Because the State has not incorporated these certification requirements into its Administrative Rules,⁷ it uses a health and safety and administrative

⁵ 42 CFR § 441.302.

⁶ 42 CFR § 441.302(a)(2).

⁷ Wisconsin Statute chapter 49.45(2)(11)(b) requires that rules be promulgated to establish criteria to certify providers of medical assistance, which includes centers. However, certification criteria for centers are in the Wisconsin Adult Day Care Certification Standards Checklist and are not included in Wisconsin Administrative Rules.

certification checklist to certify, monitor, and perform routine inspections of centers. Using its assisted living surveyors, the State agency attempts to perform recertification visits every 2 years, although this is not required. Unannounced visits also are not required.

HOW WE CONDUCTED THIS REVIEW

Of the 126 centers in Wisconsin where adults received services through the program for the quarter ended December 2016, we selected 20 centers for our review. We selected the centers on the basis of their geographic location, capacity, and history of health- and safety-related violations identified by the State agency. To determine whether the State agency complied with Federal waiver and State requirements, we evaluated the State agency's oversight of State certification requirements for centers by conducting 19 unannounced site visits and 1 announced site visit at the 20 selected centers from July 26 through October 18, 2017.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, and Appendix B contains Federal and State requirements related to health and safety and administration.

FINDINGS

The State agency did not comply with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program. We determined that all 20 of the centers we reviewed did not comply with State certification requirements. The 20 centers we reviewed each had from 3 to 19 instances of noncompliance. In total, we found 208 instances of noncompliance with health and safety and administrative requirements. (See Appendix C for a summary of these instances of noncompliance.)

State agency officials said that instances of noncompliance occurred in part because of low staffing levels that did not allow State agency surveyors to make recertification visits every 2 years. Additionally, State agency officials confirmed that the certification checklist was outdated and lacked clarity on certain requirements, and certification requirements had not been incorporated into the Wisconsin Administrative Rules. State agency officials also said that attendance by center personnel at State- or trade association-sponsored voluntary training programs was minimal and at times nonexistent. Finally, center personnel indicated the need for improved State agency communication and more guidance related to the specific center certification requirements. All of these factors caused confusion at the centers and noncompliance with numerous health and safety and administrative requirements, leaving vulnerable adults in the centers' care at risk.

CENTERS DID NOT COMPLY WITH HEALTH AND SAFETY REQUIREMENTS

A center must comply with State certification requirements at all times during the term of the certification and ensure the health and safety of vulnerable adults receiving services at the center.⁸ Among other requirements, a center must ensure that areas used by participants are clean, safe, and in good repair, with properly functioning and sanitary toilet rooms.⁹

We determined that 19 of the 20 centers we reviewed did not comply with health and safety requirements. In total, we found 68 instances of noncompliance with State certification requirements on health and safety.

For example, we found holes in a wall in a bathroom at one center (Photograph 1). In another center, we found rust covering a bathroom radiator (Photograph 2). In the same center, we also found hazardous chemicals and a full sharps biohazard container that was accessible to vulnerable adults (Photograph 3). Finally, we found a knife that was easily accessible to vulnerable adults in another center (Photograph 4).



Photograph 1: A wall in a bathroom had holes.



Photograph 2: Rust covered a bathroom radiator.

⁸ Wisconsin Statute chapter 49.45(2)(11)(a) and Adult Day Care Certification Standards Checklist (F-60947).

⁹ Wisconsin Adult Day Care Certification Standards Checklist (F-60947) §§ III.A.(11) and III.A.(12).



Photograph 3: Chemicals and a sharps biohazard container were accessible.



Photograph 4: A knife left out in the open was easily accessible.

CENTERS DID NOT COMPLY WITH ADMINISTRATIVE REQUIREMENTS

Centers must comply with State certification requirements on administration.¹⁰ Among other requirements, a center must ensure that all employees and volunteers who provide care to vulnerable adults receive the required orientation within 2 weeks of employment, training that is pertinent to their job responsibilities within 90 days of employment, and 10 hours of annual continuing education.¹¹ Centers must also maintain in a file on site signed job descriptions for employees or volunteers who perform specific duties.¹² Additionally, centers must ensure that individual service plans are reviewed and updated every 6 months or more often, as warranted, and maintain quarterly notes documenting how individuals are responding to their service plans.¹³ Finally, centers must ensure that each employee, before beginning employment, completes the self-attestation Background Character Verification (BCV) form (F-62603).¹⁴

We determined that all 20 centers we reviewed did not comply with administrative requirements. In total, we found 140 instances of noncompliance with State certification requirements on administration.

¹⁰ Wisconsin Statute chapter 49.45(2)(11)(a) and Adult Day Care Certification Standards Checklist (F-60947).

¹¹ Wisconsin Adult Day Care Certification Standards Checklist (F-60947) §§ II.D.(2), II.D.(3), and II.D.(4).

¹² Wisconsin Adult Day Care Certification Standards Checklist (F-60947) §§ II and II.A.(1).

¹³ Wisconsin Adult Day Care Certification Standards Checklist (F-60947) §§ I.C.(3) and I.C.(4).

¹⁴ Wisconsin Adult Day Care Certification Standards Checklist (F-60947) § II.A.(2).

Specifically, we found that 12 centers did not provide the orientation, 90-day training, or annual continuing education or did not complete them within the required timeframe; 13 centers did not maintain signed job descriptions for at least 1 employee or volunteer; 10 centers did not ensure that individual service plans were reviewed or updated or that notes were written within the required timeframes; and 7 centers allowed at least 1 employee to have direct contact with vulnerable adults before a BCV form or suitable background study¹⁵ was completed.

CAUSES OF NONCOMPLIANCE WITH STATE CERTIFICATION REQUIREMENTS

The State agency did not comply with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program because, according to State officials, low staffing levels did not allow State agency surveyors to make recertification visits every 2 years. State agency officials also noted that because of the numerous investigations of complaints and growth in assisted living facilities, surveyors were forced to focus on the most urgent priorities in their workload.

Additionally, State agency officials confirmed that the certification checklist was outdated and that certification requirements had not been incorporated into Wisconsin Administrative Rules. State officials also acknowledged that the checklist lacked clarity in that requirements on multiuse facilities and the type of background study required, amongst others, may be confusing to centers. State agency officials also stated that there was minimal attendance by center personnel at State- or trade association-sponsored voluntary training programs, with attendance as low as 15 percent at conferences and no participation at a virtual conference held in December 2017.

Conversely, center personnel indicated the need for improved State agency communication and more guidance related to certification requirements as well as timeliness in responding to requests made by the centers. All of these factors contributed to confusion at the centers and noncompliance with numerous health and safety and administrative requirements, leaving vulnerable adults in the centers' care at risk.

RECOMMENDATIONS

We recommend that the State agency:

- ensure that the 208 instances of noncompliance with health and safety and administrative requirements identified in this report are corrected,

¹⁵ Wisconsin center employees are required to complete a self-attestation BCV form. Centers are not required to conduct a formal background study; however, we found that most centers complete the Wisconsin Caregiver Background Check required at other types of assisted living facilities because it is more thorough than the BCV form.

- consider revising staffing standards and caseload thresholds for State surveyors,
- update the certification checklist and promulgate rules as required by Wisconsin Statutes,
- identify and address reasons for low attendance by center personnel at training programs, and
- increase State agency guidance on certification requirements.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency partially concurred with our first two recommendations and concurred with our remaining three recommendations. Regarding a small number of instances of noncompliance in the finding that relates to our first recommendation, the State agency said that requirements do not state that knives cannot be accessible or that cleaning supplies must be in a locked area. The State agency also stated that a surveyor's determination on whether a knife or cleaning supplies pose a safety hazard is made based on the assessment of each participant's mental and physical abilities. Surveyors make this decision after interviewing participants and center staff and reviewing participants' medical records. Regarding our second recommendation on revising staffing standards and caseload thresholds, the State agency said that timeframes for inspection are not established by State statute or administrative rule and that, although the goal is to conduct surveys at least every 2 years, workload priorities are managed to ensure that complaints are investigated first.

The State agency's comments are included in their entirety as Appendix D.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our findings and recommendations remain valid. Federal and State waiver criteria do not qualify the health and safety requirements relative to assessments of each participant's mental and physical abilities. We assessed conditions at the centers in accordance with the applicable criteria and made determinations of compliance based on our site visits and interviews with center staff and State officials. During our visits to centers, we observed participants who we believed to have impaired mental and physical abilities but did not conduct interviews to verify that this was the case. However, our review of certain medical records for evidence of participants' diagnosed conditions noted that all 12 centers with these instances of noncompliance served populations with medical conditions (e.g., dementia or developmental disability), that could cause participants to pose a danger to themselves or to others when knives or chemicals are readily accessible.

Regarding our second recommendation on staffing standards and caseload thresholds, the State agency acknowledged during our fieldwork that it had low staffing levels in conjunction with high workloads. The State agency stated in its written comments that it continually evaluates workload priorities and makes recommendations for additional staff resources as needed. More frequent inspections by additional staff would likely decrease the instances of noncompliance. For 8 of the 20 centers, the State agency's last inspection was at least 2 years before our site visits, including 2 centers with more than 15 instances of noncompliance and 2 centers with more than 10 instances of noncompliance each.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 126 centers in Wisconsin where vulnerable adults received services through the program for the quarter ended December 2016, we selected 20 centers for our review. We selected the centers on the basis of their geographic location, capacity, and history of health- and safety-related violations identified by the State agency.

To evaluate the State agency's oversight of State licensing requirements for centers, we conducted 1 announced site visit and 19 unannounced site visits at the 20 selected centers from July 26 through October 18, 2017. We conducted this fieldwork in the counties of Dane, Douglas, Eau Claire, Fond du Lac, La Crosse, Lincoln, Marathon, Milwaukee, Monroe, Pierce, Polk, Price, Shawano, Waukesha, and Wood.

During our audit, we did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements for centers;
- discussed with State officials how Wisconsin monitors its centers;
- developed a health and safety checklist, from State certification requirements, as a guide for conducting site visits;
- conducted unannounced site visits at 19 of the 20 centers we selected for review and an announced site visit at 1 center;
- interviewed State officials and center personnel about the causes of noncompliance; and
- discussed the results of our review with State officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: FEDERAL AND STATE REQUIREMENTS

FEDERAL REQUIREMENTS

Section 1915(c) of the Social Security Act authorizes the Secretary of HHS to waive certain Medicaid statutory requirements so that a State may offer home and community-based services to a State-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Federal regulations for section 1915(c) waivers at 42 CFR section 441.302 require States to provide assurance that necessary safeguards will be taken, including implementing adequate standards for provider participation, protecting the health and welfare of individuals served under the waiver, and assuring financial accountability for funds expended for those services. The State agency must also ensure that State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver.

STATE REQUIREMENTS

Wisconsin regulations for adult day care center certification are in Wisconsin Statutes, chapter 49, Public Assistance and Children and Family Services, and Wisconsin Administrative Rules, chapter 10, Family Care.

Wisconsin Statutes

Chapter 49.45 subdivision 2(11)(a) – Establish Criteria for Certification

Establish criteria for certification of providers of medical assistance and certify providers who meet the criteria.

Chapter 49.45 subdivision 2(11)(b) – Promulgate Rules

Promulgate rules to implement this subdivision.

Chapter 49.45 subdivision 47(a) – Adult Day Care Centers Definition

“Adult day care center” means an entity that provides services for part of a day in a group setting to adults who need an enriched health-supportive or social experience and who may need assistance with activities of daily living, supervision, or protection.

Chapter 49.45 subdivision 47(b) – Certification Required

No person may receive reimbursement under section 46.27(11) for the provision of services to clients in an adult day care center unless the adult day care center is certified by the department under subsection (2)(a)(11) as a provider of medical assistance.

Wisconsin Administrative Rules

Chapter 10.11 – Authority and Purpose of Family Care

This chapter is promulgated under the authority of sections 46.286(4) to (7), 46.287(2)(a)1, 46.288, 50.02(2)(d), and 227.11(2)(a) to implement a program called Family Care that is designed to help families arrange for appropriate long-term-care services for older family members and for adults with physical or developmental disabilities. The chapter does all of the following:

- (1) Establishes functional and financial eligibility criteria, entitlement criteria, and cost sharing requirements for the Family Care benefit, including divestment of assets, treatment of trusts and spousal impoverishment protections.
- (2) Establishes the procedures for applying for the Family Care benefit.
- (3) Establishes standards for the performance of aging and disability resource centers.
- (4) Establishes certification standards and standards for performance by care management organizations.
- (5) Provides for the protection of applicants for the Family Care benefit and enrollees in care management organizations through complaint, grievance, and fair hearing procedures.
- (6) Provides for the recovery of correctly and incorrectly paid Family Care benefits.
- (7) Establishes requirements for the provision of information about the Family Care program to prospective residents of long-term care facilities and for referrals to resource centers by hospitals and long-term care facilities.

Chapter 10.41(2) – Family Care Services

Services provided under the Family Care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO [care management organization] shall have available at least the services and support items covered under the home and community-based waivers under 42 U.S.C. § 1396n(c) and [sections] 46.275, 46.277, and 46.278, the long-term support community options program under [section] 46.27, and specified services and support items under the State's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC [residential care apartment complex], CBRF [community based residential facility] or AFH [adult family home]; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Health and Safety Requirements

Wisconsin Adult Day Care Certification Standards Checklist (F-60947)

Section III.A.(8) – Mechanical Washing of Dishes

Have readily-visible temperature gauges in the wash compartment of all mechanical dishwashers and in the rinse tank of an immersion-type dishwasher.

Section III.A.(10) – Food Storage

- (a) All food and drink shall be stored in a safe and sanitary manner. No food or drink shall be stored on the floor.
- (b) All readily perishable foods shall be covered and refrigerated at or below 40 degrees F. (4 degrees C.), and stored in a sanitary manner.
- (c) Freezing units shall be maintained at or below 0 degrees F. (-18 degrees C.). Foods to be stored in a freezer shall be wrapped and identified.
- (d) Each refrigerator and freezer shall have an accurate thermometer inside the unit.

Sections III.A.(11) and III.A.(12) – Areas Used by Participants

The premises and furnishings shall be free from litter, clean, safe, and in good repair. Toilet rooms and fixtures shall function properly and shall be maintained in a sanitary and odor-free condition.

Section III.B. – Safety

- (1) The center shall have a telephone on the premises, which is immediately accessible during hours of operation. A list of emergency telephone numbers shall be posted at each telephone.
- (2) Stairs, walks, ramps, and porches shall be maintained in a safe condition.
- (3) Animals kept on the premises shall be tolerant of persons on the premises and vaccinated against rabies if indicated.
- (4) A supply of safe drinking water shall be readily available to participants at all times. Note: If well water is used, wells shall be approved by the State Department of Natural Resources and water samples shall be tested annually at a state approved lab. Documentation is to be kept on file at the center.

Section III.B.(5) – Written Plan for Emergencies

Each adult day care program shall have a written plan for responding to fires, tornadoes, missing participants, injuries and other emergencies which includes:

- (a) Posting an evacuation plan;
- (b) Informing all staff members of their duties during an emergency; and
- (c) Practicing and recording quarterly fire and annual tornado drills.

Section III.C. – Fire Protection

- (1) The adult day care program shall maintain written reports of fire safety inspections as well as any other inspection reports required by local authorities.
- (2) The adult day care facility shall have at least one 2A, 10-B-C fire extinguisher per 1,500 square feet of space. If only one extinguisher is necessary in the building, it is to be located near the cooking area. Fire extinguishers shall be operable at all times, inspected once a year by a qualified person, and shall bear a label indicating its condition and date of the last inspection.
- (3) All staff members shall be instructed in the use of the fire extinguisher.
- (4) Unless the fire department indicates otherwise in writing, the facility shall have a fire alarm system or working smoke detectors in each activity room and hallway which shall be tested monthly.

Section III.D. – Building and Furnishings

- (1) If required by the Department of Commerce or local municipality, the adult day care program shall have on file an inspection report signed by an authorized agent demonstrating that its facility, including remodeling, has met applicable building codes.
- (2) The facility shall be designed in such a way that it is accessible and functional in meeting the identified needs of the adult population it serves.

- (3) The adult day care program shall provide the certifying agency with a detailed floor plan of its facility.
- (4) The adult day care program shall provide at least 50 square feet of usable floor space for each participant exclusive of passageways, bathrooms, lockers, office, storage areas, staff room, furnace rooms, and parts of rooms occupied by stationary equipment.
- (5) The facility shall provide sufficient furniture and equipment for use by participants that provides comfort and safety, and is appropriate for an adult population with physical disabilities, visual and mobility limitations, and cognitive impairments.
- (6) Heat shall be maintained at not less than 70 degrees F.

Administrative Requirements

Wisconsin Adult Day Care Certification Standards Checklist (F-60947)

Section I.A.(1) – Program Description

The adult day care program shall have a written description of the following:

- (a) A definition of the program goals; the days and hours of operation; a description of the services provided or made available to participants; and a description of the target population to be served by the program including age groups and specific care needs;
- (b) A description of any limits the program establishes for providing service to individuals with specific care needs;
- (c) A fee changing policy which includes: The daily charge; additional fees for specific services, goods, or supplies that are not included in the daily charge, i.e., transportation, baths, personal cares, etc.; and the method for notifying participants or guardians of fee changes;
- (d) A procedure for informing the participant's guardian, family, or caregiver of any major change in the participant's general functioning or medical condition;
- (e) A procedure for documenting any incident occurring at the site which would affect the health safety or welfare of a participant.
- (f) A procedure to implement standard precautions. NOTE: Standard precautions are measures taken to prevent transmission of infection from contact with blood or other body fluids or materials having blood or other body fluids on them, as recommended by the U.S. Public Health Services (USPHS) Centers for Disease Control (CDC) and adopted by the U.S. Occupational Safety and Health Administration (OSHA).
- (g) A statement of how the program will handle situations when a participant arrives at the site with a communicable illness or develops such an illness while at the site;

- (h) An explanation of how emergency medical situations will be handled at the site, including how participants and guardians are informed of this policy;
- (i) A policy and procedure to ensure that no staff member, volunteer, visitor, or any other person may be on the premises of the center during hours of operation if the person exhibits: symptoms of illness, communicable disease transmitted by normal contact, or behavior which gives reasonable concern for the safety of the participants;
- (j) A procedure for following up on any unexplained absences of the participants;
- (k) A procedure for obtaining a signed authorization from the participant or guardian, if applicable, allowing the release of any information about the participant to a third party;
- (l) An explanation of smoking restrictions, if any, on the premises, and the precautions to be taken for non-smoking participants;
- (m) A description of the criteria for voluntary and involuntary discharge of a participant from the program, and the time frame for notifying the participant or guardian prior to an involuntary discharge;
- (n) A procedure for investigating and resolving complaints made by a participant, guardian, family member, caregiver, or other interested persons about the services provided by the adult day care program which includes informing such persons of appropriate local, county and/or state agency contacts.

Section I.A.(5) – Participant Rights

A written document of the following participant rights shall be posted and/or distributed to participants and adhered to by the program.

- (a) The right to be treated with respect and dignity;
- (b) The right to be free from physical or verbal abuse;
- (c) The right to participate in the development of one's service plan, with support from staff or significant other if needed;
- (d) The right to refuse to participate in any particular activity;
- (e) The right to privacy and confidentiality;
- (f) The right to be fully informed of all the services provided and the charge for each of those services;
- (g) The right to be informed of the reason for discharge and the procedure for appealing that decision; and
- (h) The right to initiate a complaint and be informed of the complaint procedure.

Section I.B.(2) – Participant Enrollment Procedures

The adult day care program shall obtain and document the following information about the participant upon acceptance into the program:

- (a) The participant's full name, address, telephone number, date of birth and living arrangement;

- (b) The name, address and telephone number of the participant's primary caregiver(s), or guardian if applicable;
- (c) The name, address and telephone number of at least one family member or significant other designated as the emergency contact, if different from the primary caregiver;
- (d) The name, address and telephone number of the participant's primary physician; and
- (e) The name and address of the referring or coordinating agency and case manager, if applicable.

Section I.B.(3) – Written Statement

A statement shall be signed by the participant, or guardian/responsible party, if applicable, that a written description of the services to be provided, the cost of those services, and a statement of the participant's rights have been received.

Section I.B.(4) – Health Statement

A statement signed by a licensed physician, physician's assistant, or registered nurse shall be completed within 90 days prior to enrollment or within 30 days after enrollment which includes:

- (a) An indication that the participant has been screened for any communicable disease that is detrimental to other participants, including tuberculosis;
- (b) A list of current diseases, chronic conditions, and drug, food or other allergies;
- (c) A statement of any restrictions in the participant's ability to participate in the program's activities; and
- (d) The names of all prescribed medications including dosage.

Section I.B.(5) – Record Retention

All records of current participants must be kept on site. Upon discharge, the records are to be retained for at least 3 years in a secure, dry space.

Section I.C.(1) – Conducting Assessments and Service Plans

Assessments to get to know the person, and individual service plans to plan the program to meet individual needs, shall be conducted by staff members having the expertise, experience, or training pertinent to the client population served by the program.

Section I.C.(2) – Assessment and Service Plan Development

The service plan to meet the person's identified needs at the program shall be completed and implemented within 30 days of admission and include:

- (a) A comprehensive written assessment of the participant's functional abilities and disabilities, strengths and weaknesses, personal habits, preferences and interests, likes and dislikes, medical condition and any other information helpful to developing the service plan, such as a life review.
- (b) A statement of the services and activities the program will provide in order to meet these needs and personal interests.
- (c) The participant's usual travel arrangements to and from the site, the usual time for arriving and leaving, and any plan for using transportation services.

Section I.C.(3) – Service Plan Review

The individualized service plan will be reviewed and updated every 6 months or more often as warranted by changes in the participant's functioning, health condition, or preferences. Changes shall be documented in the participant's record.

Section I.C.(4) – Quarterly Notes

Notes shall be maintained at least quarterly documenting how a participant is responding to the service plan.

Section I.C.(5) – Processes to Foster Communication

To foster appropriate individualized interaction, the program shall have processes in place which foster communication among staff and with the participant and caregiver about the participant's daily capabilities, interests, general well-being and response to the individualized service plan.

Section I.D.(1) – Program Services

The range of services provided or arranged by the program shall be based on the written description of the program under (I.A.), and shall include at least the following:

- (a) Activity programming which takes into consideration individual differences in health and functioning, lifestyle, ethnicity, religious affiliation, values, experiences, needs, interests, abilities and skills;
- (b) Nutritional services;
- (c) Assistance and supervision needed with activities of daily living, i.e., walking, grooming, toileting, eating; and
- (d) Exercise and rest.

Section I.D.(2) – Program Services Implementing Individualized Service Plans

The services provided by the program as part of implementing individualized service plans shall:

- (a) Involve participants in the planning and implementation of the activities;
- (b) Include individual and group activities that encourage creativity, social interaction, and physical exercise; and
- (c) Provide opportunities for indoor and outdoor activities, including outings to points of interest and involvement in the general community.

NOTE: Additional services may be arranged for or provided by the adult day care program including: transportation, social services, personal cares, medication administration, nursing services, health monitoring, physical therapy, etc.

Section I.E.(1) – Meal Requirements

The facility shall assure that a meal be provided to each participant attending the program for 5 or more hours. Meals served by the facility shall provide at least one-third of an adult's daily nutritional requirements.

Section I.E.(3) – Snacks

Snacks shall be available for those participants who may need them.

Section I.G.(1) – Transportation Liability Insurance and Valid License

Adult day care programs providing transportation for participants must assure that providers of transportation carry liability insurance and have a valid operator's license.

Section I.G.(2) – Vehicle Maintenance

Vehicles used must have safe tires (1/8-inch tread, minimum) and properly functioning headlights, taillights, directional signals, windshield wipers, brakes, heater, and seat belts (if a passenger car). Annual documentation of compliance is required.

Section II. – Personnel

Definition: "Staff" is defined as any employee or volunteer trained by the adult day care program who performs specific duties as described in a written and signed job description.

Section II.A.(1) – Employee Records

The adult day care program shall maintain, on site, a file on each employee which is available to the certifying agency and includes the employee's name, address, date of birth, education, and previous work experience; the name, address, and telephone number of a person(s) to be notified in an emergency; and any documentation of training, certification, license, etc.

Section II.A.(2) – Background Character Verification

Each employee, including the administrator, shall, before beginning employment, complete the Adult Day Care and Family Adult Day Care Background Character Verification form, F-62603, available from the department's web site at: <http://www.dhs.wisconsin.gov/forms/DQAnum.asp>. If the person indicates that he or she has been convicted of, or it has been substantiated that he or she was involved in, any of the crimes listed on the form, or has pending charges for any of the crimes listed on the form, the facility shall make a determination on whether the conviction is substantially enough related to the duties of the position.

Section II.A.(3) – Caregiver Misconduct Registry for Certain Employees

Before hiring employees with experience working as a nurse assistant, home health aide or hospice aide, (HFS 129), the adult day care program shall document contact with the department's caregiver misconduct registry, to determine if there is a substantiated finding that the person abused or neglected a client or misappropriated the property of a client. If there is a substantiated finding, the person shall not be hired to work in the program.

Section II.A.(4) – Employee Health Examination

All employees working directly with participants shall have a health examination within 6 months prior to beginning work or within 30 days after beginning work. The report shall certify that the person has been screened for communicable diseases that are detrimental to the participants, including tuberculosis, and shall be signed by a licensed physician, physician assistant, or a registered nurse.

Section II.B.(1) – Program Director

A person at least 21 years of age shall be designated as program director, responsible for the programmatic activities.

Section II.B.(2) – Program Director Background

The program director shall be knowledgeable about the specific disabilities of the psychological aspects of these disabilities; the types of functional deficits which result from these disabilities; and the types of services the program must provide to meet the participants' needs resulting from these disabilities. This knowledge shall be demonstrated by the following or its equivalent: (a) At least two years of course work in a health, social or human services field, or a license or certification in a health or human services profession; or (b) Having worked for at least two years in a program, or related field, which served a population similar to the population at the adult day care program.

Section II.C.(1) through (6) – Staffing Patterns

Definition: "Severely impaired" means any impairment leading to a participant's inability at the program to perform any 3 or more activities of daily living (ADL), e.g., mobility, dressing, eating, toileting, hygiene, etc. The impairment may be physical or cognitive in nature. The severely impaired participant demonstrates an inability to perform these ADLs at the day care unless assistance, supervision or prompting is provided.

- (1) At least one staff member over the age of 18 years shall be on the premises at all times participants are present.
- (2) There shall be a minimum of 1 staff person for each 8 non-severely impaired participants at the adult day care site.
- (3) There shall be a minimum of 1 staff person present for each 4 severely impaired participants at the adult day care site.
- (4) The adult day care program will provide sufficient staff time and staff expertise to implement the program as described in I.A.(1) and participant service plans.
- (5) Daily staffing patterns shall be documented, e.g., time cards, time sheets, or other methods used for payroll purposes.
- (6) Volunteers who meet the same standards, requirements, and training as employees and who have signed a written job description may be counted as part of the staff/participant ratio.

Section II.D.(1) – Staff Training

The adult day care program shall have and implement a written plan for providing orientation and training to staff members in order to meet the requirements of this subsection.

Section II.D.(2) – Orientation

All adult day care staff who interact with participants, and volunteers who are included as part of the staff/participant ratio, must complete an orientation within the first 2 weeks of employment which includes:

- (a) An explanation of participant rights;
- (b) An explanation of the adult day care program policies;
- (c) Training in recognizing and responding appropriately to medical and safety emergencies;
- (d) An explanation of established emergency and evacuation procedures, including the proper use of the fire extinguisher; and
- (e) An explanation of the program's procedure related to standard precautions as stated in I.A.(1)(f), prior to exposure to potentially infectious material.

Section II.D.(3) – Training Within 90-Days

Within 90 days of employment, all employees who provide care to participants shall have received training on the following topics, if those topics are pertinent to their job responsibilities:

- (a) Information about the needs and abilities of the participants served;
- (b) The physical and psychological aspects of each participant's disabilities;
- (c) The techniques required to provide personal care to participants, i.e., bathing, grooming, walking, and feeding, etc; and
- (d) The interpersonal communication skills needed to relate to participants including: understanding independent living philosophy; respecting participant rights, needs and uniqueness; respecting age, cultural and ethnic differences; confidentiality; and other relevant topics.

Note: A variance may be requested for staff who have training or demonstrated competence in (b)-(d). See Section VII.

Section II.D.(4) – Continuing Education

After the first year of employment, all employees who have responsibility for direct care or program activities, including the program director, shall receive 10 hours of continuing education annually. Educational topics should be pertinent to the general job responsibilities of the staff member. These hours of workshops, lectures, or training provided through audio or video materials. The training shall be provided by someone who has demonstrated expertise in the topic being presented including a staff member.

Section II.D.(5) – Written Records of Training

A written record shall be kept of the training in (2)-(4) above provided to each staff member, including the dates and topics of training.

Section II.D.(6) – Training for Volunteers

The adult day care program shall provide orientation, training, and supervision to volunteers.

Section V. – Program Evaluation

- (1) Adult day care programs shall develop and implement an annual plan to evaluate and improve the effectiveness of the program's operation and services to ensure continuous improvement in service delivery.
- (2) The evaluation process shall include a review of the existing program; survey results from participants, families, and referral sources; program modification that responded to changing needs of participants; and proposed program and administrative improvements. A written report which summarizes the evaluation findings, improvement goals, and implementation plan shall remain on file at the site.

APPENDIX C: INSTANCES OF NONCOMPLIANCE AT EACH CENTER

Center	Health and Safety		Administrative			Total
	Physical Environment	Emergency Preparedness	Records	Training	Background Checks	
1	3	2	6	3	0	14
2	1	1	5	2	1	10
3	4	0	4	3	0	11
4	2	3	4	3	0	12
5	1	1	4	0	0	6
6	2	2	10	2	0	16
7	2	0	4	0	1	7
8	1	1	7	0	1	10
9	0	0	3	1	0	4
10	1	3	9	1	0	14
11	2	0	1	0	0	3
12	2	3	7	3	2	17
13	4	1	4	0	0	9
14	1	3	11	3	1	19
15	3	3	5	1	0	12
16	1	2	4	0	1	8
17	2	1	4	0	0	7
18	2	0	3	3	1	9
19	3	1	3	0	0	7
20	3	1	6	3	0	13
Total	40	28	104	28	8	208

Note: We provided to the State agency under a separate cover the specific centers reviewed and their specific violations.



State of Wisconsin
Department of Health Services

Scott Walker, Governor
Linda Seemeyer, Secretary

July 18, 2018

Ms. Sheri L. Fulcher
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services, Region V
233 North Michigan, Suite 1360
Chicago, Illinois 60601

Report Number: A-05-17-00030

Dear Ms. Fulcher:

Thank you for providing us the opportunity to respond to your June 19, 2018, draft audit report, “Wisconsin Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Centers Reviewed.” We appreciate the time you spent meeting with our staff as a part of your audit. We understand that our responses will be published in the Office of Inspector General’s final audit report. Our comments regarding the recommendations contained in the report are listed below.

Wisconsin works hard to assure that adult day care center services are provided in a safe and homelike environment and that care provided to participants is based on their individual needs. We take the findings of this audit seriously and will work to ensure corrections are made and compliance is maintained.

We would note that we do not believe the number of violations found is representative of all of Wisconsin’s adult day care centers. As stated in the report, the audit chose centers with a history of health and safety related violations identified by the state on previous surveys. The 20 centers chosen is not a random sample of Wisconsin’s adult day care centers but focused on centers more likely to have violations, making the results of the audit less concerning than the title of the report suggests.

Recommendation: *Ensure that the 208 instances of noncompliance with health and safety and administrative requirements identified in this report are corrected.*

The Wisconsin Department of Health Services (DHS) partially concurs. A small number of instances of noncompliance identified during the audit involved a knife left on a counter and cleaning chemicals unlocked. Adult day care centers are intended to be homelike settings. The requirements do not state that knives cannot be accessible or that cleaning supplies must be locked. The requirements state that the premises and furnishings shall be free from litter, clean, safe, and in good repair. In many cases these examples would not be considered a safety hazard

because generally the clients in an adult day care center are alert and oriented with their judgement intact. Our determination on whether a knife or cleaning supplies pose a safety hazard is made based on the assessment of each participant's mental and physical abilities. Surveyors make this decision after interviewing participants and center staff, and reviewing participants' medical records, and cite a violation accordingly.

To verify compliance with the audit findings, state surveyors conduct unannounced surveys at each adult day care center to check for compliance with all certification requirements, including the examples cited during the audit. To date, we have conducted an unannounced survey at four of the 20 centers reviewed during the audit. Each center had corrected the noncompliance identified by the audit and no new deficiencies were cited. The remaining 16 centers will be surveyed by the end of this calendar year.

Recommendation: *Consider revising staffing standards and caseload thresholds for State surveyors.*

The DHS partially concurs. In Wisconsin, surveyors regularly inspect adult day care centers for compliance with the certification requirements through unannounced surveys. The timeframes for inspection are not established by state statute or administrative rule. While the goal is to conduct surveys at least every two years, workload priorities are managed to ensure that complaints are investigated first. The Division of Quality Assurance, the regulatory agency within DHS, continually evaluates workload priorities and makes recommendations for additional staff resources as needed.

Recommendation: *Update the certification checklist and promulgate rules required by Wisconsin Statutes.*

DHS concurs. The Department of Health Services has already begun the process to promulgate an administrative rule to certify medical assistance providers that wish to be reimbursed for adult day care center services provided to medical assistance recipients. The rule will be based on the current standards for adult day care providers and include personal care and supervision, medical care, meals, transportation, and activities designed to meet the physical, social, and leisure time needs of participants. The survey certification checklist will be updated and with the new rule and will be the basis for planned training for state surveyors and supervisors. We will also offer this training to adult day care providers using an interactive format at the Assisted Living Forum, and periodically throughout the state to ensure their knowledge and understanding of the certification requirements. The training will be videotaped and available to providers at no charge upon request.

Recommendation: *Identify and address reasons for low attendance by Center personnel at training programs.*

DHS concurs. The Division of Quality Assurance plans to reach out individually to adult day care providers and invite them to the next [Assisted Living Forum](#) on August 14, 2018. The Assisted Living Forum is facilitated by the Division of Quality Assurance, Bureau of Assisted

Regional Inspector General Sheri L. Fulcher

Page 3

July 18, 2018

Living, and meets bimonthly. In Wisconsin, the assisted living community includes community-based residential facilities, adult family homes, residential care apartment complexes, and adult day care centers. Stakeholders involved in assisted living gather in a collaborative spirit to discuss current issues in the regulated assisted living environment. The results of the audit will be the focus of the breakout session for adult day care providers at the next Forum.

Additionally, Division of Quality Assurance staff will be meeting with the [Wisconsin Adult Day Services Association](#) later this month to review the audit findings and ask for their help to encourage association members to attend provider training sessions. We will ask the board of directors for their ideas on how best to open a dialogue with their members to increase adult day care provider awareness and understanding of the requirements and achieve long-lasting compliance with the certification standards.

Recommendation: *Increase State agency guidance on certification requirements.*

We plan to use the findings from the audit as the basis of our presentation at the next Assisted Living Forum for adult day care providers. The presentation will be interactive and encourage providers to ask questions and identify areas in which additional guidance or technical assistance is needed. The training will focus on how to achieve and maintain compliance with the certification requirements, including a discussion of the noncompliance identified in the audit report. We will also use the training to identify additional topics of interest from providers and plan for future training sessions.

The results of the audit and corrective action taken will also be the topic of the next Resolve Forum held with adult day care providers. Resolve Forums are conducted annually with assisted living providers and representatives from the Divisions of Quality Assurance and Medicaid Services to discuss regulatory and funding issues. The Forum meets at regional locations around the state and online.

DHS will continue to evaluate the progress made to resolve all audit findings until full resolution has occurred. If you have further questions or need additional information, please contact Otis Woods, administrator, Division of Quality Assurance, at 608 267-7185.

Sincerely,

/Linda Seemeyer/

Linda Seemeyer
Secretary