



Legal Update: Assisted Living

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Top CBRF Citations 2025

- ISP Updated Annually/With Changes
- Resident Right to Receive Medications
- Environment Safe and Clean
- Medication Administration Documentation
- Health Monitoring
- Fire Drills
- Employee Screened for Communicable Disease
- Preadmission Assessment and Ongoing

Top RCAC Citations 2025

- Services
- Tenant Rights
- Risk Agreements
- Annual Review

Top AFH Citations 2025

- Review ISP
- Safe Physical Environment
- Homelike Environment
- Fire Evacuation Evaluations
- Medications
- Health Screen – Staff
- Medication Orders
- Fire Extinguisher
- Training – 8 Hour Annual

Assisted Living: Survey Guide

- DHS 2026 focus on gathering of records during survey – For electronic records review access rules/limits (“Surveyor mode” or “Guest mode”).
 - DHS looking for feedback
- “Shared expectations tool” – Communication, record gathering, efficiency.
- Tips – Train staff on survey process and what to do when a surveyor arrives at the facility when management is not at facility; entrance conference first gather documents when surveyor is observing; survey binder ready that includes POC, 2 yrs evac drills, activity calendar x2 mos menus x2 mos, current staff and resident rosters x2 mos.
- <https://www.dhs.wisconsin.gov/regulations/assisted-living/survey.htm>

Home and Community Based Services (HCBS)

- “Heightened Scrutiny” review = DHS looking at certain residential settings more closely. (attached to hospital, SNF or public institution grounds)
- Applies to home and community -based services (HCBS) settings.
- Goal = pay providers for Medicaid waiver -funded services.
- Community -based vs. institutional settings.
- Consider any restrictions on resident rights, overnight guests, facility policies.
- Soft rollout Jan 1 2026
- Surveying April 1, 2026



HCBS cont.

- **HCBS Settings Rule Modifications** – Certain parts of the HCBS Settings Rule can be modified in some situations.
- **Modifiable parts** – Privacy in their sleeping and living units; Units have entrance doors lockable by the individual; Choice of roommates in the setting; Freedom to furnish and decorate their units; Freedom and support to control their own schedules and activities; Access to food at any time; Visitors of their choosing at any time; access to funds
- **Before a HCBS Settings Rule Modification** – Must be supported by a specific assessed need and in the service plan; Facility must with the resident and their care manager/consultant at the MCO; Resident (or their legal decision maker when applicable) must consent.
- [Dhs.wisconsin.gov/ hcbs/index.htm](https://dhs.wisconsin.gov/hcbs/index.htm)

Wisconsin State Budget Passed with Funding to HCBS Program



- Senate Bill 45 as 2025 Wisconsin Act 15 passed.
- State budget for 2025 –2027.
- Funding for the minimum fee schedule for long -term care facilities implemented by DHS.

Pharmacy Update



- **Medications When Resident Leaves** – Have a plan, Know when they can be sent with the resident, Know disposal terms.
- **Medication Disposal Problem Areas** – Discharge, Death, Controlled Substances (sending with resident).
- **Define** – Over the counter (OTC) medications vs. prescription medications (for example, Naloxone).
- **Delegation** – Remember “Training is not delegation” and “When RN leaves, delegation is removed.” Must be 18yo for med admin
- **CBD** – have policies; res should tell Facility when using
- **Narcan** – not required to have; injection delegated but not nasal

Facility Licensing

- New DHS DQA Provider Portal.
- A new online system for licensure/certification, background checks, plan reviews, and other provider applications.
- DHS will schedule an initial licensing visit when the application is complete, which begins after DHS receives the complete licensing application packet and completes the initial licensing survey.
- **Takeaways** – New portal system for application; Review all submitted documentation and complete the application as soon as possible to avoid delays.



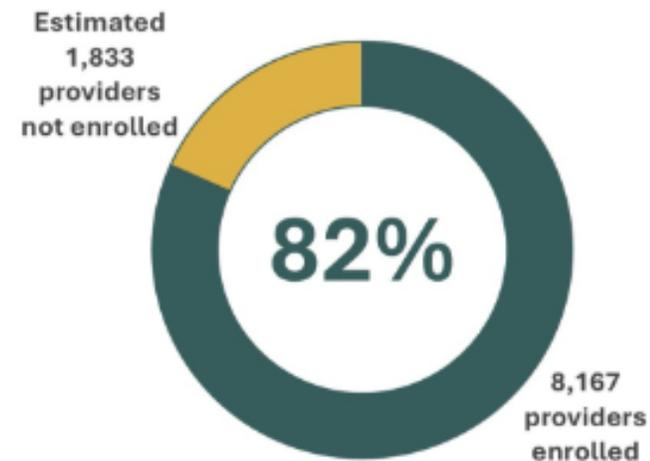
WI Medicaid Provider Application

- Apply soon as possible!
- Applies to providers of home and community -based services under an adult long -term care (LTC) waiver program.
- Application information and trainings available from ForwardHealth and DHS.
- No enrollment = no pay!

Enrollment progress tracker

Partners across Wisconsin are working together to help ensure all adult LTC waiver services providers start their enrollment right away. DHS is sharing enrollment progress so everyone knows how close to 100% enrollment the state is. Numbers are updated monthly.

- ✔ **Providers already enrolled:** 8,167
- ⋮ **Providers not yet enrolled:** 1,833 (estimated)
- 👤 **Total providers expected to enroll:** 10,000 (estimated)



Guidance for the Use of Electronic Recording, Video Monitoring, or Filming Equipment

<https://www.dhs.wisconsin.gov/regulations/assisted-living/technology-guidance.htm>

Personal use by resident, tenant, or legal representative

- A resident, tenant, or legal representative can decide to implement monitoring equipment, but not family members.
- Roommates or their legal representative must agree to the presence of the equipment and can place conditions.
- Must post a sign at the room entrance.
- Consider a reasonable person's expectation of privacy in bathrooms or shower rooms.

Use by the assisted living provider



- Permitted in very limited areas with signs.
- Providers should remove any cameras in prohibited locations.
- Equipment located in impermissible locations will be considered a violation of resident privacy rights, even if residents provide informed, written consent.
- Consider all devices that can record or monitor (“Alexa” devices).
- Ongoing review of the continued use of devices.

BOALTC Additional Guidance – Video Monitoring

- Privacy and Dignity must be thoroughly considered.
- Do not lose right to privacy with activated POAHC or Guardian.
- Goal of the use of the device?
- Consider personal history.
- Consider relationships.
- Consider alternatives.
- BOALTC: <https://longtermcare.wi.gov/Pages/Home.aspx>
- https://longtermcare.wi.gov/Documents/LIBRARY_site%20download%20files/Electronic%20Devices%20Discussion%20Tool%20-%20Final.pdf

Other States – Video Monitoring

- Arizona – Bill has cleared the House that focuses on allowing residents in assisted living facilities and nursing homes to install electronic monitoring devices (cameras) in their private rooms.
 - Would prohibit facilities from barring resident cameras in their rooms, removing a resident who wants to use a camera, or retaliating against a resident who wants to use a camera.
- Many states have laws which mandate facilities to accommodate resident requests to install monitoring devices or allow for cameras (for example, Minnesota, Missouri, Nevada, North Dakota, Oklahoma, Rhode Island, South Dakota, and more).

Case Law Updates

Former assisted living CEO ordered to pay \$154 million, serve 90 months for diverting millions from properties

- *November 2025*—A former assisted living community and nursing home executive was sentenced after pleading guilty to healthcare fraud and tax scheme that diverted millions in Medicare and Medicaid funds from facilities in Wisconsin and Michigan.



Wisconsin's Wage Payment and Collection Laws

- *Freeman v. SL Greenfield, LLC*
 - Freeman filed a complaint on behalf of herself and all other similarly situated senior care employees alleging that SL Greenfield engaged in systemic violations of Wisconsin's wage payment and collection laws at several independent living and assisted living facilities throughout Wisconsin.
 - Specifically, Freeman alleges that SL Greenfield unlawfully failed to pay certain senior care workers for meal periods lasting fewer than thirty minutes, resulting in the denial of compensation and overtime pay.

Employee Pregnancy Related

- An Illinois assisted living community is facing a pregnancy-based employment discrimination lawsuit for reportedly firing a certified nursing assistant after failing to accommodate her pregnancy-related lifting restrictions.
- According to the complaint, the employee was placed on involuntary leave after notifying the community's director of nursing that she was pregnant and could not lift more than 20 pounds, according to her physician.
- The EEOC said that it filed the lawsuit after its attempts at a pre-litigation settlement through its administrative conciliation process failed. The suit seeks back pay, reinstatement, and compensatory and punitive damages.

Employee Pregnancy Related cont.

- A Minneapolis facility has agreed to pay \$73,000 to settle a pregnancy discrimination and retaliation lawsuit filed by the US Equal Employment Opportunity Commission.
- According to the federal agency, the facility manager, after promoting a female employee, threatened to demote her and launched a campaign of “excessive and heightened scrutiny” of her work upon learning of her pregnancy.
- The employee filed a discrimination charge with the EEOC, leading the manager to retaliate by writing negative performance reviews, according to the agency. The facility eventually forced the woman to quit, saying it had to find a more reliable replacement, the EEOC said.

Employee Pregnancy Related cont.

- An assisted living operator has agreed to a \$20,000 settlement in a pregnancy discrimination lawsuit, along with providing training for staff members and changing its policies, after it reportedly violated federal law.
- According to the lawsuit, facility management declined to give one of its temporary staff members more shifts after learning she was pregnant, and the company fired her, which is a violation of the Pregnancy Discrimination Act and Title VII of the Civil Rights Act.
- The company also agreed to an injunction that prevents all employees from considering an employee's pregnancy status or ability to become pregnant when making employment decisions.

ADA / Mobility

- Senior living company to pay \$14.5 million to plaintiffs to settle long-running ADA lawsuit - an eight-year-long class action lawsuit over accessibility at some of its California assisted living communities.
- The lawsuit, *Stiner v. Brookdale Senior Living* originally was filed in 2017 and was thought to be the first Americans with Disabilities Act-related class action lawsuit against an assisted living community.
- Under the terms of the settlement agreement, the senior living company will bring the interior and exterior common areas at the three communities into compliance with the ADA within five years. The company also will renovate several residential units in the communities.
- The parties agreed the company will not modify the terms of its existing transportation policy, which allows residents to remain in a wheelchair or on a scooter or other power mobility aid during transit.

ADA / Mobility cont.

- New York assisted living provider settlement over alleged discrimination against wheelchair users.
 - The Fair Housing Justice Center announced the settlement February 2026. Lawsuit claims were based on its investigation into the properties denying admission to prospective residents over their use of wheelchairs.
 - The complaint alleged violations of the Fair Housing Act, the Rehabilitation Act, and the Affordable Care Act.
- The communities agreed to pay \$399,000 and adopt nondiscrimination policies regarding people who have mobility impairments, adopt reasonable accommodation policies, train staff members who are involved in admissions processes, and extensively revise their application processes.

ADA / Mobility cont.

- 'Landmark' settlement clarifies that assisted living operators cannot deny residency based on mobility limitations (*Fair Housing Justice Center et al. v. McDonald*).
- Assisted living providers in New York cannot refuse admission to prospective residents, or the continued residency of existing residents, because they have mobility limitations.

Resident Deaths

- Former assisted living executive retains license but must complete training following freezing death of resident after wandering outside (Iowa).
- Resident death case settlement bars former assisted living owners from operating in state for 5 years over what she described as repeated failures to properly maintain door alarms resulting in resident leaving facility and extreme heat exposure (Arizona).

Continued Lawsuits over Massachusetts Assisted Living Facility Fire

- July 14, 2025: A Massachusetts assisted living fire resulted in 10 deaths and dozens injured.
- The owner of the community that was the site of a deadly fire last summer, and the safety inspection company it hired, are pointing fingers at each other over failures to address the building's faulty sprinkler system.
- Facility owner contests 13 OSHA citations and \$187,000 in penalties related to deadly fire
- Review evacuation plans and facility fire systems: Fire was reported as contained to one wing, but the smoke spread throughout.

Data Breach

- Illinois – A senior living operator has reached a settlement in a class action lawsuit after a 2023 data breach exposed the personal information of more than 61,000 residents.
- Class members who experienced “extraordinary” losses, including fraud and identity theft that can be traced back to the breach, are eligible for up to \$5,000 each in cash compensation.

Children's Hospital of Wisconsin v. City of Wauwatosa

- Children's sued when the City determined that during construction of a new tower at its hospital, it was not being used for tax exempt purposes and was therefore liable for property taxes.
- The Court of Appeals affirmed finding that property under construction cannot qualify for property tax exemption.
- LeadingAge and WHCA submitted an amicus curiae brief to the Supreme Court of Wisconsin arguing construction of specialized facilities is exempt use of property under the applicable statutes, regulations, and prior case law.

Krupka v. Children's Hospital of Wisconsin

- Children's was held liable for an attack on Krupka in the ER by Jefferson, another ER patient/family, causing Krupka injuries.
- Children's argued that public policy considerations precluded liability — arguments rejected by the Circuit Court stating Children's had already conducted risk assessments and created behavioral contracts with Jefferson and to ban Jefferson was simply the next step and that there was a sensible stopping point to liability because banning such individuals wouldn't always be necessary and cameras could be installed as a deterrent.
- LeadingAge, WALA, and WHA, together, filed an amicus brief arguing if extended to assisted living and nursing homes, such facilities don't have security forces like Children's and visitation rights/privacy in those facilities are strongly protected by DHS. Cameras can't be across the board placed and there would be no sensible stopping point for liability.

DHS Updates:

- New Director for the Bureau of Assisted Living Northwestern Regional Office
 - Kelly Haugen
 - kellyj.haugen@dhs.wisconsin.gov , 715-836-4965
- New Deputy Administrator
 - Eugene Janke

Items to watch:

- Legislation introduced 5/8/2025 (Assembly Bill 255).
- The bill imposes several requirements related to referring individuals to an assisted living facility in exchange for a fee collected from the assisted living facility.
- If passed, will impose disclosure requirements on referring agencies.
- Applies to all “referral agencies” including “A Place for Mom.”

Takeaway = Review current referral practices and monitor bill progress for new limits or requirements.

Additional Legislative

- Legislation Re-Introduced to Allow “Compassionate Care” Visits in LTC and Health Care Facilities.
- State Sen. Andre Jacque (R-DePere) and State Rep. Chuck Wichgers (R-Muskego) are reintroducing legislation that would ensure patients and residents in Wisconsin health care facilities can receive in-person visitors, even during public health emergencies, with appropriate infection protocols in place.
- The legislation, which was prompted by health care facility and long-term care facility visitation restrictions during the COVID-19 pandemic, reflects the final version of 2023 Senate Bill 257 as amended. That legislation passed the State Senate on a voice vote in January 2024, but it did not clear the Assembly before the end of the legislative session.

BAL Survey Collaborative

- Survey Process
- Statewide in -person forums
- Workgroup continuing
- Shared Expectations tool
- Records expectations (survey process)



Updates from Ken Brotheridge, BAL Director

- Next virtual BAL Assisted Living Forum is June 16, 2026, from 10am – 12pm.
 - Go Here for more information including how to logon to the Forum via Zoom: <https://www.dhs.wisconsin.gov/regulations/assisted-living/asstdlvg-forum.htm>
- Join the DQA Listserv to receive DQA email updates here:
 - <https://www.dhs.wisconsin.gov/regulations/listserv-signup.htm>

Questions??



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