

Open for Public Comment: Proposed Heightened Scrutiny Information for Residential Service Locations ODP Announcement 20-002

AUDIENCE:

All interested parties

PURPOSE:

The purpose of this communication is to release for public comment the residential service locations¹ that have been identified as requiring an onsite heightened scrutiny review from the Office of Developmental Programs (ODP) as well as the proposed tool that will be used in conducting the review. Public comment on this information will be accepted until 11:59 pm on Monday February 17, 2020.

DISCUSSION:

To be compliant with the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Settings (HCBS) rule, ODP must identify and complete onsite reviews of all service locations that are presumed to have the qualities of an institution. The purpose of these onsite reviews will be to determine whether each service location can overcome the institutional presumption by either showing proof that the requirements contained in the CMS HCBS rule are currently met, or by ensuring the requirements will be met within a timeframe specified by ODP (but no later than March of 2022). If ODP determines that the service location does not currently meet the requirements but has

¹ Residential service locations are homes where Residential Habilitation or Life Sharing is provided through the Consolidated, Community Living, Person/Family Directed Support and/or Adult Autism Waivers.

ODP will be conducting this same process for Community Participation Support/Day Habilitation service locations. These service locations and the corresponding Heightened Scrutiny Onsite Tools will be released for public comment soon.

a plan to meet them within the timeframe specified by ODP, the service location must be submitted to CMS for a heightened scrutiny review. CMS will then determine whether the service location has the qualities of a home and community-based setting and does not have institutional qualities.

As part of this process, ODP initially assessed each HCBS setting to determine compliance through a self-assessment that was completed by providers. Residential service locations (homes) that selected any of the following in the self-assessment, as well as any homes identified by ODP as meeting any of the following definitions are included in Attachment 1. These homes will require an onsite heightened scrutiny review by ODP due to having the potential of isolating individuals living in the home from the broader community:

- **Farmstead** – These settings are often in rural areas on large parcels of land, with little ability to access the broader community outside the farm. Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals. Individuals typically live in homes only with other people with disabilities and/or staff. Their neighbors are other individuals with disabilities or staff who work with those individuals. Daily activities are typically designed to take place onsite so that an individual generally does not leave the farm to access HCBS or participate in community activities. For example, these settings will often provide a place onsite to receive clinical (medical and/or behavioral health) services, day services, places to shop and attend church services, as well as social activities where individuals on the farm engage with others on the farm, all of whom are receiving Medicaid HCBS. While sometimes people from the broader community may come onsite, people from the farm do not go out into the broader community as part of their daily life. Thus, the setting does not facilitate individuals integrating into the greater community and has characteristics that isolate individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.
- **Gated Community** – These settings typically consist primarily of people with disabilities and the staff that work with them. Often, these locations will provide residential, behavioral health, day services, social and recreational activities, and long-term services and supports all within the gated community. Individuals receiving HCBS in this type of setting often do not leave the grounds of the gated community in order to access activities or services in the broader community. Thus, the setting typically does not afford individuals the opportunity to fully engage in community life and choose activities, services and providers that will optimize integration into the broader community.

- **Campus** – These settings have multiple co-located and operationally related (i.e. operated and controlled by the same provider) service locations/homes/facilities that congregate a large number of people with disabilities together and provide for significant shared programming and staff, such that people’s ability to interact with the broader community is limited. This could include group homes on the grounds of a private Intermediate Care Facility (ICF) or numerous group homes co-located on a single site or in close proximity (multiple units on the same street or a court, for example).

ODP is now welcoming public comment on the identified residential homes listed in Attachment 1 as well as identification of any other residential homes that meet the definitions provided above. ODP is also releasing for public comment the Heightened Scrutiny Onsite Tools (Attachments 2 and 3) that will be used during the onsite visit to determine compliance with the HCBS Rule as well as with ODP’s policies and regulations. Comments will be accepted until 11:59PM on Monday February 17, 2020.

The following next steps will be taken to proceed with the heightened scrutiny process:

1. ODP will finalize the service locations that will require an onsite visit based on public comments received.
2. ODP will conduct the onsite visit to the service locations that have been identified after public comment has ended.
 - a. ODP will be contacting the service locations to set up a date and time that staff and the individuals would be available to participate in the heightened scrutiny review process.
 - b. During the onsite visit, ODP will be using the Heightened Scrutiny Onsite Tools to assist with making a final determination regarding if the service locations can overcome the presumption of having institutional qualities. The onsite tools were created to assist ODP staff with conducting interviews with provider staff (attachment 2) that work for the individuals at the residential service location. ODP staff will also ask the individuals who are receiving the residential service if they are willing to participate in an interview (attachment 3) about the residential services they are being provided. Through the interview process, ODP staff will be collecting evidence to validate the provider staff’s responses to the questions on the onsite tool which align with federal and state regulation.

3. After all onsite visits and interviews have been completed, ODP will be holding four internal review meetings, one per each region, that will consist of the onsite interviewers, ODP regional staff, and ODP policy staff.
 - a. During the internal review meetings, each question on the Heightened Scrutiny Onsite Tool will be reviewed along with the applicable evidence that was collected per onsite visit. Through this process, ODP will determine if the response to each question and the evidence that was collected during the onsite visit meets compliance with the HCBS Settings Rule.
4. After the review process has been completed, a report will be sent to the provider with a determination per question.
 - a. For each question that was deemed not compliant, remediation will need to occur through a Corrective Action Plan (CAP) that must be completed by the provider within 30 calendar days. After the provider has completed the CAP, the provider must send it back to ODP. ODP will then review the CAP to determine if the service location can overcome the presumption of having institutional qualities.
5. A public notice will be published in the summer of 2020 which will list general information about service locations reviewed through the heightened scrutiny process along with the determination made for each service location into one of the following categories:
 - a. Eligible for waiver reimbursement and will be submitted to CMS heightened scrutiny process; or
 - b. Ineligible for waiver reimbursement as of March 17, 2022. Service locations that cannot remediate the necessary changes to be compliant with the HCBS Settings Rule, and therefore are determined institutional, may not receive Medicaid funding for the home and community-based service after March 17, 2022 per federal mandate and will need to transition individuals served at that location to another service location that is compliant with the requirements.
6. ODP will submit information to CMS by October 31, 2020 regarding how ODP has determined that each service location is or will become eligible for waiver reimbursement by overcoming the presumption that it has the qualities of an institution. Information submitted will focus on the qualities of the service location including individual rights, how the service location is integrated in and supports

access of individuals receiving services into the broader community via the provider organization's policies and practices, as well as how their service location supports individuals consistent with their person-centered service plans.

7. To ensure that all service locations, including the ones that will not be receiving an onsite visit as part of the heightened scrutiny process, continue to meet the HCBS Settings Rule requirements, questions relating to the Settings Rule will be added to the licensing inspection instruments and the Quality Assessment and Improvement (QA&I) process. Further, a sample of the service locations that indicated on the self-assessment areas of noncompliance in relation to restraints, barriers, individual rights, and choice will have an onsite visit in the spring of 2020. Service locations that will not be part of the sample will be assessed through the QA&I process. The onsite visit may be scheduled at an earlier date than the routine QA&I scheduled visit.

More information published by CMS on the HCBS rule, including heightened scrutiny requirements, can be found at

<https://www.medicaid.gov/medicaid/hcbs/guidance/settings/index.html>.

The Residential and Non-Residential Home and Community-Based Services (HCBS) Provider Settings Self-Assessment Reports can be accessed via [ODP Announcement 19-149](#).

For questions pertaining to this announcement, please email

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