

## Open for Public Comment: Proposed Heightened Scrutiny Information for Non-Residential Service Locations **REISSUE** - ODP Announcement 20-106

### **AUDIENCE:**

All interested parties

### **PURPOSE:**

The purpose of this communication is to release for public comment the non-residential service locations<sup>1</sup> (Attachment 1) that have been identified as requiring an onsite Heightened Scrutiny review from the Office of Developmental Programs (ODP). ODP is also requesting stakeholders to identify any other settings that meet the criteria provided in the discussion section below. ODP is 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 Settings Rule as well as with ODP's policies and regulations. These documents will be out for public comment for 30 days; comments will be accepted until **11:59PM on Monday, 11/30/2020**. Please send electronic comments to [RA-PWODPHCBSSETTINGS@pa.gov](mailto:RA-PWODPHCBSSETTINGS@pa.gov). If electronic comments are being submitted, it is recommended to provide comments directly on the documents and to track the changes in the documents where edits are being suggested. If written comments are being submitted, please address and send the written comments to Katie-Marie Wilson, Department of Human Services, Office of Developmental Programs, 625 Forster Street, Room 510, Harrisburg, PA 17120.

### **DISCUSSION:**

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<sup>1</sup> Non-Residential service locations are facilities that provide Community Participation Support or Day Habilitation services through the Consolidated, Community Living, Person/Family Directed Support, and/or Adult Autism Waivers.

The primary objective of Community Participation Support and Day Habilitation services is to promote involvement in community life which creates opportunities for new experiences and interests, the potential to develop friendships, and the ability to make a contribution to the community. This aligns with the Home and Community-Based Settings (HCBS) rule established by the Centers for Medicare and Medicaid Services (CMS) which establishes requirements for the qualities of settings where individuals receive services through ODP's waivers. The intent of CMS's Heightened Scrutiny process is to ensure that individuals receive services in integrated settings that support full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving waiver services. The HCBS rule, as enumerated in 42 CFR 441.301, states that the following are not considered home and community-based settings:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution will be presumed to be a setting that has the qualities of an institution.

To receive waiver funding, ODP is required to complete an onsite visit for any of these settings to obtain information that demonstrates that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings. As part of the HCBS Provider Settings Self-Assessment completed in 2018, providers reported whether they render ODP waiver services in any non-residential service location that is co-located or adjacent to any of the following:

- Skilled Nursing Facility;
- Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID);
- Institute for Mental Disease; or

- Hospital.

In addition, ODP utilized public information to determine whether additional non-residential service locations shared the same address as skilled nursing facilities, ICFs/ID, and hospitals. Any service locations identified through the HCBS Provider Settings Self-Assessment and ODP's analysis are included in Attachment 1 as having been identified as requiring an onsite review.

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 HCBS rule and state regulations in 55 Pa. Code Chapter 6100 are currently met or by ensuring the requirements will be met within a timeframe specified by ODP (but no later than March 17th, 2022). If ODP determines that the service location does not currently meet the requirements but has 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 or that of an institution.

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. Prior to scheduling the onsite visit, ODP will be requesting documentation from the identified service locations. Documentation will be requested from a selected timeframe before and during the COVID-19 pandemic.
3. ODP will conduct the onsite visit to the service locations that have been identified after public comment has ended. Due to the COVID-19 pandemic, onsite visits will be conducted in accordance with current guidance and protocols used for ODP onsite licensing inspections. The interviewers will follow the provider's COVID-19 symptom screening process as well as guidance from the Center for Disease Control (CDC) and Pennsylvania Department of Health (DOH) guidance for personal protective equipment (PPE) and mask use.
  - 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 in conducting interviews with provider staff (attachment 2) who work with the individuals at the Community Participation Support/Day Habilitation service location. ODP will also ask the individuals who are receiving Community Participation Support/Day Habilitation services if they are willing to participate in an interview (attachment 3) about the services they are receiving from the provider. Through the interview process, ODP 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.
4. 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.
5. 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.
6. A public notice will be published 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.
7. ODP will submit information to CMS 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.
8. 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, the Regulatory Compliance Guide (formally known as the licensing inspection instruments) and the Quality Assessment and Improvement (QA&I) process will review information that relates to the HCBS Settings Rule. Further, in the near future reviews will occur for a sample of service locations identified by ODP as having low rates of community involvement and/or that indicated on the self-assessment areas of noncompliance in relation to restraints, barriers, individual rights, and choice.
  - a. As stated in [ODP Announcement 19-090](#), ODP will review Transition Plans for non-residential service locations to assess compliance with the requirements contained in the communication, including whether sufficient progress has been made.

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

<https://www.medicare.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:

[RA-PWODPHCBSSETTINGS@pa.gov](mailto:RA-PWODPHCBSSETTINGS@pa.gov).