



OFFICE OF LONG-TERM LIVING BULLETIN

ISSUE DATE 12/29/2021	EFFECTIVE DATE 12/29/2021	NUMBER 59-21-03
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SUBJECT:
Home and Community-Based Settings Heightened Scrutiny Process

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PURPOSE:

This bulletin provides additional guidance relating to the Federal requirements for the settings in which home and community-based services (HCBS) are rendered and the heightened scrutiny process.

SCOPE:

This bulletin applies to HCBS providers billing for the provision of HCBS in the Community HealthChoices (CHC) and OBRA waivers.

BACKGROUND:

As of January 16, 2014, the Centers for Medicare & Medicaid Services (CMS) established requirements in 42 CFR 441.301 which detail acceptable qualities and characteristics of settings for Medicaid HCBS provided under 1915(c) waivers. On December 28, 2016, the Office of Long-Term Living (OLTL) issued Bulletin #59-16-14, Home and Community-Based Settings Requirements, which provided guidance to HCBS providers on the requirements they must satisfy to receive payment for HCBS. Among other things, that bulletin included a list of specifically-excluded settings. The settings listed in 42 CFR 441.301(c)(5) specifically exclude the following settings as acceptable HCBS settings:

- (i) *A nursing facility;*
- (ii) *An institution for mental diseases;*
- (iii) *An intermediate care facility for individuals with intellectual disabilities;*
- (iv) *A hospital; or*
- (v) *Any other locations that have qualities of an institutional setting as determined by the Secretary of the federal Department of Health and Human Services.*

In addition, 42 CFR 441.301(c)(5) further clarifies that 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, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution.

The heightened scrutiny process is applicable to settings presumed to have the qualities of an institution and able to be approved by the Federal government for the provision of HCBS.

DISCUSSION:

OLTL is providing additional guidance on the heightened scrutiny process. OLTL will be identifying and assessing provider sites that are presumed to have the qualities of an institution because they have one of the following characteristics as indicated in 42 CFR 441.301(c)(5):

- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution.
- Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Additionally, OLTL will review congregate residential settings for compliance to ensure those sites do not isolate participants and are free from coercion/ensure participant choice is being honored. These are settings where two or more unrelated participants live and receive HCBS, and the setting is owned and/or operated by an entity that also has a financial interest in an HCBS provider agency and/or settings that are providing services to these individuals.

OLTL has developed a final rule panel comprised of representatives from each of the CHC Managed Care Organizations, licensing entities, community stakeholders and participant advocacy groups to ensure ongoing compliance with the HCBS Final Rule settings. The panel is also responsible for validating a site's claim that they do not have qualities of an institutional setting or isolating conditions. The panel will also review all complaints received regarding potential noncompliant sites.

PROCEDURES:

Sites identified through OLTL's Final Rule Panel will receive a letter from OLTL that would be appropriate for heightened scrutiny giving them the opportunity to do one of the following:

- Schedule an onsite review- The onsite review will entail examination of provider policies and procedures, an onsite assessment of the setting by OLTL staff, review of provider documentation, and review of Person-Centered Service Plans (PCSP). OLTL will conduct confidential personal interviews with a representative sample of site participants, family members and staff as part of this process. A list of topics that providers must have addressed in policies, procedures, handbooks, etc. are outlined in Attachments A, B and C.
- Implement a Corrective Action Plan (CAP) that demonstrates compliance.
- Discontinue providing HCBS at the site in question. OLTL will work with the provider to transition affected participants to another provider.

A public notice package will be developed with the assistance of the sites for public comment. The public notice package will identify the site without releasing confidential participant information, the number of individuals served at the site and information to demonstrate the

reasons the site does not have the qualities of an institution and is home and community-based.

Finally, those sites will also work with OLTL to compile a heightened scrutiny package for submission to CMS for a heightened scrutiny review and approval/denial. OLTL will issue final notice to the affected provider upon receipt of CMS's decision.

Anyone may submit information on settings they feel are not compliant with the federal requirements set forth in 42 CFR 441.301, or the requirements outlined in this bulletin, to RA-PWHCBSFinalRule@pa.gov. OLTL's Final Rule Panel will ensure due diligence when following-up on each complaint.

Attachment A: HCBS Final Rule Heightened Scrutiny Checklist Adult Day/Structured Day Settings

Attachment B: HCBS Final Rule Heightened Scrutiny Checklist Employment Skills Development Settings

Attachment C: HCBS Final Rule Heightened Scrutiny Checklist Congregate/Residential Settings

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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