



COLORADO

Department of Health Care
Policy & Financing

1570 Grant Street
Denver, CO 80203

Home- and Community-Based Services (HCBS) Settings Final Rule Heightened Scrutiny Determinations Fact Sheet

The Colorado Department of Health Care Policy & Financing (HCPF) has made a second batch of determinations relating to settings subject to heightened scrutiny under the federal Home- and Community-Based Services (HCBS) Settings Final Rule. People receiving services at these settings may be participants in the following waivers:

- Community Mental Health Supports (CMHS) for Persons with Major Mental Illness
- Elderly, Blind and Disabled (EBD)
- Persons with Brain Injury (BI)
- Persons with Developmental Disabilities (DD)
- Complementary and Integrative Health Waiver (CIH)
- Supported Living Services (SLS)

HCPF will accept public comments from April 25, 2023 through May 25, 2023.

HCPF intends to submit the determinations to the Centers for Medicare & Medicaid Services (CMS) after it has reviewed and addressed the comments received during the public comment period. CMS will make final determinations regarding these settings.

An explanation of the heightened scrutiny materials available for public comment can be found below.

Background

In 2014, CMS published a [rule](#) requiring HCBS to be provided in settings that meet certain criteria. The criteria ensure that HCBS participants have access to the benefits of community living and live and receive services in integrated, non-institutional settings.

Under this rule, called the HCBS Settings Final Rule, any setting that (i) “is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,” or (ii) is located “in a building on the grounds of, or immediately adjacent to, a public institution,” or (iii) otherwise “has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS,” is “presumed to be a setting that has the qualities of an institution unless [CMS] determines through heightened scrutiny, based on information presented by the



State or other parties, 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.”

In June 2021, HCPF determined that 52 settings had a factor triggering the presumption that they were institutional and, despite that factor, were in fact home- or community-based (or had a state-accepted plan for getting there). HCPF determined that a setting overcame the institutional presumption by verifying that it met (or had an accepted plan for meeting) each requirement of the HCBS Settings Final Rule. HCPF published a list of these settings, along with additional materials. After taking public comment, HCPF submitted these settings to CMS in August 2021.

HCPF has determined that an additional seven settings have a factor triggering the presumption that they are institutional and, despite that factor, are in fact home- or community-based. HCPF determined that a setting overcomes the institutional presumption by verifying that it meets (or has an accepted plan for meeting) each requirement of the HCBS Settings Final Rule. HCPF is publishing a list of this second batch of settings, along with additional materials.

Materials available for public comment

(1) HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process

[This document](#), published in June 2021, describes the process by which HCPF assessed settings for compliance with the HCBS Settings Final Rule and for the application of heightened scrutiny.

(2) List of settings

This document lists the seven additional settings that have a factor triggering the presumption that they are institutional and, despite that factor, are in fact home- or community-based (or have a state-accepted plan for getting there). To summarize this list:

- There is one setting subject to heightened scrutiny based on its location (i) in a building where inpatient institutional treatment is provided or (ii) in a building located on the grounds of, or immediately adjacent to, a public institution.
- There are six settings subject to heightened scrutiny based on (iii) their potential effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS.

HCPF is withholding the address of some settings in the list to protect the personal health information (PHI) of individuals receiving services at these settings.

(3) Summary sheets

There is one summary sheet per setting subject to heightened scrutiny. The summary sheet describes the setting, the reason it is subject to heightened scrutiny, and the evidence as of April 25, 2023 supporting HCPF's determination that the setting complies with each component of the HCBS Settings Final Rule or, if the setting is not fully compliant yet, the evidence that is still required and the state's plan for ensuring that the evidence is submitted and verified.

(4) Supporting evidence

HCPF's heightened scrutiny determinations were informed by each setting's Provider Transition Plan (PTP) and the documents and other materials attached to the PTPs. These supporting materials are available on request. (For an explanation of the PTP, please refer to the HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process.)

HCPF also consulted Individual/Family/Advocate (IFA) Survey responses where such responses were identifiable to a particular provider or setting. To protect respondent anonymity, these responses are not available to the public; they are, however, addressed in the relevant summary sheets.

Public Comment Opportunity

HCPF posted the [HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process](#) and will post the list of settings and the seven new summary sheets on its [website](#) for public review and comment.

HCPF has on file folders of supporting evidence (PTPs and documents attached to PTPs). Members of the public wishing to review any folder should reach out to HCPF using one of the contact methods listed below and provide their name, their email address, and the setting(s) of interest (identified by the HS-series number(s) in the list of settings and, if known, the provider name and setting address). If you need hard copies of these materials, please let us know.

HCPF will host a public town hall meeting to allow interested stakeholders to comment on HCPF's determinations relating to this second batch of settings subject to heightened scrutiny. Interested stakeholders may include individuals receiving services at these settings; their family members, friends, and advocates; advocacy organizations; providers that own or operate the settings; and others. All are welcome. It is not necessary to have a direct personal connection to a provider or setting to comment on it. If a commenter has such a connection, it is not necessary to disclose it. All public comments received by HCPF through this process are subject to the Colorado Open Records Act and may be disclosed. Citizens are encouraged to bear that in mind when giving personal information in a public comment.

Meeting: Second batch of settings subject to heightened scrutiny (settings HS-053 through HS-059)

- **May 15, 2023 from 10:00 a.m. to 11:00 a.m.**
- [Join via Google Meet](#)
- Or call in at 513.468.1239, PIN 974 027 424#

Reasonable accommodations will be provided upon request for persons with disabilities. Auxiliary aids and services for individuals with disabilities and language services for individuals whose first language is not English may be provided upon request. Please notify John Barry at 303-866-3173 or John.R.Barry@state.co.us or the 504/ADA Coordinator at hcpf504ada@state.co.us least one week prior to the meeting to make arrangements.

HCPF will make available the [HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process](#), the list of settings, the seven summary sheets, and the supporting evidence for a **30-day public comment period, running from April 25, 2023 through May 25, 2023.**

HCPF commits to incorporating comments, concerns, and suggestions when and wherever possible. This includes comments provided orally or via chat boxes during the town hall meeting, as well as any written email or hard copy submissions. HCPF will summarize comments and its responses on the relevant summary sheet, which after any necessary revisions will be submitted to CMS. HCPF will post updated summary sheets on its [website](#) after the public comment period ends.

To request a paper or electronic copy of the materials mentioned in this Fact Sheet, and/or to provide public comment, please reach out to us via:

- Phone: 303.866.5666
- Email: hcpf_STP.PublicComment@state.co.us
- U.S. Mail: Department of Health Care Policy & Financing, 1570 Grant Street, Denver, CO 80203, ATTN: Statewide Transition Plan Team
- Fax: 303.866.2786, ATTN: Statewide Transition Plan Team
- Meeting: by speaking or using the chat box during the public town hall meeting, as identified above