



INFORMATIONAL MEMO

TITLE:	HCBS SETTINGS FINAL RULE—HEIGHTENED SCRUTINY DETERMINATIONS
SUPERSEDES NUMBER:	N/A
EFFECTIVE DATE:	JUNE 10, 2021
DIVISION AND OFFICE:	STRATEGIC OUTCOMES DIVISION, OFFICE OF COMMUNITY LIVING
PROGRAM AREA:	HOME AND COMMUNITY-BASED SERVICES
KEY WORDS:	HOME AND COMMUNITY-BASED SERVICES, HCBS, SETTINGS FINAL RULE, HEIGHTENED SCRUTINY, PUBLIC NOTICE
INFORMATIONAL MEMO NUMBER: HCPF IM 21-037	
ISSUE DATE: JUNE 10, 2021	
APPROVED BY: HAYLEY GLEASON	

HCPF Memo Series can be accessed online: <https://www.colorado.gov/hcpf/memo-series>

Purpose and Audience:

The Colorado Department of Health Care Policy & Financing (the Department) invites the public to comment on heightened scrutiny determinations under the federal Home and Community-Based Services (HCBS) Settings Final Rule. People receiving services at these settings may be participants in the following HCBS 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); Persons with Spinal Cord Injury (SCI); and Supported Living Services (SLS).

Information:

Background

In 2014, the Centers for Medicare & Medicaid Services (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."

The Department has determined that 52 settings 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). The Department 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. The Department is publishing a list of these settings.

Materials available for public comment

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

This document describes the process by which the Department has been assessing settings for compliance with the HCBS Settings Final Rule and for the application of heightened scrutiny.

(2) List of settings

This document lists the 52 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 are 16 settings subject to heightened scrutiny based on their 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. These settings have been assigned Heightened Scrutiny numbers HS-001 through HS-015 and HS-017.
- There are 36 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. These settings have been assigned Heightened Scrutiny numbers HS-016 and HS-018 through HS-052.

The Department is withholding the address of some settings in the list to protect the personal health information (PHI) of individuals receiving services at these settings. These settings are all subject to heightened scrutiny based on their potential to isolate and are mostly group homes, the nature of which is presumably not known to the public.

(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 May 25, 2021 supporting the Department'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

The Department'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.)

The Department 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

The Department will post the HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process, the list of settings, and the 52 summary sheets on its website at <https://hcpf.colorado.gov/home-and-community-based-services-settings-final-rule> for public review and comment.

The Department 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 the Department 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.

The Department will host public town hall meetings to allow interested stakeholders to comment on the Department's determinations relating to 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 the Department 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 1: Settings subject to heightened scrutiny based on their location (settings HS-001 through HS-015 and HS-017)

- **June 28, 2021 from 1:00 p.m. to 2:00 p.m.**
- Join online at https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2I3MmMzZDUtMWVhNy00NmRjLThjNjEtMWNhNTQyZGY4MzUx%40thread.v2/0?context=%7b%22Tid%22%3a%22d9b110c3-4c25-4379-b97a-e248938cc17b%22%2c%22Oid%22%3a%22d19553c7-5a8f-46a4-8ef0-c3139de6ac9c%22%7d
- Or call in toll-free at 866-619-5581, conference ID 921264045#

Meeting 2: Settings subject to heightened scrutiny based on their potential to isolate, first half (settings HS-018 through HS-035)

- **June 29, 2021 from noon to 1:00 p.m.**
- Join online at https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjJhOTAzMTctYjJjNy00YmYxLWE2MWEtMjAyZjE1MWFhMzA2%40thread.v2/0?context=%7b%22Tid%22%3a%22d9b110c3-4c25-4379-b97a-e248938cc17b%22%2c%22Oid%22%3a%22d19553c7-5a8f-46a4-8ef0-c3139de6ac9c%22%7d
- Or call in toll-free at 866-619-5581, conference ID 749414827#

Meeting 3: Settings subject to heightened scrutiny based on their potential to isolate, second half (settings HS-016 and HS-036 through HS-052)

- **June 30, 2021 from 1:00 p.m. to 2:00 p.m.**
- Join online at https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTk4Y2Y2NjItZDM4OS00MDM5LTk4NmQtNjIwMmY0YWU2YjEx%40thread.v2/0?context=%7b%22Tid%22%3a%22d9b110c3-4c25-4379-b97a-e248938cc17b%22%2c%22Oid%22%3a%22d19553c7-5a8f-46a4-8ef0-c3139de6ac9c%22%7d

- Or call in toll-free at 866-619-5581, conference ID 997310448#

Priority during each meeting will be given to comments on the specific settings identified above for that meeting. If time allows, comments will be taken on settings scheduled to be discussed at other meetings, to accommodate people unable to attend those meetings.

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 at least one week prior to the meeting to make arrangements.

* * *

The public comment period is open for 30 days, from **June 10, 2021** through **July 10, 2021**.

Comments and requests for electronic or hard copy materials may be submitted to the Department through the following channels:

- Phone: 303.866.6314
- 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: 303.866.4411, ATTN: Statewide Transition Plan Team
- Meeting: by speaking or using the chat box during the public town hall meetings, as identified above

The Department intends to submit the determinations to CMS after it has reviewed and addressed the comments received during the public comment period. CMS will make final determinations regarding these settings.

Attachment(s):

None

Department Contact:

hcpf_STP.PublicComment@state.co.us