



INFORMATIONAL MEMO

TITLE:	HCBS SETTINGS FINAL RULE—HEIGHTENED SCRUTINY DETERMINATIONS—BATCH 2
SUPERSEDES NUMBER:	N/A
EFFECTIVE DATE:	APRIL 25, 2023
DIVISION AND OFFICE:	STRATEGIC OUTCOMES DIVISION, OFFICE OF COMMUNITY LIVING
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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 (HCPF) invites the public to comment on a second batch of 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); Complementary and Integrative Health (CIH); 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.”

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, since it is part of the protected health information (PHI) of individuals receiving services at these settings.

(3) Summary sheets

There is one summary sheet per setting subject to heightened scrutiny, available on [HCPF's website](#). Each 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 [the HCPF 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's 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.

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

- **Monday, May 15, 2023, 10 to 11 a.m. MT**
- [Join via Google Meet](#)
- Join via Phone: 1-513-468-1239, 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.

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The public comment period is open for 30 days, from **Tuesday, April 25, 2023**, through **Thursday, May 25, 2023**.

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

- 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

HCPF 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