

DEPARTMENT OF DEVELOPMENTAL SERVICES

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February 23, 2023

TO: HOME AND COMMUNITY-BASED SERVICES STAKEHOLDERS

SUBJECT: PUBLIC COMMENT PERIOD FOR HEIGHTENED SCRUTINY
SETTINGS

The California Department of Developmental Services (DDS) invites the public to comment on the heightened scrutiny determinations under the federal Home and Community-Based Services (HCBS) Settings Final Rule. As part of the federal HCBS settings regulations, the Centers for Medicare and Medicaid Services (CMS) requires states to submit settings for heightened scrutiny review. The heightened scrutiny process allows California to demonstrate that settings can overcome the institutional presumption by submitting evidentiary packages for CMS review. Individuals receiving services in these settings may be participants in the following Home and Community-Based Services programs: Section 1915(c) Home and Community-Based Services Waiver for Californians with Developmental Disabilities, Section 1915(i) Home and Community-Based Services State Plan Amendment, and Section 1915(c) California Self-Determination Program Waiver for Individuals with Developmental Disabilities.

Background

In 2014, CMS published a rule requiring HCBS be provided in settings that meet certain criteria under the new rule. The criteria ensures that individuals receiving Medicaid funding for services have access to the benefits of community living, live in, and receive services in integrated, non-institutional settings. Under the HCBS Settings Final Rule, CMS presumes the following types of settings have institutional or isolating qualities:

- (i) Is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- (ii) Is located in a building on the grounds of, or immediately adjacent to, a public institution; and/or
- (iii) Has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

A setting that meets one of the above criteria is presumed to have the qualities of an institution unless CMS determines through the additional heightened scrutiny review that the setting does not have the qualities of an institution and instead has the qualities of HCBS. CMS requires states to submit evidentiary packages for settings that meet the above criteria to CMS justifying the settings are home and community-based.

“Building Partnerships, Supporting Choices”

DDS determined on a case-by-case basis whether a particular setting requires heightened scrutiny review by CMS. This determination was made through a combination of provider assessment, interviews with individuals served, information collected during an on-site review, interviews with direct support staff, and a review of provider policies and procedures. DDS has determined that six settings have institutional or isolating factors, but evidence indicates that the setting has the qualities of being home or community-based. Therefore, DDS determined that a setting overcame this institutional presumption by verifying that it met (or had an accepted plan for meeting) each requirement of the HCBS Settings Final Rule. After a period of public comment, evidence will be provided to CMS for heightened scrutiny review. CMS will consider the evidence and render a final decision.

Materials available for public comment

(1) List of Heightened Scrutiny Settings

This document lists the six settings that have triggered the presumption of having institutional or isolating factors but are home or community-based:

Site #: 01

Site #: 02

Site #: 03

Site #: 04

Site #: 05

Site #: 06

(2) 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 supporting DDS' determination that the setting complies with each component of the HCBS Settings Final Rule.

(3) Supporting Evidence

DDS heightened scrutiny determinations were informed by each settings site-specific assessment and submission of supporting documents for desk review, along with a site-visit completed by DDS. These documents will not be posted for public comment but are available upon request.

Public Comment Opportunity

DDS has posted the six Summary Sheets on the [HCBS Final Rule Assessment Information](#) website for public review and comment. Public comments can be submitted via email at the email address provided below. The public comment period is open for 30 calendar days, from February 23, 2023, through March 24, 2023. Should you need to make a request for electronic or hard copy materials, your request may be submitted to DDS through the following channels:

- Phone: 1-833-396-4337
- Email: hcbregs@dds.ca.gov
- U.S. Mail: 1215 O Street, MS 7-40, Sacramento, CA 95814