

Heightened Scrutiny Onsite Tools for Non-Residential Service Locations Finalized and Now Available Online

ODP Announcement 21-081

AUDIENCE:

All interested parties

PURPOSE:

The purpose of this communication is to announce that the Heightened Scrutiny Onsite Tools for Non-Residential Service Locations has been finalized and posted for stakeholders to view. The Office of Developmental Programs (ODP) is also using this communication to address some of the comments and concerns that were received through public comment.

DISCUSSION:

The Home and Community-Based Services (HCBS) Settings Rule, established by the Centers for Medicare and Medicaid Services (CMS), has requirements relating to the physical locations where individuals receive waiver services (referred to as the service location) and the quality of those services. In alignment with the HCBS Settings Rule, Community Participation Support (CPS) and Day Habilitation services (referred to as Non-Residential services) provide opportunities and support for community inclusion and building interest in and developing skills and potential for competitive integrated employment. CPS and Day Habilitation services should result in active, valued participation in a broad range of integrated activities that build on each individual's

interests, preferences, gifts, and strengths while reflecting the individual's desired outcomes relating to employment, community involvement, and membership.

While the COVID-19 pandemic resulted in significant delays in performing the onsite visits, ODP will now be continuing with the Heightened Scrutiny process for CPS and Day Habilitation service locations to meet the CMS requirement that all waiver providers must be in full compliance with the HCBS Settings Rule no later than March 17, 2023.

The Heightened Scrutiny Onsite Tools for Non-Residential Service Locations were made available for public comment from October 30, 2020 through November 30, 2020. There were numerous stakeholders who responded during the public comment period. ODP thanks all stakeholders for their valuable feedback which was incorporated into the tools that are now posted online via the link at the bottom of this communication.

Below, ODP addresses major themes and concerns submitted through public comment:

1. There were multiple stakeholders who were concerned that ODP is solely focusing on location as part of Heightened Scrutiny.

ODP Response: The Heightened Scrutiny process is required by CMS for service locations that are presumed to have the qualities of an institution. Waiver services that are provided in buildings that are considered to be any of the following are presumed by CMS to have the qualities of an institution:

- A nursing facility
- An institution for mental disease
- An intermediate care facility for individuals with an intellectual disability (ICF/ID)
- A hospital; or

- A publicly or privately operated facility providing inpatient institutional treatment.

Further, CMS considers waiver services that are provided in a building on the grounds of or immediately adjacent to a public institution to be presumed to have the qualities of an institution.

During the onsite Heightened Scrutiny reviews of these service locations, compliance with regulatory and waiver requirements will be evaluated. This includes ensuring providers assist individuals to exercise their rights, provide opportunities and assistance necessary for individuals to access the community, and facilitate personal relationships.

Service locations that are not presumed to have the qualities of an institution will be reviewed for regulatory and waiver requirements through licensing inspections and the Quality Assessment and Improvement process.

2. Stakeholders were concerned about potential bias that may occur if ODP were to interview staff and the individuals identified at the service locations.

ODP Response: ODP will be coordinating with Temple University's Institute on Disabilities (referred to as Temple), who will be performing all onsite visits and interviews for the settings identified in Attachment 1, since Temple has experience interviewing individuals with I/DD through Independent Monitoring for Quality (IM4Q). Temple will also be assisting ODP with desk reviews of a sample of individuals who receive services at the setting. ODP staff, who have been involved with the creation of the tools and the overall Heightened Scrutiny process, will train Temple's reviewers on how to use the tools.

3. ODP received comments regarding interviewing individuals who may not communicate verbally.

ODP Response: ODP will coordinate with the CPS or Day Habilitation provider and Temple to ensure each individual selected to be interviewed will have the opportunity to communicate responses in a language and means of communication they can understand and be understood in.

4. Comments identified that in the [Non-Residential HCBS Provider Settings Self-Assessment Report](#), providers self-identified 34 settings as located either next to or adjacent to a nursing facility, ICF/ID, or a Hospital, but not all of those settings were listed to receive an onsite visit when Attachment 1 was released for public comment.

ODP Response: The 34 settings were reviewed by ODP, including ODP regional staff who are familiar with the programs, to verify if the locations identified in the self-assessment were accurate. As a result of this review and public comment, several of the service locations were determined to not meet the criteria of requiring a review under the Heightened Scrutiny process. Other service locations that were originally identified have permanently closed or stopped providing CPS or Day Habilitation services through ODP's waivers. The remaining settings identified in Attachment 1 will be reviewed as part of the Heightened Scrutiny process.

Next Steps:

Temple will begin scheduling the onsite visits of the identified CPS/Day Habilitation service locations. During the onsite visit, ODP has asked Temple to attempt to interview up to 3 individuals that were randomly selected for a desk review during the onsite

visit. Temple will choose which individuals from the desk review sample will be asked if they would like to participate in the interview. Temple's selection will be based on who is in attendance the day of the onsite visit. Individuals are not required to participate in the interview if they do not want to. The Supports Coordinator for each individual in the desk review sample will also be informed of this process and are being asked to explain the process to the selected individuals.

Service locations that are fully compliant, including service locations where the Corrective Action Plan indicates that compliance will be achieved by March 1, 2023 will be released for public comment and then submitted to CMS for Heightened Scrutiny. Service locations that cannot or choose not to achieve compliance by March 1, 2023 will be notified that they cannot be reimbursed through the waivers for services rendered effective March 17, 2023. Individuals that will be impacted by this will be notified no later than December 1, 2022 so that transition planning can occur.

To view the finalized HCBS Settings Non-Residential Tools, please visit:

<https://www.dhs.pa.gov/contact/DHS-Offices/Pages/ODP-HCBS%20Final%20Rule.aspx>

Any questions about this communication or the HCBS Heightened Scrutiny process, please email the following mailbox: RA-PWODPHCBSSETTINGS@pa.gov.