

To: FSSA Home- and Community-Based Services stakeholders
From: FSSA Office of Medicaid Policy and Planning
Re: Public Comment period for Division of Aging, residential setting that requires heightened scrutiny
Date: October 24, 2022

Home- and Community-Based Services Settings that are Presumed to be Institutional

On March 17, 2014, the Centers for Medicare and Medicaid published final regulations in the Federal Register, implementing new requirements for Medicaid's home and community-based services programs furnished either through a 1915(c) waiver or through a 1915(i) state plan option. The federal rule establishes the qualities that demonstrate the setting is a home and community-based setting and does not possess the characteristics of an institution.

The federal rule provides a transition period for the State to evaluate the settings where individuals live and receive Medicaid waiver services to ensure the settings meet the required qualities of HCBS. States may work with settings that do not fully meet the final HCBS rule definition to develop a plan to bring the setting into compliance.

CMS Heightened Scrutiny Review

Certain types of settings are identified by the federal regulation as [presumed to be institutional](#). These settings include any setting that is located within a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment; a building on the grounds of or adjacent to a public institution or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community; and any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

For settings that do not possess the required HCBS characteristics, states should submit evidence to CMS requesting a heightened scrutiny review. The request must include sufficient evidence to demonstrate the setting as having the effect of isolating individuals receiving Medicaid HCBS from the broader community and evidence a public comment period has been held to obtain public input on the identified settings.

Indiana has published these settings for public review in the **Heightened Scrutiny Evidence Packet** section of the [Statewide Transition Plan](#) page to allow all HCBS members, providers and stakeholders an opportunity to provide input on these settings. Hard copies are available upon request. The public comment period will run November 2, 2022 through December 1, 2022

Comments and input regarding the settings may be submitted by email to da.hcbssettingsrule-fssa@state.in.gov and written comments should be sent to:

State of Indiana FSSA/OMPP
Attn: HCBS Final Rule – Kortney Bond, Director of Government Affairs
State Plan and Waivers
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