



Eric Holcomb, Governor
State of Indiana

Indiana Family and Social Services Administration
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INDIANAPOLIS, IN 46207-7083

March 1, 2021

FSSA seeks public comment on HCBS settings that require heightened scrutiny

The Indiana Family and Social Services Administration is seeking public comment on Home-and Community-Based Services settings, in accordance with Code of Federal Regulations 42 CFR Sections 441.301(c)(4) and 441.710, respectively. The public comment period is on behalf of the Division of Aging, Division of Mental Health and Addiction and the Division of Disability and Rehabilitative Services.

Indiana will publish the settings for public review in the heightened scrutiny evidence packets section of the Statewide Transition Plan webpage, [available here](#). The FSSA's Office of Medicaid Policy and Planning would like HCBS members, providers, and stakeholders to provide input on these settings, which are isolative in nature for members and so require heightened scrutiny.

The public comment period is from **March 1, 2021, through March 31, 2021**.

Requests for paper copies of the HCBS settings for comment, and feedback on the settings, are welcome via email or written correspondence.

Email: HCBSrulecomments@fssa.in.gov

U.S. mail:

State of Indiana FSSA/OMPP

Attn: HCBS Final Rule – BreAnn Teague, Director of Government Affairs

State Plan and Waivers

402 W. Washington St., Rm. W374 MS - 07

Indianapolis, IN 46204-2739.

Background information

HCBS settings presumed to be institutional

On March 17, 2014, the Centers for Medicare & Medicaid Services published final regulations in the Federal Register implementing new requirements for Medicaid's HCBS programs, furnished either through a 1915(c) waiver or 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 have 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. The



state may work with settings that do not fully meet the final HCBS rule definition to develop a plan to bring settings into compliance.

CMS heightened scrutiny review

Certain types of settings are identified by the federal regulation as presumed to be institutional. This includes the following settings:

- Setting located within a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment
- 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
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

For settings that do not have 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 not having the effect of isolating individuals receiving Medicaid HCBS from the broader community, and evidence that a public comment period was held to obtain public input on the identified setting.