

HCBS Settings Final Rule Heightened Scrutiny Settings

Public Forum

Hawai'i Department of Human Services, Med-QUEST Division
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Agenda

1. Moving Forward on Community Integration
2. Federal Requirements Under the Settings Rule
3. Heightened Scrutiny Settings
4. Public Comment
5. Resources

Moving Forward on Community Integration

- People with disabilities have the right to:
 - Make choices about where and how to live, including who supports them and what their schedule of activities look like
 - Be supported to make informed decisions
 - Live with privacy, dignity and respect
 - Seek a job in the regular workforce, if applicable
 - Interact with the broader community
 - Develop and keep relationships with people without disabilities
 - Be supported in a person-centered way
 - Pursue a great quality of life

HCBS Final Rule: Where are we going next?

- Re-set our commitment to build a strong foundation
- Strengthen how we monitor and work with partners, work towards consistency in ongoing compliance
- Continue to ensure person-centered practices across service systems
- “*Never let a good crisis go to waste*” (Winston Churchill, 1945) Using COVID-19 as an opportunity to emerge stronger and with more integrated opportunities

HCBS Settings Final Rule: What is it, again?



The rule identifies what is considered home and community-based - and what is not



The goal of the rule is to make sure people receiving HCBS can live, work, and spend time in the greater community in the ways they want, including with people who are not involved in services



Each person's experience, and their opportunity for community integration and participation is very important

HCBS Setting Final Rule Applies To

- Residential

- Adult Residential and Expanded Adult Residential Care Homes
- Assisted Living Facilities
- Community Care Foster Homes
- Intellectual/Developmental Disabilities Adult Foster Homes
- Intellectual/Developmental Disabilities Domiciliary Homes
- Special Treatment Facilities/Therapeutic Living Programs
- * HCBS settings rule does not apply to own home or family member home

HCBS Settings Final Rule Applies To

- Non- Residential
 - Adult Day Care
 - Adult Day Health
 - Intellectuals/Developmental Disabilities Adult Day Health

What is not a HCBS Setting?

- Hospital
- Nursing Facility
- Institution for Mental Disease (IMD)
- Intermediate care facility for individuals with intellectual disabilities (ICF/ID)

What has happened so far?

- The Centers for Medicare & Medicaid Services (CMS) spent seven years getting public input on the rule, and then finalized it in 2014
- States worked with partners and stakeholders to look at what needed to change in their state, and develop a plan to make those changes - each “Statewide Transition Plan” sent to CMS for approval
- In Hawai`i, the plan is called “My Choice, My Way” and it was approved by CMS on October 19, 2019
- Nationally, all settings, both residential and non-residential have to be in compliance by March 14, 2023. However, the State submitted a plan of correction to extend the compliance date to July 31, 2024.

Federal Categories of Compliance

- **Category 1**: The setting fully (100%) aligns with the home and community-based services (HCBS) final rule.
- **Category 2**: The setting is considered a HCBS setting (not in Category 4), but still does not fully comply with the HCBS final rule and will require modifications.
- **Category 3**: The setting cannot meet the HCBS requirements and require removal from the program and/or the relocation of individuals.
- **Category 4**: The setting has qualities of an institution or have the effect of isolation, but the State will submit explanations to CMS for heightened scrutiny.

Heightened Scrutiny Settings

Category 4 - Heightened Scrutiny Settings

CMS Prong 1: The setting is in a privately or publicly owned facility that provides inpatient treatment.

CMS Prong 2: The setting is on the grounds of or adjacent to a public institution.

CMS Prong 3: The setting could have the effect of isolating individuals from the community.

- Multiple settings co-located and operationally related that congregate a large number of people with disabilities and provide significant shared programming staff, such that the individuals ability to interact with the broader community is limited.

Heightened Scrutiny Settings

- The State required onsite validations for all Category 4 providers to determine if they are or can come into compliance with the HCBS final rule.
- All providers in Category 4 confirmed after the site validation will undergo the federal heightened scrutiny process.

Heightened Scrutiny Settings

Non-Residential

- Hale Makua, Adult Day Health (1115 Waiver QUEST Integration)
- Palolo Chinese Home, Adult Day Health (1115 Waiver QUEST Integration)
- Opportunities and Resources Inc., Adult Day Health (1915c IDD Waiver)

Residential

- Opportunities and Resources Inc., Domiciliary Home (1915c IDD Waiver)

Federal Heightened Scrutiny Process

- The State used the heightened scrutiny process to disprove the presumption that a setting has institutional qualities.
- The State required providers to submit evidence to explain and document that the setting does not have institutional qualities and that the setting is HCBS.
- CMS will review the evidence submitted by the State and makes a determination as to whether the evidence is sufficient to overcome the presumption.

What is HCBS Evidence?

The provider submitted evidence to demonstrate compliance. Evidence documentation includes, but is not limited to:

- Provider policies and procedures
- Member rights and responsibilities
- Member residency agreement
- Example of member choice of activities and schedules
- Example of member transportation log
- Example of member visitor log

What is HCBS Evidence?

- Member individualized schedules
- Member Health and Functional Assessment
- Member Health Action Plan
- Member Rights Modification Plan
- Photos and/or architectural renderings of physical space
- Training curriculum and materials

Heightened Scrutiny Settings Summary

- My Choice My Way Website
- See “News” tab

Heightened Scrutiny Settings for Public Comment

The final rule provides the State the opportunity to evaluate settings through a heightened scrutiny process if the setting:

(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,” or

(iii) otherwise “has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS,”

The setting is then “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, 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.”

The State identified 4 settings that required heightened scrutiny. The State determined that a setting overcame the institutional presumption by verifying that the setting met (or had an accepted plan of correction) for meeting each requirement of the HCBS Setting Final Rule.

The HCBS Heightened Scrutiny Settings Summary (below) includes the list of settings, summary of findings, and additional supporting evidence may be available upon request.

[Hale Makua Adult Day Health \(1115 Waiver QUEST Integration\)](#)

[Palolo Chinese Home Senior Day Care \(1115 Waiver QUEST Integration\)](#)

[Opportunities and Resources, Inc. Adult Day Health \(1915c I/DD Waiver\)](#)

[Opportunities and Resources, Inc. Developmental Disabilities Domiciliary Homes \(1915c I/DD Waiver\)](#)

Public Comments

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Submit comments by June 20, 2024

Technical Assistance, Questions, or Comments?

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