

Heightened Scrutiny Process

Through the self-assessment surveys the State was able to generate a preliminary report that identified settings that may limit access to the community or have qualities of an institution. The preliminary report placed these settings in a category 4 of compliance. The questions that triggered further evaluation for providers that answered no or did not answer the question about access to stores, businesses, or transportation and the use of restraints and/or restrictive interventions. In addition to the surveys, the My Choice My Way workgroup had identified settings that may have qualities of an institution or have the effect of isolation by service location or operational structure such as, the setting:

- Is privately or publically owned facility that provides inpatient treatment.
- Is on the grounds of or adjacent to a public institution.
- Could have the effect of isolating individuals from the community.
- Has multiple 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.
- May isolate individuals, such as
 - Use of interventions or restrictions that are used in institutional settings (e.g. seclusions)
 - Multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social recreational activities provided only to individuals with disabilities.
 - Individuals in the setting have limited interaction with the broader community.

After the analysis of the self-assessment surveys, the State developed a validation tool that helped determine if a setting is a true category 4. About 50 reviewers were trained on

- The different categories of compliance
- Development of teams of two (2) reviewers either self-advocates, families, or state staff
- Reviewers roles and responsibilities
- Review of the validation tool
- How to get the information needed through observation and interviews
- Interview techniques a "Let's Talk Story" approach

All reviewers had access to "Big Tent" website as communication platform during the validation period to post questions, ask for/share advice. The website served as a discussion board and tracking tool which reviewers can view any validations that have been scheduled or already completed.

At the end of the validations, the reviewers confirmed the compliance of each setting. DHS/MQD then analyzed the validation tools submitted by the reviewers. A secondary

validation was conducted by DHS/MQD of the settings that were identified as category 4 setting. There were a total of 3 settings, 1 residential and 2 non-residential, that needed a secondary validation. DHS/MQD reviewed each validation tools and findings before coordinating another onsite visit. The providers were briefed on the initial validation findings and educated on the settings that may isolate or limit community integration by the Centers for Medicare and Medicaid Services (CMS) guidance <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf> At the end of the visits done by DHS/MQD, all 3 settings were confirmed a category 4. The My Choice My Way work group reviewed and approved the findings. The providers were then notified and placed on the provider compliance list as a category 4. The list was posted on the DHS/MQD website for public comment. The list included provider information, number of individuals served, category of compliance and survey score. No comments were received on validation findings or provider compliance list.

Starting mid-2016, the State plans to work collaboratively with the category 4 settings that been presumed institutional. The State is using the heightened scrutiny process to disprove the presumption that a setting has institutional qualities. The State plans to use the CMS heightened scrutiny guidance <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/home-and-community-based-setting-requirements.pdf> to initiate the process. Evidence will be collected to explain and document that the setting does not have qualities of an institution and is home and community based. Provider transition plan actions may include the setting to demonstrate

- How the program is will integrate individuals into the broader community with individual participation in activities that do not include those organized by the provider and only include paid staff
- How the program is is not interrelated with the residential homes, including demonstrating how the program is a separate entity from the residential homes both physically and operationally
- How the program is not interrelated with the nursing facility, including demonstrating how the day health is a separate entity from the nursing facility/institution both physically and operationally.

The State will be reviewing the evidence and seek public comment before the submission to CMS. Changes will be made based on public comments, any questions will be answered and posted on the DHS/MQD website. CMS will then formally review the evidence submitted by the State and will make a determination as to whether the evidence is sufficient to overcome the presumption. During this process, the State will continue to provide ongoing technical assistance and training in areas identified for remediation.