

## INSTITUTIONS AND HEIGHTENED SCRUTINY

### HOME AND COMMUNITY BASED SERVICES (HCBS) FREQUENTLY ASKED QUESTIONS

| Question  | Answer  |
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| <b>1. What settings are considered to be institutions?</b>    | Nursing facilities, institutions for mental diseases, intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and hospitals are considered to be institutions. Additionally, any setting that has qualities of an institutional setting will be presumed to be institutional.   |
| <b>2. What are the qualities of an institutional setting?</b> | <p>The Centers for Medicare and Medicaid Services (CMS) has said that if a setting meets any of the following characteristics it will be presumed to be a setting that has the qualities of an institution:</p> <ul style="list-style-type: none"> <li>• Any setting that is located in a building that is also a publicly or privately operated facility and provides inpatient treatment.</li> <li>• Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution.</li> <li>• Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. This would include settings that may not look isolating, but because of rules and procedures followed at the setting, have the effect of isolating residents.</li> </ul>   |
| <b>3. How do we know if a setting isolates?</b>               | <p>If people in the setting have limited, if any, interaction with the broader community as a result of business practices in place at that setting then the setting may be isolating. This includes having rules or procedures that limit access to the community to only certain times or only as part of a group, or restricts choice of community activities and places to visit. Another example is if it is designed to provide people with multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities on site AND it discourages people from going elsewhere for those services that setting may be isolating.</p> <p>In guidance, CMS has identified potential examples of settings that isolate, including farmsteads, gated or secured communities for people with disabilities,</p> |

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|  | residential schools, and multiple settings clustered together and operationally related.   |
| <p><b>4. What happens if a setting has a characteristic of an institution?</b></p> | <p>If a setting has any of the characteristics of an institution the state must take a closer look to determine if it is institutional or not. If the state believes that despite having the characteristics of an institution the setting is truly home and community based, the state may move that setting through a process called heightened scrutiny.</p>  |
| <p><b>5. What is heightened scrutiny?</b></p>                                      | <p>A setting that has characteristics of an institution may submit evidence via the state to CMS to prove it is actually home and community based. This process is referred to as the heightened scrutiny process.</p> <p>The setting is presumed to be institutional if it has any of the three characteristics described above. The state must first examine any setting with any of the three characteristics. If the state believes a setting with institutional characteristics is in fact able to meet the requirements of a home and community based setting, the state would gather and submit information to CMS to prove that is the case. CMS will then use a heightened scrutiny process to determine if the setting is in fact compliant with the home and community based setting requirements.</p> <p>A setting presumed to have institutional qualities will not be approved as a home and community-based setting through heightened scrutiny unless CMS determines that the state has submitted sufficient information to explain and document that the setting does not have qualities of an institution and does have the qualities of a home and community-based setting. Idaho Medicaid will work with the provider to develop this package of information for CMS.</p> <p>A word on isolation: any setting regardless of location, that has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving HCBS is presumed to be institutional, and therefore requires information from the state to overcome that presumption and describe how the HCBS settings requirements are met.</p> |

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| <p><b>6. During the heightened scrutiny process, what types of supporting documents may providers make available to show that the setting is home and community based, not institution-like?</b></p> | <p>CMS is expected to provide more clarity around the heightened scrutiny process in the future. In the interim providers should consider collecting the following:</p> <ul style="list-style-type: none"> <li>• Documents showing that they do not isolate. This may include policy and procedures, event calendars, transportation logs, visitor logs, testimonials from participants and/or guardians, and family newsletters. In residential settings this may also include the residency agreement.</li> <li>• Documentation that demonstrates how the setting supports full access to the greater community. This includes providing opportunities to seek employment, engaging in community life, and receiving services in the community. These components of community integration are all important.</li> <li>• A completed provider self-assessment (developed and provided by Medicaid) along with evidence to support each response.</li> <li>• Descriptions of community interactions and how close a setting is to community activities and public transportation (or how transportation is accessed for individuals in the setting).</li> <li>• Procedures the setting uses that show support for activities in the community and that show individuals have access to activities of their choosing that meet their individual preferences and interests as determined through the person-centered planning process.</li> <li>• Evidence showing the general community considers the setting as part of the community and does not associate the setting only with providing services to people with disabilities. This may include letters from neighbors, from family members, or from nearby community entities.</li> <li>• Description of the proximity to and scope of interactions with community settings used by individuals not receiving Medicaid funded home and community-based services.</li> <li>• Evidence that participants are involved in the community outside of the setting.</li> </ul> |

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|  | This is not an all-inclusive list. Providers involved in heightened scrutiny may work with Medicaid to identify additional information they believe will help show that the setting meets the regulation.   |
| <b>7. Who determines whether a setting is community based or institutional?</b>                | The state Medicaid agency will make the initial determination about whether a setting is community based or institutional, including whether to submit a presumed institutional setting to CMS for heightened scrutiny. If the state decides to submit a setting through the heightened scrutiny process, the final decision about whether that setting passes heightened scrutiny (and thus may continue to receive HCBS funding) is made by CMS.  |
| <b>8. What happens if a setting is determined to be institutional and not community based?</b> | Settings that are not community based will not be eligible to receive HCBS funding. People who use such settings for HCBS will be entitled to select a new HCBS compliant setting and transfer to that setting.   |
| <b>9. Where can I find additional information about heightened scrutiny?</b>                   | CMS has developed FAQs on heightened scrutiny. To access those FAQs please click here <a href="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">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</a> . |