

HCBS Settings Rule: Heightened Scrutiny

What is heightened scrutiny?

The process to determine whether settings that are presumed institutional overcome that presumption and provide Home and Community Based Services (HCBS).

Utah's Heightened Scrutiny (HS) Process Overview:

The State identifies and notifies settings that may go through the HS process

- Although a setting has been identified as going through the HS process, it does not mean that setting will automatically be submitted to Centers for Medicare and Medicaid Services (CMS) for review.
- Through the remediation process, providers have the opportunity to submit information to rebut the identified indicators that were used to determine the setting was isolating and institutional in nature.

If providers are able to demonstrate they have overcome their presumption and are compliant with the HCBS Settings Rule by June 30, 2021, the State will not be required to submit their information on that setting to CMS for HS review.

After June 30, 2021*, providers continue to have the opportunity to provide a remediation plan and additional information to the State to demonstrate their identified settings either overcome or will overcome the presumption of being institutional in nature and are deemed compliant by the State prior to March 17, 2023. This information will be included in the HS Evidence package to demonstrate compliance.

- If a provider, at any time in the process, notifies the State they are choosing not to come into compliance with the HCBS Settings Rule, the HS process will stop. The State will start the process to inform and transition individuals to compliant settings and discontinue that setting as a provider of Medicaid Home and Community Based Services.

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The State determines if the setting has or can come into compliance with the HCBS Settings Rule federal requirements

- The State will compile HS Evidence Packages.
- If the State determines a setting cannot or chooses not to come into compliance, the State will start the process to inform and transition individuals to compliant settings and discontinue that setting as a provider of Waiver Home and Community Based Services prior to March 17, 2023.
- Settings that have demonstrated they have or can come into compliance with the HCBS Settings Rule will be submitted for public comment.
- Once public input is compiled and added to the HS Evidence Package, the State will make a final determination if the setting has or can come into compliance with the HCBS Settings Rule.

A list of settings that have demonstrated they have or can come into compliance will be submitted to CMS for HS review

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- CMS will pick a random sample of providers from the list and request the evidence package for those settings for review. The determination CMS makes will be based on the State's ability to demonstrate the process they are using to review settings with isolating factors to ensure that the settings overcome those factors and do in fact provide home and community based services.

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What criteria were used to identify Providers who need to go through the HS process?

The HCBS Settings Stakeholder Work Group assisted in identifying when a factor becomes isolating or institutional in nature and how to overcome that presumption to be compliant with the HCBS Settings Rule.

The State used the information identified to create the [HCBS Settings Rule Identified Isolating & Institutional Factors Document](#). The State used this document to determine if the setting had institutional characteristics.

Through the State's review of a setting, if the setting was found to have one of the following characteristics, the setting was identified to go through the HS process:

1. The setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
2. The setting is located in a building on the grounds of, or immediately adjacent to, a public institution; or
3. The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals who do not receive Medicaid HCBS.

For providers who are not identified initially as needing to go through the HS process, what else may trigger a setting to go through this process?

Settings may be identified as requiring to be reviewed for possible inclusion in the Heightened Scrutiny process through one or more of the following:

- Public input from consumers, family, friends, neighbors, consumer advocates, or the general public.
- On-site visits by Medicaid Case Coordinators.
- On-site reviews by Licensors or Reviewers indicating that the provider's operations have the effect of isolating individuals from the broader community.
- Other factors, including, but not limited to feedback from the Long-Term Care Ombudsman, critical incident reports, or other advocates.

You can access the CMS HS guidance here:

[CMS Home and Community Based Settings Regulation Guidance – Heightened Scrutiny](#)

Submit any questions to HCBSSettings@utah.gov

