

**LEGAL NOTICE  
STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**REQUEST FOR PUBLIC COMMENT**

In January 2014, the Centers for Medicare & Medicaid Services (CMS) issued a final rule to ensure that Medicaid's home and community-based services (HCBS) programs provide beneficiaries full access to the benefits of integrated community living and person-centered care.

Known as the HCBS Settings Rule, the rule was established to support the delivery of high quality HCBS in state Medicaid programs and to provide certain protections to participants. In describing the rule's intent, CMS emphasized individuals having full access to the benefits of community living and the opportunity to receive services in the most integrated setting.

The HCBS Settings Rule applies to settings where individuals live and/or receive Medicaid-reimbursable HCBS. In New Jersey, this includes but is not limited to: Assisted Living Residence, Comprehensive Personal Care Home, Adult Family Care, Community Residences for individuals with developmental disabilities, Community Care Residences, Community Residential Services and Medicaid funded prevocational and day services.

According to [federal guidance](#), a setting may be presumed compliant if:

- The Medicaid beneficiary is living in a privately owned or rented home or apartment with family members, friends or roommates; and
- The home is integrated in a typical community neighborhood where people not receiving HCBS reside; and
- The home is not owned by an unrelated caregiver who is paid for providing HCBS to the person.

Some settings where Medicaid services are provided have the qualities of an institution. HCBS settings that meet the CMS threshold of offering integrated community living should not resemble institutions. In the HCBS Settings Rule, CMS defines locations that are presumed to have the qualities of an institution as:

- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and
- Any other settings that have the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

In order to be compliant with the HCBS Settings Rule, the NJ Department of Human Services (DHS) completed reviews of Medicaid HCBS settings to determine which locations may have the qualities of an institution.

Settings that the State identified through evaluation and review as non-compliant with the HCBS Settings Rule (in that they were presumed to have the qualities of an institution) are required to cooperate with a “Heightened Scrutiny” assessment. Heightened Scrutiny by the State and CMS will determine whether the setting can overcome the institutional presumption by either showing proof that the requirements contained in the HCBS Settings Rule are being met, or by ensuring that the requirements will be met by March 17, 2023. The tool used for the Heightened Scrutiny assessment may be viewed online at [https://www.state.nj.us/humanservices/dmahs/info/hcbs\\_resources.html](https://www.state.nj.us/humanservices/dmahs/info/hcbs_resources.html).

By this Notice, DHS is requesting public comment on the identified settings to gather feedback on whether these settings are truly institutional in nature, or if the individuals who reside in these settings are truly integrated in the community despite the presumed institutional characteristics as identified in the above mentioned State review. The list of the identified settings can be viewed online at [https://www.state.nj.us/humanservices/dmahs/info/hcbs\\_resources.html](https://www.state.nj.us/humanservices/dmahs/info/hcbs_resources.html).

Additionally, DHS is requesting information on any other residential or non-residential settings not on this list that the public believes have the qualities of an institution. Information regarding additional sites may be submitted to [DMAHS.HCBS-Settings-Rule@dhs.nj.gov](mailto:DMAHS.HCBS-Settings-Rule@dhs.nj.gov). DHS will review the information provided as described above and submit information to CMS as necessary.

An initial list of providers who require an on-site visit for Heightened Scrutiny has been developed and those providers have been contacted by the State. Following this public comment period, the list will be finalized to include any additional settings which require an on-site Heightened Scrutiny assessment. Any additional providers identified will be contacted after the public comment period has ended.

The Heightened Scrutiny assessment tool will be used by DHS to conduct the onsite visit. A copy of the tool will be shared with the provider prior to the visit. DHS staff will conduct interviews with the provider staff that support the individuals at the service location. Individuals and guardians (as applicable) will be informed of the upcoming review and offered the opportunity to participate, with consent of their guardian.

After the DHS review process has been completed, a report will be sent to the provider with a determination.

If a setting is determined to be non-compliant with the CMS HCBS Settings Rule, the provider must submit a Corrective Action Plan. Corrective Action Plans should be submitted to DHS at [DMAHS.HCBS-Settings-Rule@dhs.nj.gov](mailto:DMAHS.HCBS-Settings-Rule@dhs.nj.gov) within 30 days of being notified of non-compliance. Corrective Action Plans will be reviewed by DHS to determine whether or not the site overcomes the qualities of an institution.

The State will issue a listing which divides settings into three categories described below. The State will provide this list to CMS. An evidentiary package for all settings identified as requiring Heightened Scrutiny (items 2 and 3 below) will be submitted to CMS. The evidentiary package will describe how the State has determined each service location is or will become eligible for Medicaid participation by overcoming the presumption that it has the qualities of an institution.

The State will issue a second public notice listing information about the service locations reviewed through Heightened Scrutiny along with the determination made for each location into one of the following categories:

- 1) Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny Process;
- 2) Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023 and will be submitted to CMS Heightened Scrutiny Process;
- 3) Non-Compliant with the CMS HCBS Final Rule and is ineligible for Medicaid participation as of March 17, 2023. Service locations that cannot effect the necessary changes to be compliant with the HCBS Settings Rule may not receive Medicaid funding for the home and community-based service after March 17, 2023.

Service locations that are determined to be non-compliant with the HCBS Settings Final Rule and cannot come into compliance by March 17, 2023 will be ineligible for Medicaid participation. Service locations in this circumstance will be notified by the State of this so that discussion on next steps can occur. This can include assistance from DHS in offering alternate services.

Public comment related to the sites that require Heightened Scrutiny, the tools that will be used, and the process by which DHS is conducting this review may be submitted to [DMAHS.HCBS-Settings-Rule@dhs.nj.gov](mailto:DMAHS.HCBS-Settings-Rule@dhs.nj.gov) by **August 19, 2022.**

More information on the CMS HCBS Settings Final Rule can be found here: <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>

Information and frequently asked questions related to Heightened Scrutiny can be found here: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>