

## INSTRUCTIONS

### COMPLETION OF HOME AND COMMUNITY-BASED SERVICES (HCBS) SETTING RULE HEIGHTENED SCRUTINY SETTING REVIEW EVIDENTIARY DOCUMENT CHECKLIST

The Centers for Medicare & Medicaid Services (CMS) has requirements for the qualities of settings that are eligible for reimbursement for Medicaid home and community-based services (HCBS), as published in 42 CFR §§ 441.031(c)(4) and 441.710. Under the requirements of the HCBS Settings Rule, the Wisconsin Department of Health Services (DHS) must ensure that residential settings serving HCBS waiver participants meet and remain in compliance with the settings rule requirements.

The federal HCBS settings rule makes a presumption that certain settings are not home and community based. These include settings in a publicly or privately owned facility providing inpatient treatment; settings on the grounds of, or adjacent to, a public institution; and settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid waiver services.

DHS has determined that your setting is within the criteria for HCBS heightened scrutiny review. Although completion of the enclosed form is voluntary, the information must be provided in order to determine compliance with the HCBS settings rule. Failure to provide the information may result in a non-compliance determination.

In order for DHS to reimburse settings that meet one of the criteria above, DHS must present evidence to CMS to justify that the setting possesses the required home and community-based characteristics and is not institutional in nature.

If you intend to serve participants in the Medicaid waiver programs, you must submit documentation to the DHS to evidence that your setting qualifies as home and community based. It is expected that you submit several types of information and documentation that supports the presence of home and community-based services (HCBS) qualities.

CMS has indicated several areas where they will expect to see evidence. The accompanying checklist outlines the required evidentiary categories to demonstrate that your setting is not institutional in nature and meets all of the provisions of the federal HCBS settings rule.

**Evidence to Overcome Institutional Presumption (applies to settings subject to heightened scrutiny)**—Settings that are identified as meeting the heightened scrutiny must provide evidence that overcomes the presumption that the setting is institution-like due to its connection to an institution or other factors. CMS has indicated several areas where they will expect to see evidence. These are described below:

**Section 1: Policies or practices that overcome any institutional presumptions**—The setting must provide documentation that demonstrates: that people without disabilities in the community consider the setting a part of their community and do not associate the setting with institutional services; that residents participate regularly in typical community life activities outside of the setting to the extent the individual desires; and that activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff.

**Section 2: Person-Centered Planning Process** – As part of the determination of whether the setting has overcome an institutional presumption, the state will be required to attest to CMS that Medicaid beneficiaries receiving HCBS at this setting have person-centered service plans and that these individuals experience access to the broader community consistent with the level desired as articulated in their PCP.

**Section 3: Staffing**—The setting must provide documentation that demonstrates the distinction between staff for the two settings and the training provided to staff in the HCBS setting regarding HCBS regulations, services, and principles.

**Section 4: Physical Distinction**—The setting must provide documentation that demonstrates a meaningful physical distinction between the HCBS setting and the institutional setting. This should include, at a minimum, separate

entrances and signage, physical divisions, and differences in decor. Please label all maps and plans to clearly show the HCBS facility(s) in relation to the SNF.

**Section 5: Operational Distinction:** The setting must provide documentation that there is a meaningful operational distinction between the institution and the community-based setting such that the latter is integrated in, and supports, full access of individuals receiving HCBS services.

#### **Timeline**

Evidentiary Document Checklist and all requested documentation for heightened scrutiny review must be received by DHS **within 15 business days** of the date on the accompanying *Notice of Need for Heightened Scrutiny* letter.

#### **Submitting HCBS Heightened Scrutiny Evidentiary Materials**

**Format:** Submission should be organized by the five sections outlined on the Document Checklist.

Materials should be submitted via email to: [DHSHCBSheightenedscrutiny@dhs.wisconsin.gov](mailto:DHSHCBSheightenedscrutiny@dhs.wisconsin.gov)

**Attn:** Heightened Scrutiny Review

#### **Process:**

1. Complete and provide updates, if needed, to the accompanying Evidentiary Document Checklist in its entirety and include a copy of this with your document submissions.
2. Organize documents and data being submitted by each section as outlined on the Checklist.
3. Cover letters are encouraged to summarize how the facility meets the HCBS requirements mandated by CMS. This description can include the setting's person-centered processes, and HCBS qualities, characteristics, and integration with the broader community.
4. Submitted documents are to be emailed in pdf format **within 15 business days** of the date of the accompanying letter. Documents should be labeled by corresponding section title of the document (e.g., Section 1 Admission Agreement: Section 2 Redacted Person-centered Plan). Zip files for multiple pdf files may be utilized.
5. DHS will conduct a desk review of submitted materials to determine if the facility provided sufficient evidence to overcome institutional presumption.
6. DHS heightened scrutiny staff will contact the facility to schedule onsite or virtual follow-up and observations.
7. DHS will review and validate the documentation you submit. When the review is completed, DHS will publish a summary of your setting's heightened scrutiny review, as required by CMS, so that the public may comment.
8. If DHS agrees that the evidence, site visit or virtual visit observations, and any public comments affirm that the setting is home and community-based, DHS will provide the evidence to CMS for review and their final determination.

#### **Questions:**

By Email: [dshcbsheightenedscrutiny@dhs.wisconsin.gov](mailto:dshcbsheightenedscrutiny@dhs.wisconsin.gov)

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