

## Open for Public Comment: Proposed Heightened Scrutiny Service Locations to be Submitted to CMS **ODP Announcement 22-117**

### **AUDIENCE:**

All Interested Parties

### **PURPOSE:**

To announce a 30-day public comment period on the Residential and Community Participation Support (CPS) service locations that the Office of Developmental Programs (ODP) proposes to submit to the Centers for Medicare and Medicaid Services (CMS) for Heightened Scrutiny. Public comment on each service location will be accepted until 11:59pm on December 19, 2022.

### **DISCUSSION:**

On January 16, 2014, CMS published the Home and Community-Based Services (HCBS) Rule. The HCBS Rule created requirements for the qualities and characteristics of settings where waiver services are provided. CMS will presume that the following settings have the qualities of an institutional setting unless ODP sends information demonstrating that the setting has the qualities of a home and community-based setting:

- A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,

- A setting in a building on the grounds of, or immediately adjacent to, a public institution, or
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

A summary of ODPs findings for each Residential and CPS service location that ODP has determined meets one or more of these criteria is available at

<https://home.myodp.org/professionals/public-comment-on-odps-heightened-scrutiny-service-locations/> and <https://www.dhs.pa.gov/Services/Assistance/Pages/HCBS-Statewide-Transition-Plan.aspx><sup>1</sup>. A description of the process ODP used to identify service locations, complete reviews, and make determinations is also available on both websites.

General information regarding Heightened Scrutiny can be found in the *Pennsylvania Bulletin*, Volume 52, Number 47 published on Saturday, November 19, 2022 at <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol52/52-47/1796.html>.

It is important to note that information regarding the Office of Long-Term Living's (OLTL) Heightened Scrutiny sites is also published on <https://www.dhs.pa.gov/Services/Assistance/Pages/HCBS-Statewide-Transition-Plan.aspx> Please follow the OLTL process for submitting comments on the OLTL sites.

Public Comment:

Public comment is being sought on ODPs findings for each service location. ODP will review and consider all comments received by 11:59pm on December 19, 2022, in making a final determination as to whether each service location meets all regulatory and waiver requirements to overcome the presumption that the service location has

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<sup>1</sup> The link published in the *Pennsylvania Bulletin* is no longer accurate. A new link was required due to work currently being performed to the Department of Human Services website.

institutional characteristics. ODP encourages stakeholders to provide personal experiences with any of the service locations. This could include:

- Examples of how the service location supports opportunities for people to engage in community life.
- Examples of how people who receive services control their schedules and activities.
- Observations or experiences with how staff treat people who receive services.
- Observations or experiences regarding the ability of people receiving services to meet and speak with others in private (either in-person or via audio/video communication).
- Observations or experiences regarding people receiving services having a place to privately store their possessions or having a private space for personal care.
- Anything that ODP should consider about the service location that isn't included in the summary.

A *Heightened Scrutiny Public Comment Form* has been developed for optional use in submitting comments. This form is available at

<https://home.myodp.org/professionals/public-comment-on-odps-heightened-scrutiny-service-locations/> and

<https://www.dhs.pa.gov/Services/Assistance/Documents/Heightened-Scrutiny-Public-Comment-Template.docx>.

Public comment may be submitted through one of the following methods:

1. Electronic submission through email at the following email address: [rapwhcbsfinalrulepl@pa.gov](mailto:rapwhcbsfinalrulepl@pa.gov)<sup>2</sup>

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<sup>2</sup> Please note that the email address published in the *Pennsylvania Bulletin* is incorrect. Please use the email address in this communication.

2. Written submission through mail, addressed to:

Julie Mochon, Department of Human Services

Office of Developmental Programs

625 Forster Street, Room 510, Harrisburg, PA 17120

3. Verbal submission through the public comment webinar. During the webinar ODP staff will go over the Heightened Scrutiny process and receive comments on the service locations.

Date: December 1, 2022

Time: 1:00pm – 2:30pm.

Registration link:

<https://register.gotowebinar.com/register/483140129887758861>

Anyone who is interested in participating may do so by phone but will need a computer to provide comments during the webinar. To assist ODP in accurately capturing comments provided during the webinars, individuals are asked to submit a written copy of their comments by email or to mail to the address provided above. If you are unable to attend this session, a recording will be made available. ODP will publish a communication when the recording is available.

**CONTACT:**

Questions about this communication should be directed to [ra-pwhcbsfinalrulepl@pa.gov](mailto:ra-pwhcbsfinalrulepl@pa.gov).