
INFORMATIONAL LETTER NO. 2571-MC-FFS

DATE: March 22, 2024

TO: Home and Community-Based Services (HCBS) Waiver and Habilitation Providers

APPLIES TO: Managed Care (MC), Fee-for-Service (FFS)

FROM: Iowa Department of Health and Human Services (HHS), Iowa Medicaid

RE: Reporting New or Closing Home and Community-Based Services (HCBS) Settings

EFFECTIVE: March 17, 2023

This informational letter (IL) serves as a reminder that effective **March 17, 2023**, Home and Community-Based Services (HCBS) waiver and Habilitation providers must report and receive approval for new residential and non-residential settings **prior** to using HCBS funding in the setting. **March 17, 2023**, marked the end of the transition period for states to fully comply with the Centers for Medicare & Medicaid Services (CMS) final rule for HCBS settings. The HCBS settings rule requires states to ensure all settings where HCBS waiver and Habilitation services are provided comply with HCBS settings requirements rule **prior** to receiving HCBS funding in the setting.

Per [IL 2492¹](#), HCBS waiver and Habilitation providers must contact their HCBS Specialist to report changes. A [map of HCBS Specialist service areas²](#) can be found on the [HCBS Waivers Program webpage³](#) on the HHS website.

At a minimum, the following information must be reported, but additional information may be needed to effectively assess and approve a setting.

1. The name of the provider organization.
2. The full, physical address of the setting being added or closed.

¹ <https://secureapp.dhs.state.ia.us/IMPA/Information/Bulletins.aspx>

² <https://hhs.iowa.gov/media/11530/download?inline=>

³ <https://hhs.iowa.gov/programs/welcome-iowa-medicaid/policies-rules-and-regulations/home-and-community-based-services-hcbs-waivers-program>

3. Identification of the settings as one of the following:
 - a. A non-residential service setting where one or more of the following services are provided: day habilitation, adult day care, supported employment or prevocational services.
 - b. Residential service setting where one or more of the following services are provided: Supported Community Living (SCL), Residential-Based Supported Community Living (RBSCL), Home-Based Habilitation, Assisted Living Service, or Consumer Directed Attendant Care (CDAC) Agency in a Residential Care Facility (RCF) or Assisted Living Facility (ALF).
4. Identification of which services are provided in the setting.
5. Identification of the type of residential service setting from the following options:
 - a. Unit in a multi-plex of any type
 - b. House
 - c. Department of Inspections, Appeals and Licensing (DIAL) licensed RCF or ALF
 - d. **Host Home**
6. Identification of the type of non-residential service setting from the following options:
 - a. Adult day care or day habilitation services setting.
 - b. Non-site-based day habilitation program (i.e., “no walls” or “100% community-based”).
 - c. Supported Employment or Prevocational Services setting.
 - d. Group, enclaves or other similar Supported Employment or Prevocational Services program.
7. For residential service settings, DIAL licensing as applicable or whether the location has a five-person approval.
8. The number of HCBS members and non-HCBS individuals receiving services in the setting and the capacity for the setting.

For settings that are not presumptively institutional and do not require prior approval from CMS, Medicaid reimbursement for HCBS delivered in the setting may **begin once the setting has been assessed and approved by Iowa Medicaid**. In most cases, this assessment and approval will occur at the time the setting is reported to the HCBS Specialist.

Presumptively Institutional Settings and Newly Constructed Facilities

Settings determined to be presumptively institutional and newly constructed facilities where HCBS will be provided require additional assessment and approval from Iowa Medicaid prior to using HCBS funding in the setting. New HCBS settings located in a building that is also a publicly or privately operated facility where inpatient institutional treatment is provided (Heightened Scrutiny Category 1) require additional assessment and approval from Iowa Medicaid **and prior approval from CMS**.

When additional assessment is required, Iowa Medicaid’s Quality Improvement Organization (QIO) HCBS Unit will provide technical assistance and assessment of the provider’s plan for implementation of HCBS settings requirements in the setting and follow-up assessment to

ensure the plan was appropriately implemented. Remediation may be required to overcome the institutional presumption. Services must be provided and reimbursed through non-Medicaid funding sources for sufficient time to provide adequate evidence of compliance before the follow-up assessment can be completed. When CMS approval is required, the compliance determination must be posted for public comment on the [Iowa Medicaid Public Notices webpage⁴](#) for **thirty days** before referring to CMS for heightened scrutiny review. The entire process for approving a presumptively institutional setting for HCBS funding may take several months. Providers are encouraged to work with their HCBS Specialist to ensure timely completion of assessment, remediation and follow-up assessments.

Failure to report and receive approval prior to accessing HCBS funding in a setting may result in recoupment of incorrectly paid funds.

Definitions

A *setting* is *provider owned or controlled* when the HCBS provider owns the property where the member resides, leases the property from a third party or has a direct or indirect financial relationship with the property owner that impacts either the care provided to or the financial conditions applicable to the member. The unit or dwelling is a specific physical space that can be owned, rented or occupied under a legally enforceable agreement by the member receiving services, and the member has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity. For the settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law. **This definition includes "daily" SCL or Home-Based Habilitation residential service settings (including Host Home models).**

Site-based or group-based non-residential services include day habilitation centers, adult day care centers, sheltered workshops, small group supported employment and groups of members receiving community-based or "no-walls" day habilitation services.

Presumptively institutional is a term used to describe settings identified by the regulation as being presumed to have the qualities of an institution. The three categories of presumptively institutional settings are also the three categories requiring heightened scrutiny.

- Settings in the same building as a public or private in-patient treatment institution.
- Settings on the grounds of or adjacent to a public institution.
- Settings that have qualities that isolate Medicaid beneficiaries.

⁴ <https://hhs.iowa.gov/about/newsroom/public-notice>

Heightened scrutiny is a term used to describe an enhanced review process for HCBS waiver and Habilitation that are “presumptively institutional” and meet one of categories outlined above. CMS performs heightened scrutiny reviews and approval, but Iowa Medicaid’s quality oversight review processes are also designed to assess settings that meet a category of heightened scrutiny. After the public comment period, settings that Iowa Medicaid identifies as meeting the settings rule are referred to CMS for heightened scrutiny review. If a state refers a setting to CMS for heightened scrutiny review, the state will supply CMS with information about the state’s compliance findings. Meeting a category of heightened scrutiny and receiving a heightened scrutiny review do not disqualify a provider from participating in HCBS. **Some new HCBS settings may require heightened scrutiny review prior to using HCBS funding in the setting.**

Please contact your HCBS Specialist with questions about this communication or the general mailbox at HCBSwaivers@dhs.state.ia.us.