

## Public Notice

### Public Comment Period for Heightened Scrutiny of HCBS Settings

**Posted: September 27, 2023**

On March 17, 2014, the Centers for Medicare and Medicaid Services (CMS) issued a final rule for Home and Community-Based Services (HCBS) that required states to ensure all settings where HCBS waiver and Habilitation services are provided are or can become compliant with the final rule. The time between the establishment of the final rule and the deadline for all states to full comply is referred to as the “transition period”. The transition period ended on March 17, 2023. Several states, including Iowa are completing work on our Statewide Transition Plan through a corrective action process.

Pursuant to the authority of 42 CFR 441.301(c)(5)(v) in the final HCBS regulation and at 441.530(a)(2)(v), the Iowa Department of Health and Human Services (HHS) has an obligation to identify settings that are presumed institutional or otherwise have the effect of isolating HCBS recipients from the broader community. These settings require heightened scrutiny review. Heightened scrutiny is a term used to describe an enhanced review process for HCBS waiver and Habilitation service settings that meet one of categories outlined below. After the public comment period, settings that meet a category of heightened scrutiny and have been assessed and determined by Iowa Medicaid to have overcome the institutional presumption, 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.

**Category 1:** Settings in the same building as a public or private institution providing inpatient, institutional treatment.

**Category 2:** Settings on the grounds of or adjacent to a public institution.

**Category 3:** Settings that have qualities that isolate HCBS recipients.

Please notice that meeting a category of heightened scrutiny and receiving a heightened scrutiny review do not disqualify a provider from participating in HCBS.

Iowa Medicaid’s Quality Improvement Organization (QIO) has identified the following Category 1 settings as summarized below. Iowa has no identified Category 2 settings and Category 3 settings were previously identified and underwent a public comment period.

#### **Summary**

A total of 81 settings were identified as meeting the criteria of Category 1. Some of the settings are operated by the same provider and are summarized together. One setting closed between identification of the setting but before it could be assessed. All settings are HCBS settings in the same building as a public or private institution providing inpatient, institutional treatment. Most are assisted living facilities that accept HCBS funding and are attached to a nursing facility. A few are other HCB services provided in public or private institution providing inpatient, institutional treatment.

Please see the list of identified Category I settings along with a summary of findings supporting Iowa Medicaid's determination that these settings have the characteristics of HCBS and effectively overcome the institutional presumption. Public feedback is requested on the findings. Upon conclusion of the public comment period, Iowa Medicaid will summarize and address public comments and submit the setting's evidentiary package to CMS for heightened scrutiny.

### **Public Review and Comments**

A copy of this notice is available at the following link: <https://hhs.iowa.gov/public-notices>. To reach all stakeholders, non-electronic copies will be made available for review at the HHS Field Offices.

Written comments concerning this notice or the proposed amendments may be addressed to:

Iowa Department of Human Services  
Iowa Medicaid  
1305 East Walnut Street  
Des Moines, IA 50319

or via email at [HCBSSettings@dhs.state.ia.us](mailto:HCBSSettings@dhs.state.ia.us). Please indicate "Heightened Scrutiny" in the subject line of the email.

All comments must be received by October 27, 2023.

### **Submitted by:**

**Elizabeth Matney**  
**Iowa Medicaid Director**  
**Iowa Department of Health & Human Services**