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DATE: July 29, 2022

TO: Home and Community-Based Services (HCBS) Stakeholders

SUBJECT: Public Comment Period for HCBS Heightened Scrunity Settings.

The California Department of Healthcare Services (DHCS) invites the public to comment on the heightened scrutiny determinations under the federal Home and Community-Based Services (HCBS) Settings Final Rule. As part of the federal HCBS settings regulations, the Centers for Medicare and Medicaid Services (CMS) requires states to submit settings for heightened scrutiny review. The heightened scrutiny process allows California to demonstrate that settings can overcome the institutional presumption by submitting evidentiary packages for CMS review. Waiver beneficiaries receiving services in these settings may be participants in the following Home and Community-Based Services waivers: Assisted Living Waiver (ALW) or Home and Community-Based Alternatives (HCBA) Waiver.

Background

In 2014, CMS published a rule requiring HCBS waivers be provided in settings that meet certain criteria under the new rule. The criteria ensures that ALW and HCBA waiver beneficiaries have access to the benefits of community living, live in, and receive services in integrated, non-institutional settings.

Under the HCBS Settings Final Rule, CMS presumes the following types of settings have institutional or isolating qualities:

- (i) Is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- (ii) Is located in a building on the grounds of, or immediately adjacent to, a public institution; and/or
- (iii) Has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

If a residential or non-residential setting meets one of the above criteria, then the setting is presumed to have the qualities of an institution unless CMS determines through the additional/supplemental heightened scrutiny review that the setting does not have the qualities of an institution and has the qualities of HCBS. CMS requires states to submit evidentiary packages for settings to CMS justifying those settings are home and community-based. DHCS will determine on a case-by-case basis whether a particular

setting requires heightened scrutiny review by CMS. If DHCS agrees the evidence indicates that the setting is home and community-based, DHCS will provide the evidence to CMS for heightened scrutiny review. CMS will consider the evidence and render a decision.

DHCS has determined that one hundred and fifteen (115) settings have triggered the presumption of having institutional or isolating factors but are home or community-based (or have a state-accepted plan for getting there). DHCS determined that a setting overcame the institutional presumption by verifying that it met (or had an accepted plan for meeting) each requirement of the HCBS Settings Final Rule. The Department will publish a list of these settings for public comment.

Materials available for public comment

(1) HCBS Settings Final Rule Site Specific Assessment and Heightened Scrutiny Process

This document describes the process by which DHCS has been assessing settings for compliance with the HCBS settings final rule and for the application of heightened scrutiny.

(2) List of Heightened Scrutiny Settings

This document lists the 115 settings that have triggered the presumption of having institutional or isolating factors but are home or community-based (or have a state-accepted plan for getting there):

- | | |
|-------------|-------------|
| Site #: 006 | Site #: 170 |
| Site #: 012 | Site #: 171 |
| Site #: 013 | Site #: 174 |
| Site #: 014 | Site #: 178 |
| Site #: 015 | Site #: 186 |
| Site #: 016 | Site #: 189 |
| Site #: 017 | Site #: 190 |
| Site #: 023 | Site #: 192 |
| Site #: 024 | Site #: 195 |
| Site #: 025 | Site #: 199 |
| Site #: 026 | Site #: 202 |
| Site #: 033 | Site #: 206 |
| Site #: 037 | Site #: 211 |
| Site #: 047 | Site #: 221 |
| Site #: 050 | Site #: 228 |
| Site #: 051 | Site #: 232 |
| Site #: 052 | Site #: 239 |
| Site #: 056 | Site #: 240 |
| Site #: 057 | Site #: 242 |
| Site #: 071 | Site #: 243 |
| Site #: 079 | Site #: 244 |
| Site #: 080 | Site #: 245 |

Site #: 084	Site #: 246
Site #: 088	Site #: 247
Site #: 090	Site #: 248
Site #: 098	Site #: 249
Site #: 101	Site #: 250
Site #: 102	Site #: 257
Site #: 104	Site #: 258
Site #: 106	Site #: 261
Site #: 107	Site #: 263
Site #: 111	Site #: 267
Site #: 117	Site #: 277
Site #: 119	Site #: 278
Site #: 120	Site #: 279
Site #: 121	Site #: 283
Site #: 123	Site #: 284
Site #: 126	Site #: 285
Site #: 127	Site #: 300
Site #: 131	Site #: 301
Site #: 137	Site #: 302
Site #: 140	Site #: 308
Site #: 141	Site #: 313
Site #: 142	Site #: 322
Site #: 143	Site #: 324
Site #: 144	Site #: 328
Site #: 145	Site #: 331
Site #: 146	Site #: 332
Site #: 147	Site #: 334
Site #: 148	Site #: 335
Site #: 149	Site #: 337
Site #: 153	Site #: 341
Site #: 156	Site #: 348
Site #: 157	Site #: 351
Site #: 158	Site #: 358

A list of settings that the state does not believe can overcome the presumption that the settings are institutions by the end of the transition period, and thus may not receive Medicaid funding for HCBS after the transition period.

(3) Summary Sheets

There is one summary sheet per setting subject to heightened scrutiny. The summary sheet describes the setting, the reason it is subject to heightened scrutiny, and the evidence as of June 30, 2022 supporting DHCS' determination that the setting complies with each component of the HCBS Settings Final Rule or, if the setting is not fully compliant yet, the evidence that is still required and the state's plan for ensuring that the evidence is submitted and verified.

(4) Supporting Evidence

DHCS heightened scrutiny determinations were informed by each settings Remediation Work Plan (RWP) and supporting documents. These documents will not be posted for public comment but are available upon request.

Public Comment Opportunity

DHCS will post the HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process, List of Heightened-Scrutiny Settings, and the 115 Summary Sheets on its website at the [HCBS Statewide Transition Plan](#) website for public review and comment.

Public comments will be collected via a form found [here](#). The public comment period is open for 30 calendar days, from July 29, 2022 through August 28, 2022. Should you need to make a request for electronic or hard copy materials, your request may be submitted to DHCS through the following channels:

- Phone: 1-833-204-9032
- Email: CA_DHCS_Assessments@pcgus.com
- U.S. Mail: 1501 Capitol Ave, MS 4502; P.O. Box 997437; Sacramento, CA 95899-7437

DHCS intends to submit the determinations to CMS after it has reviewed and addressed the comments received during the public comment period. CMS will make final determinations regarding these settings.