

Heightened Scrutiny Fact Sheet

Heightened scrutiny is a more in-depth review by the Centers for Medicare and Medicaid Services (CMS) of settings that are presumed to have institutional qualities, ensuring they demonstrate compliance with the Home and Community-Based Services (HCBS) Settings Rule. CMS also ensures appropriate state processes when determining compliance for settings that are presumed to have institutional qualities.

Settings that are presumed to have institutional qualities include:

- The setting is located in or attached to a building that is also a nursing home/facility or hospital.
- The setting is located in a building on the grounds of, or immediately adjacent to, a public institution.
- The setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community.

Settings that may have the effect of isolating could include:

- The setting is in a gated or secured community.
- The setting provides services exclusively for people who have disabilities.
- The setting provides multiple types of services for individuals with disabilities at one location, for example: medical, behavior or therapy services.
- The setting is designed specifically for individuals with disabilities.

To overcome the presumption that a setting has institutional-like qualities, a heightened scrutiny evidentiary package must be compiled by the state, published for stakeholder review, and submitted to CMS for approval. Information within this evidentiary package outlines how the setting overcomes the presumption of institutional qualities. The evidentiary package outlines the ways the setting provides community integration to residents as well as in how the setting supports individuals consistent with their person-centered service plans.

Requirements for a residential setting:

- There is a lease or other legally enforceable agreement providing similar protections in place.
- Individuals have privacy in their unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.
- Individuals have autonomy and the ability to control their own schedule, including access to food.
- Individuals can have visitors of their choosing at any time.
- The setting is physically accessible.