

# The Heightened Scrutiny Process for the Office of Developmental Programs

## Background

### 1. Provider Self-Assessments

ODP determined that an initial assessment would be completed by providers in 2018 for all Residential and Non-Residential (referenced throughout this document as Community Participation Support (CPS)) service locations<sup>1</sup>. The purpose of this initial assessment was to:

- Help providers understand the federal Home and Community-Based Services (HCBS) Rule,
- Help providers understand waiver service requirements and state regulations. The state regulations were in draft at the time of the provider self-assessment in 2018 but were published in 55 Pa. Code Chapter 6100 in October 2019,
- Give providers time to develop and implement plans to come into compliance with the HCBS Rule requirements, state regulatory requirements, and ODP waiver requirements, and
- Help ODP determine whether a Heightened Scrutiny On-site Review would be needed.

The HCBS Provider Settings Self-Assessment tools were developed through extensive research on the HCBS Rule, ODP waivers, applicable federal and state regulations, as well as an environmental scan of other state instruments, and through review of public comment.

To figure out which service locations had to be assessed, ODP utilized Individual Support Plan (ISP) data to develop a list of where Residential (Life Sharing and Residential Habilitation) and CPS/Day Habilitation services were authorized to be provided. Each provider that owned or operated a service location where at least one of these services was rendered was required to complete an assessment for each service location.

Questions on the self-assessments were developed based on either a specific regulation within the HCBS Rule, a state regulation, or an ODP waiver policy.<sup>2</sup> ODP sent an email to each service location for which a Provider Settings Self-Assessment was completed. The email contained a Provider Settings Self-Assessment Report that included each self-assessment question, the provider's responses submitted, and any further action required based on the provider's response. These reports along with the "HCBS Self-Assessment Compliance Guidance" were emailed to the providers between November 2018 and January 2019. Providers were given 60 calendar days to remediate all issues that were

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<sup>1</sup> A service location is the place where services are rendered through the Consolidated, Community Living, Person/Family Directed Support and/or Adult Autism Waivers.

<sup>2</sup> To view the policies that pertained to each question and ODP's Reports, please visit:  
<https://www.dhs.pa.gov/contact/DHS-Offices/Pages/ODP-HCBS%20Final%20Rule.aspx>

identified. If the provider was unable to remediate the issue in 60 calendar days, the provider was responsible for filling out a CAP by using the [CAP template](#).

The data from the self-assessments were analyzed and two comprehensive reports were created; one for service locations where Residential Habilitation or Life Sharing services were rendered and one for service locations where Community Participation Support/Day Habilitation services were rendered<sup>3</sup>.

Compliance with waiver and regulatory requirements was validated through Heightened Scrutiny On-site Review process described below and/or Licensing Inspections described in the [Home and Community-Based Settings Rule Assessments report](#).

## **2. Heightened Scrutiny On-Site Reviews Process**

### Purpose

Heightened Scrutiny On-Site Reviews are required for service locations that are presumptively institutional based on the physical location where services are rendered. Section 441.301(c)(5)(v) provides that the following settings will be presumed to have the qualities of an institutional setting unless the Centers for Medicare and Medicaid Services (CMS) determines through heightened scrutiny, based on information presented by the state or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings:

- A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or
- A setting in a building on the grounds of, or immediately adjacent to, a public institution.

The purpose of the Heightened Scrutiny On-Site Review was to determine whether each service location identified as meeting these criteria complies with regulatory and waiver requirements. Compliance with these requirements means that the service location overcomes the institutional presumption and has the qualities of a home and community-based setting.

### Identification of Settings Presumed to Have Institutional Characteristics

ODP used the following methods to analyze and identify whether service locations where Residential Habilitation, Life Sharing, or Community Participation Support/Day Habilitation services are provided were presumed to have institutional characteristics which required a Heightened Scrutiny On-site Review.

- ODP staff reviewed all completed self-assessments to identify service locations that providers indicated had characteristics of an institutional setting.
- ODP staff also utilized the following:
  - o Software that maps all provider owned or operated service locations receiving ODP waiver funding as well as public and private ICFs/ID,

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<sup>3</sup> The Residential Self-Assessment Report can be found: <https://www.dhs.pa.gov/contact/DHS-Offices/Documents/ODP/Residential-HCBS-Provider-Settings-Self-Assessment-Report.pdf> and the Non-Residential Self-Assessment Report can be found: <https://www.dhs.pa.gov/contact/DHS-Offices/Documents/ODP/Non-Residential-HCBS-Provider-Settings-Self-Assessment-Report.pdf>

- o Information and maps available on the internet,
- o Addresses of skilled nursing facilities, and
- o ODP staff knowledge of the service locations.

All service locations identified through this process were shared with stakeholders for public comment. Public comment did not indicate that any additional service locations should be added due to institutional characteristics. Public comment recommended that some service locations be removed because they were not in locations that were presumed to have institutional characteristics. Based on this process, ODP identified 2 Residential service locations and 18 Community Participation Support/Day Habilitation service locations that required a Heightened Scrutiny On-site Review.

### Heightened Scrutiny On-site Review

The Heightened Scrutiny On-Site Review involved the following:

- Interviews with individuals who receive services at the service location,
- Interviews with staff who render services at the service location,
- Tour of the home or facility, and
- Desk review.

To conduct the interviews, ODP developed tools to be used on-site to guide discussions with the individual and staff. The tools were released for public comment, changes were made based on public comment, and the final documents to be used were announced in ODP Communications [20-021](#) and [21-081](#).

### Interviews with Individuals and Staff

The on-site visit focused on the experience of individuals receiving services to verify if each service location is integrated and supports access of individuals receiving services into the broader community, as well as focusing on compliance with regulatory and waiver requirements related to individual rights. Each individual in the Residential service location was given the opportunity to speak with reviewers about their services. Since the CPS programs usually serve many more people in a service location, a random sample (which was selected based on a 20 percent margin of error, 80 percent confidence level, and 5 percent response distribution) of individuals was chosen. Out of those individuals, the reviewers asked to interview three of the individuals in the sample when they were at the on-site visit.

All individuals who were given the opportunity to be interviewed, were given the option to speak privately with the reviewer or with a support person, or they had the opportunity to decline the interview altogether. Reviewers utilized the individual interview tool as a guide when speaking with each individual about their experience receiving services.

ODP ensured that at least one management level staff and one direct support professional were also interviewed for each service location. Reviewers utilized the provider tool to interview staff and document observations from the tour described below<sup>4</sup>.

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<sup>4</sup> Please visit the following link to view the documents used for interviewing individuals and their staff: <https://www.dhs.pa.gov/contact/DHS-Offices/Pages/ODP-HCBS%20Final%20Rule.aspx>

There were always at least two reviewers who conducted the interview with the individuals and the provider staff. One reviewer performed the interview while the other reviewer took notes.

### Tour of the Home or Facility

In addition to gathering information about how individuals were given opportunities for community engagement and involvement, reviewers also visually confirmed that waiver and regulatory requirements were met. ODP included pictures and a written description for stakeholders about what was observed in the summaries posted for public comment (see public comment section below).

### Desk Reviews

A desk review tool was used to compile the data and information collected during the on-site visit as well as information submitted by the provider via email. The desk review consisted of a review of the provider and individual interview tools (responses to the questions on the on-site tools were validated through the collection of evidence, as applicable), ISPs<sup>5</sup>, and all documentation submitted by each service location. Most service locations submitted documentation such as policies, procedures, training records, and behavioral support plans.

## **3. Additional Information Used to Validate Compliance**

The HCBS Rule requires the Residential or CPS service location to be chosen by each individual from among settings options, including non-disability-specific settings. Supports Coordinators are responsible to provide information to individuals and their family about services that are available under the waiver and their rights to choose willing and qualified providers to support the individual's needs. The ISP addresses the full range of participant needs, identified outcomes, and preferences including but not limited to; choice of residence, to seek or engage in competitive employment, community participation, control of personal resources to the same degree of access as all other persons in the community. Compliance with this requirement is validated through the Quality Assessment and Improvement (QA&I) process.

For service locations that will be submitted to CMS for Heightened Scrutiny, a description of how staff are trained on the HCBS Rule requirements and person-centered planning is required to be submitted. After extensive stakeholder engagement, ODP published regulations at 55 Pa. Code Chapter 6100 in October 2019 which incorporated HCBS Rule requirements by strengthening community services and supports to promote person-centered approaches, community integration, personal choice, quality in service delivery, health and safety protections, and competitive integrated employment. Orientation and annual training are required for all waiver service providers through Chapter 6100 on the application of person-centered practices, community integration, individual choice, individual rights, and assisting individuals to develop and maintain relationships. Compliance with these training requirements is validated through licensing inspections and the QA&I process. Further, to be qualified to render Community Participation Support services, all new hires must complete the Department approved training on Community Participation Support<sup>6</sup> within 60 days of hire and during that time

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<sup>5</sup> For CPS service locations a sample of ISPs were selected based on a 20 percent margin of error, 80 percent confidence level, and 5 percent response distribution.

<sup>6</sup> This training can be accessed at <https://www.myodp.org/course/view.php?id=993>

they must be supervised by someone who has completed the training. Compliance with this requirement is validated through the provider qualification process.

#### **4. Findings**

After the on-site visit and the desk review were complete, ODP compiled all the information collected and documented it into an Executive Summary specific to each service location reviewed. The Executive Summary contained a determination about whether the service location was found to be currently compliant with each requirement or required corrective action to become compliant with one or more requirements. ODP staff emailed the Executive Summary to each service location where a Heightened Scrutiny On-site Review was completed. The email notified the provider of the requirement for the completion of a Corrective Action Plan (CAP) within 30-days for any areas where corrective action was indicated in the Executive Summary.

Both Residential service locations were required to complete CAPs. ODP staff have reviewed and approved one of the CAPs and is in the process of reviewing the other CAP. The service location where the CAP was approved has been determined to be fully compliant with waiver and regulatory requirements.

CAPs were required to be completed for 12 Community Participation Support service locations. ODP staff have reviewed and approved CAPs for nine of those service locations. The three remaining CAPs have either not been reviewed or approved because:

- One CPS service location opened more recently due to COVID-19 which delayed the completion of the Heightened Scrutiny On-site Review. The CAP for this service location isn't due until early December 2022; and
- The other two CPS service locations are receiving technical assistance regarding the CAPs submitted.

At this time, ODP has found that all service locations for which a Heightened Scrutiny On-site Review was completed are either currently compliant with all waiver and regulatory requirements or actively working on corrective actions to become compliant by March 1, 2023. ODP plans to submit 14 CPS service locations that meet criteria for being presumptively institutional to CMS for a federal Heightened Scrutiny review. The remaining four CPS service locations and two Residential service locations were found to not meet the criteria for being presumptively institutional<sup>7</sup> and do not require a CMS Heightened Scrutiny review.

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<sup>7</sup> A document titled *Service Locations That Will Not Be Sent to CMS/Do Not Meet Heightened Scrutiny Criteria* provides a summary of why each service location does not meet Heightened Scrutiny criteria. This document is available at <https://www.myodp.org/mod/page/view.php?id=41956> and <https://www.dhs.pa.gov/Services/Assistance/Pages/HCBS-Statewide-Transition-Plan.aspx>