

HCBS Final Settings Rule Heightened Scrutiny Public Comment

April 2022

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Agenda

- What is the HCBS Final Settings Rule
- What is the Final Settings Rule
- Statewide Transition Plan
- Heightened Scrutiny and Impacted HCBS Waivers
- Impacted Nebraska HCBS Settings
- Nebraska HCBS Evaluated
- Nebraska Setting Assessments and Heightened Scrutiny
- Heightened Scrutiny Reviews
- Next Steps

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What is the Final Settings Rule?

- The Centers for Medicare and Medicaid Services (CMS) published a final rule for Medicaid Home and Community-Based Services (HCBS) effective March 14, 2014.
- The final rule requires states to ensure people receiving Medicaid home and community-based services have the benefits of community living.

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Nebraska Timeline

- 2014 – CMS releases *Final Rule*
- 2015 – CMS initial review of Nebraska plan and site assessment process established
- 2016 – Public comment and revised plan to CMS
- 2018 – Public comment period for 2019 submission
- 2019 – Public comment and revised plan to CMS
- 2021 – Ongoing monitoring of previously assessed settings

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Final Settings Emphasis

The HCBS Final Settings Rule emphasizes:

- Person-centered planning;
- Conflict-free case management; and
- Provider-owned, controlled, and operated settings where home and community-based services are provided

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Home and Community-Based Settings

The following settings are ***not*** considered home and community-based services and are excluded from the Final Settings Rule:

- Nursing Facilities;
- Institutions for Medical Disease;
- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs); and
- Hospitals.

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Statewide Transition Plan (STP)

Each state was required to create a Statewide Transition Plan (STP) reviewing policies, practices, and settings where home and community-based services are provided.

The STP outlines:

- Requirements for all settings and additional requirements for provider-owned or operated residential settings.
- A plan explaining updates to policies and regulations, a plan to determine if service settings are meeting requirements, and a plan to remedy instances where settings are not meeting requirements.

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Heightened Scrutiny Settings

- For settings ***presumed*** to have institutional qualities, CMS requires an additional assessment process called “heightened scrutiny.”
- Identified settings will be required to undergo an additional review by state staff and may be included in a sample reviewed by CMS.
- Settings subject to heightened scrutiny include:
 - Settings in a publicly or privately-operated facility providing inpatient institutional treatment;
 - Settings on the grounds of, or adjacent to, a public institution; and
 - Settings with the effect of isolating people receiving Medicaid home and community-based services from the broader community of people not receiving services.

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Heightened Scrutiny Process

- For settings presumed to have institutional qualities according to the final rule:
 - It *does not* necessarily mean HCBS may not be provided in this setting;
 - It *does* mean this setting is subject to the heightened scrutiny process.
- Depending on the setting, this process may include:
 - Site visits;
 - Submitting a packing of information;
 - Responding to additional inquiries; and
 - Remediation planning.

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Impacted Nebraska HCBS Waivers

Medicaid 1915(c) Waivers:

- Aged and Disabled (AD) Waiver
- Comprehensive Developmental Disabilities (CDD) Waiver
- Developmental Disabilities Adult Day (DDAD) Waiver
- Traumatic Brain Injury (TBI) Waiver

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Nebraska HCBS Settings Evaluated

AD Waiver	DD Waivers	TBI Waiver
Assisted Living Facilities	Host Home/Shared Living	Assisted Living Facilities
Adult Day Health	Group Home	
Extra Childcare for Children with Disabilities	Centers for Developmental Disabilities (CDDs)	
Respite Settings	Adult Day Settings	
	Other Settings	
	Day Support (Workshop)	

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Nebraska Settings Assessments Completed

Medicaid HCBS Waiver	Assessments Completed	Reporting Period
AD and TBI Waivers*	1,538	8/2017-7/2021
CDD Waiver**	3,132	6/2017-2/2022
DDAD Waiver***	424	3/2017-2/2022

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Settings Subject to Heightened Scrutiny

Of the settings evaluated, settings in **boldface** were determined to be subject to heightened scrutiny.

AD Waiver	DD Waivers	TBI Waiver
Assisted Living Facilities	Host Home/Shared Living	Assisted Living Facilities
Adult Day Health	Group Home	
Extra Childcare for Children with Disabilities	Centers for Developmental Disabilities (CDDs)	
Respite	Adult Day Settings	
	Other Settings	
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Prevalence of Heightened Scrutiny

Medicaid HCBS Waivers	Heightened Scrutiny Review	In Compliance
AD and TBI Waivers – residential	66	65
AD Waiver – non-residential	0	N/A
CDD Waiver – residential	7	7
CDD and DDAD Waivers – non-residential	4	4

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Next Steps for Heightened Scrutiny

- Settings subject to heightened scrutiny have been notified and will be given further instruction as clarifications on the process are received.
- All requested heightened scrutiny documentation will be reviewed by DHHS for initial approval.
- Heightened scrutiny documentation will be sent to CMS when requested.
- CMS will make the final determination if identified settings meet HCBS criteria.

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Next Steps for Compliance

DHHS is committed to continue:

- Working with participants, families, providers, and partners;
- Sharing technical assistance and good service models;
- Supporting providers through heightened scrutiny; and
- Supporting participants to select providers and in person-centered service delivery.

All settings must be in compliance by March 2023.

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Stakeholder Comments

dhhs.hcbspubliccomments@nebraska.gov

Mail Comments to:

Attention HCBS Public Comments
DHHS Developmental Disabilities
P.O. Box 95026
Lincoln, NE 68509

View the State Transition Plan:

<http://dhhs.ne.gov/pages/HCBS-Statewide-Transition-Plan.aspx>

Copies of the revised draft State Transition Plan
are available upon request.



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