

Office of Long-Term Living Heightened Scrutiny- Public Comments

As part of the Heightened Scrutiny process for the Home and Community-Based Settings Rule, the Office of Long-Term Living (OLTL) was required to provide detail on the following:

- how the state identified settings presumed to have the qualities of an institution,
- how the settings were reviewed as well as how the state determined if a setting has or will overcome the presumption that it is an institutional setting, and
- how each setting identified has, will, or will not overcome the presumption of an institution.

Service location reports and a Heightened Scrutiny Process Document containing this information were posted on the Pennsylvania Department of Human Services website at [Home and Community-Based Services Statewide Transition Plan \(pa.gov\)](#).

Stakeholders were asked to provide comment on the service location reports from November 19, 2022, through December 19, 2022.

OLTL received comments relating to identified sites for Heightened Scrutiny from 5 organizations.

Heightened Scrutiny Site or General Comment	Public Comment	OLTL's Response
<p>General Comments- Provider Owned and Controlled Settings</p>	<p>Three (3) commenters expressed concern about settings which house up to three individuals with disabilities and have an ownership or other financial arrangement with a home care provider to provide Personal Assistance Services (PAS) to these residents. In such settings, the commenters shared concerns about whether the residents have real choice of HCBS providers and whether the settings have the effect of isolating their residents from the broader community.</p> <p>In addition, each of the commenters inquired as to why these settings were not included in the list of identified sites for heightened scrutiny.</p>	<p>OLTL did review provider-owned and controlled settings. These are settings where two or more unrelated participants live and receive HCBS, and the setting is owned and/or operated by an entity that also has a financial interest in an HCBS provider agency and/or settings that are providing services to these individuals.</p> <p>As indicated in CMS guidance, OLTL identified and assessed provider sites that are presumed to have the qualities of an institution because they have one of the following characteristics as indicated in 42 CFR 441.301(c)(5):</p> <ul style="list-style-type: none"> • Settings are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment. • Settings are in a building located on the grounds of, or immediately adjacent to, a public institution. • Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

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		<p>Additionally, OLTL reviewed congregate residential settings for compliance to ensure those sites do not isolate participants, ensure participants are free from coercion, and ensure participant choice is being honored.</p> <p>Most of the provider owned and controlled sites did not meet the criteria for heightened scrutiny because they were compliant, or they were able to become compliant through a Corrective Action Plan (CAP).</p> <p>OLTL continues to monitor sites against the requirements outlined in the Final Rule through the onsite assessment tool.</p>
<p>General Comments- Provider Owned and Controlled Settings</p>	<p>Three (3) commenters expressed that OLTL needs to establish a better system of identifying and reporting, reviewing, monitoring, and sharing information related to provider-controlled settings (settings that are owned and/or operated by an entity that also has a financial interest in an HCBS provider agency and/or settings that are providing services to these individuals).</p>	<p>OLTL's current process includes actions prior to enrollment as well as ongoing provider monitoring, Service Coordinator (SC) requirements, and participant involvement. Prior to any enrollment, the provider is required to complete the OLTL standard application form and materials. Effective July 1, 2015, the application form includes questions and information related to the HCBS Rule.</p> <p>The types of questions a provider must respond to are specific to the service location where HCBS is rendered, pose qualities to isolate participants from the greater community, third-party relationships, and the financial interest of owners of residential settings.</p> <p>There is also a role for the Community HealthChoices Managed Care Organizations (CHC-MCOs) and SCs. OLTL requires the CHC-MCOs to identify any concerns related the HCBS Final Rule as SCs work with participants during the Person-Centered Service Plan (PCSP) process. For all participants who receive HCBS through OLTL, SCs are required at least yearly through the annual re-determination process to review all available service delivery options and document the participant's choice.</p> <p>SCs are responsible for ensuring participants are fully informed of all services available in the waiver, their right to choose from and among all willing and qualified providers that are part of the CHC-MCOs provider network, and electronically document evidence of participant choice.</p>

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		<p>SCs are also responsible for providing participants with information and training on the process for selecting qualified providers of services during the PCSP development process. Any identified concerns must be brought to OLTL's attention as outlined in Appendix D of the Waivers.</p> <p>OLTL will work with stakeholders to identify enhancements to our existing processes.</p>
General Comments	Two (2) commenters asked for OLTL to develop and publish a document similar to the Office of Developmental Program's document titled " <i>Service Locations That Will Not Be Sent to CMS/Do Not Meet Heightened Scrutiny Criteria</i> ".	OLTL is working to compile this information and post to the Department's website.
General Comments- Lack of participant involvement	Four (4) commenters raised concerns about the lack of participant involvement and interviews during the heightened scrutiny review process.	OLTL agrees that speaking with participants is fundamental. OLTL Quality Management Efficiency Team (QMET) staff have strived to interview participants at the site. However, it should be noted that due to concerns related to the Public Health Emergency (PHE), interviews are conducted as they are able to encounter participants at the site. Day to day operations were observed during on-site visits as well as a review of the PCSP. Post COVID-19, on-going monitoring processes will prioritize participant and/or family interviews.
Garden Spot Village-Adult Day, Landis Homes-Adult Day, Messiah Lifeways-Adult Day	One (1) commenter provided support for OLTL's Adult Day Center (ADC) sites. OLTL's determination that the identified ADCs operating at these locations should overcome the presumption of institutional qualities due to the separately designated space with a private entrance/exit and operating under its own set of policies, procedures, and staff/management. We affirm that the goals of the identified ADCs include promoting independence for participants and providing opportunities for enrichment and socialization within the broader community in accordance with participants' individual preferences. By providing these services	Thank you for your comments in support of these sites.

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	<p>during the day, the identified ADC sites enables participants to remain integrated and live within the community in alignment with their needs as specified in the service plan to achieve the overall health, welfare, and safety of the participants.</p>	
<p>General Comments</p>	<p>Three (3) commenters provided comments on the 289 sites mentioned in the Statewide Transition Plan (STP) vs. the number of sites being submitted for heightened scrutiny.</p>	<p>To clarify, not all 289 sites were presumed to have institutional characteristics. Page 22 of the most recently published Statewide Transition Plan outlines the most current numbers based on the QMET on-site and Final Rule panel review. OLTL estimated that, of the 289 sites, 11 providers representing 19 service locations may be submitted for heightened scrutiny.</p> <p>Most of the sites reviewed were either compliant or able to become compliant with a CAP. OLTL will update the STP to include information on the total number of sites reviewed, number of sites fully compliant and number of sites who can or did become compliant through a CAP.</p> <p>OLTL is submitting ten (10) sites that have had an on-site or virtual heightened scrutiny assessment by the QMET, a review by the Final Rule panel and a determination was made that the site meets the CMS criteria for heightened scrutiny. There was one identified provider with two site locations that after further review of the physical location (for which the site was solely being submitted for heightened scrutiny) did not meet criteria for heightened scrutiny and therefore was removed from the list because it met all requirements of the Final Rule.</p>
<p>General Comments</p>	<p>Three (3) commenters requested OLTL to post information about active CAPs, remediation review, and decisions about whether the service location will be compliant with the HCBS Rule by March 1, 2023.</p>	<p>OLTL does not publicly share provider monitoring results or site remediation. Provider changes made which directly affect participants have to be shared with site participants by the provider.</p> <p>OLTL will be updating the STP to include information on the total number of sites reviewed, number of sites fully compliant and number of sites who can or did become compliant through a CAP.</p>

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All Sites	<p>One (1) commenter expressed general concerns for each of the site reviews for the following reasons:</p> <ul style="list-style-type: none"> • Adequately verifying integration into the community. • Lack of participant interviews/involvement. • Lack of enough detail to sufficiently provide thoughtful comments. 	<p>OLTL's process for heightened scrutiny was published in MA Bulletin #59-21-03 dated December 29, 2021. In addition, the on-site assessment tool that OLTL uses to review sites was distributed for public comment and published with the STP for which OLTL did not receive any comments.</p> <p>OLTL worked to accurately identify opportunities for community engagement, recognizing that some activities may not have occurred during the PHE. OLTL's ongoing monitoring strategy includes assessment of community engagement through an interview with participants/family members as well as a review of a participant's PCSP; each individuals' preferences for community engagement may differ based on their individual goals and interests.</p> <p>OLTL agrees that speaking with participants is fundamental. OLTL QMET staff have strived to interview participants at the site. However, it should be noted that due to concerns related to the PHE, interviews are conducted as they are able to encounter participants at the site. In addition to the review of a site's policies and procedures, the QMET observed day to day operations to ensure that the operations reflected what was in policy. QMETs also reviewed PCSPs. Post COVID-19, on-going monitoring processes will prioritize participant and/or family interviews.</p> <p>OLTL does not publicly share provider monitoring results or site remediation. Provider changes made which directly affect participants have to be shared with site participants by the provider.</p>
General Comment	<p>One (1) commenter stated that it is not clear if these sites are providing services in a culturally competent way to meet individual needs. Settings should support options that meet the needs of diverse populations such as limited-English-proficient older adults and LGBT elders.</p>	<p>OLTL agrees that sites should provide services in a culturally competent way to meet individual needs. Participants preferences and accessibility needs must be discussed during the PCSP process.</p>