

Public Comment and Response Summary for ODP's Heightened Scrutiny Settings

As part of the Heightened Scrutiny process for the Home and Community-Based Services Rule, the Office of Developmental Programs (ODP) 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 <https://home.myodp.org/professionals/public-comment-on-odps-heightened-scrutiny-service-locations/> as well as the MyODP website at <https://www.dhs.pa.gov/Services/Assistance/Pages/HCBS-Statewide-Transition-Plan.aspx>. Stakeholders were informed of this information, as well as a public comment webinar opportunity, through the publication of ODP Communication 22-117. Stakeholders were asked to provide comment on the service location reports from November 19, 2022, through December 19, 2022. ODP wants to thank all stakeholders for their feedback.

ODP received comments relating to Heightened Scrutiny that came from 5 individual stakeholders and organizations. Each public comment was reviewed by ODP; the following is the summary of those public comments and ODP's responses.

Many of the responses reference individual interviews, provider staff interviews and reviews of documents such as Individual Support Plans, service notes, and progress notes. The following link provides access to the onsite interview and desk review tools used during the Heightened Scrutiny review: <https://www.dhs.pa.gov/contact/DHS-Offices/Pages/ODP-HCBS%20Final%20Rule.aspx>

Public Comment and Response Summary for ODP's Heightened Scrutiny Settings

Public Comments	ODP's Response
Two stakeholders indicated that they visited Devereux Whitlock Center Joyce Mendleson AAC and thought the program does not do a good job of ensuring that individuals who have communication needs are supported.	<p>Thank you for sharing this experience. No changes were made to the determination of the service location based on public comment. As part of the Heightened Scrutiny review process, individuals were asked the following questions:</p> <ul style="list-style-type: none"> • Do you feel that your staff understand you when you communicate with them? • If you use technology to communicate, do staff provide support to assure your communication device works (i.e. batteries, keeping it charged, stored properly when not used)? <p>Some individuals interviewed indicated that they communicate through non-verbal communication and that staff understand their communication needs. In addition, a sample of Individual Support Plans were reviewed to ensure that individuals' communication needs are supported.</p> <p>ODP encourages stakeholders to contact the provider, Supports Coordinator, or the ODP Customer Service Line if there is a concern about a provider not meeting requirements.</p>
One stakeholder noted that from firsthand experience with Dr. Gertrude A. Barber Center Inc Bollinger, the individuals were treated with respect.	Thank you for sharing this experience. No changes were made to the determination for the service location based on public comment.
One stakeholder noted from firsthand experience with visiting Overbrook Friedlander-Focus Day Program, that the individuals were treated with respect.	Thank you for sharing this experience. No changes were made to the determination for the service location based on public comment.
Two stakeholders commented on Merakey Allegheny Valley School Middle's setting expressing concern that ODP did not interview any individuals for this service location.	No changes were made based on these public comments. The Centers for Medicare and Medicaid Services (CMS) provided guidance that compliance with federal requirements should be based on a review of a sample of individuals' daily activities, person-centered service plans, and/or interviews. As part of ODP's Heightened Scrutiny review, a sample of individuals were asked to be interviewed at each setting. At this specific

Public Comment and Response Summary for ODP's Heightened Scrutiny Settings

Public Comments	ODP's Response
	setting, multiple individuals were asked if they wanted to be interviewed and a few individuals declined while one agreed. In addition, a sample of Individual Support Plans was reviewed to ensure services meet state and federal regulatory requirements and are rendered in accordance with each individual's plan.
One stakeholder expressed agreement with ODP's determination of LifePath Inc, that it overcomes the presumption of institutional qualities based on firsthand experience at, and knowledge of, the service location.	Thank you for sharing this experience. No changes were made based on public comment.
One stakeholder provided comments like those listed below about the Child Guidance Resource Center service location.	Child Guidance Resource Center has closed and is no longer rendering ODP waiver services at the location that was released for public comment. For this reason, this service location will not be submitted to CMS for Heightened Scrutiny.
Three stakeholders expressed interest in additional information about how often individuals go into the community for multiple/all service locations reviewed and if that resulted in meaningful engagement with their community members.	<p>The amount of time individuals participate in the community must be person-centered and based on each individual's choices, preferences, and interests. As part of ODP's Heightened Scrutiny review, individuals were asked the following questions:</p> <ul style="list-style-type: none"> • Do you ever leave the day program and go out and visit places? • Do you get to do this when you want to? • Do you communicate and/or interact with community members (from outside the day program)? <ul style="list-style-type: none"> ○ If not, do you know why not? ○ If yes, can you give an example of who you talk to in the community? • How often do you spend time in the community with your day program?

Public Comment and Response Summary for ODP's Heightened Scrutiny Settings

Public Comments	ODP's Response
	<ul style="list-style-type: none"> • Are you offered activities that you enjoy in the community as often as you would like? • Would you like to spend time in the community more or less often with your day program? • Would you like to spend your time in the community in a different way or by doing something different? • Where do you like to go in the community when you are with your day program? • Do you enjoy the activities that you do? Or do you want to do another activity that you enjoy? • Are there other activities in the future that you would like to try? <p>In addition, a sample of Individual Support Plans, service notes, and progress notes were reviewed to ensure that individuals' were supported to participate in community activities as outlined in their plan.</p>
<p>Five stakeholders commented about the community location qualities of multiple service locations reviewed including:</p> <ul style="list-style-type: none"> • That the distance from the identified settings to other local shops or restaurants should be measured. • That ODP should not use proximity to public resources as a way to evaluate if the individuals are provided access to the community and that they have interaction with people without disabilities. • Individuals cannot access community locations without having access to transportation. 	<p>The Centers for Medicare and Medicaid Services (CMS) provided guidance that states should describe the service location's proximity to the broader community. As seen in the Service Location Summary documents, ODP looked at the surrounding area of the service location to ensure it was in a community integrated environment (not segregated for people with just disabilities). Since there are no state or federal requirements about the distance a Community Participation Support location must be to community locations, a specific measurement was not taken. Through the Heightened Scrutiny review, ODP ensured that each service location was offering individuals opportunities to participate in integrated community activities consistent with their preferences, choices, and interests and Individual Support Plans.</p> <p>The Community Participation Support service definition makes it clear that providers are required to provide transportation as an integral component of the service for individuals to access community locations. The</p>

Public Comment and Response Summary for ODP's Heightened Scrutiny Settings

Public Comments	ODP's Response
	Community Participation Support service can also support individuals in learning to use public/private transportation and other transportation options available in the local area.
Three stakeholders noted that the summaries for multiple service locations indicated that individuals were free to move around service location but there was little to no indication that individuals can exercise independent initiative to leave the service location if they wished to do so.	As part of ODP's Heightened Scrutiny review, individuals and provider staff were asked if individuals could leave the service location as they wish. In addition, a sample of Individual Support Plans, service notes, and progress notes were reviewed to ensure that individuals are supported to participate in community activities as outlined in their plan.
One stakeholder expressed concern with the use of calendars as evidence of individuals accessing the community to the same degree as individuals not receiving Home and Community-Based Services. This stakeholder felt that in particular, calendars with repetitive activities each month and limited activities each day does not represent the flexibility in decision-making that individuals without disabilities enjoy.	As outlined in ODP's Heightened Scrutiny Process, calendars were not the only evidence used to ensure individuals accessed the community. Individuals and provider staff were asked about community opportunities and a sample of Individual Support Plans, service notes, and progress notes were reviewed to ensure that individuals are supported to participate in community activities as outlined in their plan.
One stakeholder expressed concern that ODP cited interviews with staff as proof that individuals are treated with dignity and respect, indicating that ODP relied on staff interviews rather than confirming this with individuals.	As outlined in ODP's Heightened Scrutiny Process, interviews with staff were not the only evidence used to ensure individuals are treated with dignity and respect. Individuals were asked if provider staff were respectful to them. In addition, Individual Support Plans, service notes, and progress notes were reviewed for evidence of rights violations. During the public comment webinar, stakeholders were also encouraged to share personal and/or professional experiences with the service location which includes experiences about whether individuals are treated with dignity and respect.

Public Comment and Response Summary for ODP's Heightened Scrutiny Settings

Public Comments	ODP's Response
	ODP encourages stakeholders to contact the provider, Supports Coordinator, or the ODP Customer Service Line if there is a concern about a provider not meeting requirements.
One stakeholder expressed concern that a rack room or personal cubbies do not promote individuals' right to privacy as they feel these are open to other individuals. The stakeholder requested additional information regarding if there was any type of door for the rack room or cubbies, and if there was a locking mechanism, in each setting.	All providers are required to ensure that each individual is provided a secure place to store their personal belongings such that no one but the individual can access them. The provider may not store an individual's belongings such that the individual must ask a staff person to access their belongings unless otherwise specific in the assessment and Individual Support Plan. Requiring providers to use locks for every individual could result in some individuals being required to ask a staff person to access their belongings. In any instance where there are issues or complaints regarding the security of individual's belongings, the provider must explore alternative means to ensure this requirement is met which may include the use of locks for individuals who can independently use them.
Three stakeholders expressed the following concerns about the Corrective Action Plan process: <ul style="list-style-type: none"> • the Corrective Action Plans were not available for public comment; and • the Corrective Action Plans not being approved yet. 	ODP complied with guidance from CMS regarding public input which does not require documents such as Corrective Action Plans be provided for public comment. As indicated in the Heightened Scrutiny Process Document, the three service locations that have Corrective Action Plans that are not approved yet are expected to become compliant with federal and state regulatory requirements, as well as ODP waiver requirements, no later than March 1, 2023.
Two stakeholders expressed the following concerns about how the complaint process is described in multiple service location summaries: <ul style="list-style-type: none"> • providers require staff to help participants complete a complaint; and 	ODP complied with guidance from CMS regarding public input which does not require complaints to be analyzed and posted for public comment. As part of ODP's Heightened Scrutiny review, individuals were asked if they know how to file a complaint. In addition, provider complaint procedures were reviewed to ensure that individuals are notified of their ability to submit complaints anonymously without staff assistance in compliance

Public Comment and Response Summary for ODP's Heightened Scrutiny Settings

Public Comments	ODP's Response
<ul style="list-style-type: none"> no details were included about whether complaints have been made and what those complaints were about. 	<p>with 55 Pa. Code Chapter 6100 requirements. ODP also ensured that 100% of providers documented grievances in accordance with regulation in Fiscal Years 2017-2018, 2018-2019, and 2019-2020.</p>
<p>Two stakeholders expressed concerned that the service location summaries did not show enough information on restrictive procedures specific to each service location.</p>	<p>The service location summaries have been updated to clarify the following:</p> <ul style="list-style-type: none"> No restrictive procedures were observed during any Heightened Scrutiny on-site review. Restrictive procedures were checked as part of the desk review of Individual Support Plans, service notes, progress notes, and provider policies. All service locations are subject to a licensing inspection at least annually that ensure restrictive procedure requirements in 55 Pa. Code Chapters 2380 or 2390 are followed.