



# Home and Community-Based Settings Final Rule Heightened Scrutiny for OLTL

MLTSS Subcommittee Meeting  
December 7, 2022

# HCBS Rule Requirements

To ensure each service/setting is home and community-based (not institutional) each service/setting must:

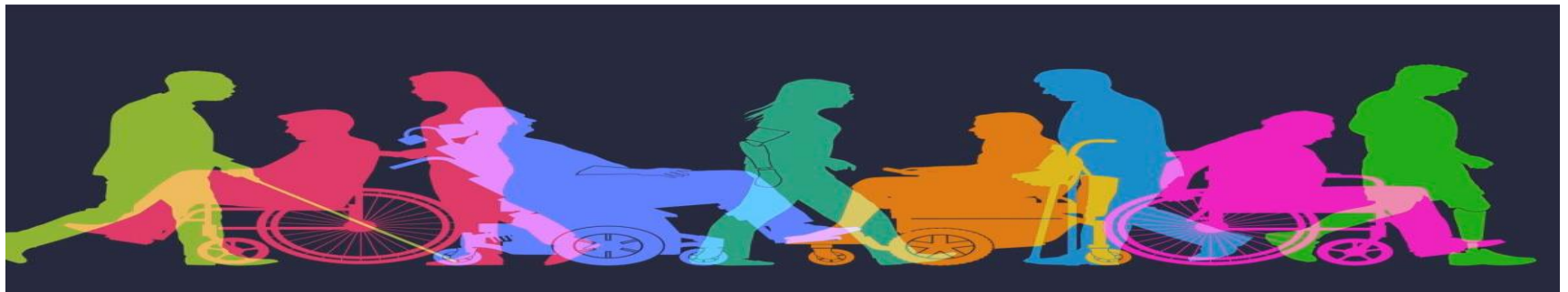
- **Be integrated in and support full access to the greater community.**
- **Be selected from among a variety of service/setting options.**
- **Optimize autonomy and independence in making life choices.**



## ▶ HCBS Rule Requirements (Continued)

To ensure each service/setting is home and community-based (not institutional), each service/setting must:

- **Facilitate individual choice in selecting both services and service providers.**
- **Ensure rights of privacy, dignity, respect, and freedom from coercion and restraint**



## HCBS Rule Requirements (Continued 2)

The following are presumed to have institutional characteristics:

- Services/settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
  - Intermediate Care Facilities, Nursing Facilities, Hospitals
- Services/settings in a building located on the grounds of, or immediately adjacent to, a public institution;
- Any other services/settings that have the effect of isolating individuals

# OLTL Site Specific Assessments

OLTL utilized the following approaches to assess compliance with the HCBS Rule statewide:

- Self-Assessments with QMET follow-up
- QMET site assessments and follow-up
  - Developed a tool to use for each provider site in a category to be reviewed
  - Tool reviewed provider physical site as well as policies and procedures
  - OLTL Final Rule Panel developed to coordinate review of findings
  - QMET follow up with provider to ensure findings were corrected.

# Identification of Institutional Settings

OLTL Provider Enrollment Application was updated as of July 1, 2015.

- Additional questions added to determine qualities of an institution
- No new settings where HCBS is provided had applications approved if there was demonstrated evidence that the site has the qualities of an institution
- OLTL released bulletin 59-16-14 “Home and Community Based Settings Requirements” on December 28, 2016.
- OLTL has also established an email resource account for providers, participants, stakeholders, advocates, and others to communicate with OLTL on sites that may not be compliant or ask questions about site compliance with the HCBS Settings Final Rule.

# ▶ OLTL Heightened Scrutiny Process

- On December 29, 2021, OLTL issued a Medical Assistance Bulletin 59-21-03, “Home and Community Based Settings Heightened Scrutiny Process”.
- OLTL conducted on-site or virtual assessments of HCBS provider sites where congregate (3 or more) participants live or receive services, which included in-person or virtual inspection of the site, review of policies and procedures, and direct observation of services when possible.
- Each site was then submitted to the OLTL Final Rule Panel for approval. Sites that had components that were out of compliance worked through a Corrective Action Plan (CAP). Once the CAP was approved by the Final Rule Panel and the Panel agreed the site falls into a category appropriate for heightened scrutiny, the provider was sent a letter giving them the option of working with OLTL through the heightened scrutiny process.

# Heightened Scrutiny

- OLTL has identified 9 HCBS providers appropriate for heightened scrutiny.
  - Of those 9:
    - 6 are identified because they are in a building on the grounds of an institution
    - 3 are found to have the effects of isolating due to the provider's location and components of the service provision but OLTL with the support of the OLTL Final Rule Panel feel the provider meets the spirit of the rule and is appropriate for heightened scrutiny.
- Please see a summary of each site here: [Home and Community-Based Services Statewide Transition Plan \(pa.gov\)](#)
- Please provide comments on the format provided on the website



# Heightened Scrutiny Public Comment Period

- Heightened Scrutiny Public Comment period for all 9 OLTL HCBS providers is available until 11:59 pm on December 19, 2022.
- Interested persons are invited to submit written comments regarding the proposed HCBS Rule provider sites to the Department of Human Services, Office of Long-Term Living, Bureau of Policy Development and Communications Management, Attention: Janice Bickel, P.O. Box 8025, Harrisburg, PA 17105-8025. Comments may also be submitted to the Department at [RA-PWHCBSFinalRule@pa.gov](mailto:RA-PWHCBSFinalRule@pa.gov).

# Corrective Action Plan

- Pennsylvania has submitted to CMS a Corrective Action Plan because all Pennsylvania heightened scrutiny locations have not been approved yet.
- It is anticipated that Pennsylvania's settings will be submitted to CMS no later than January 31, 2023.
- Please note: OLTL does **not** anticipate the need to close any sites at this time which would cause participants to be moved. If any sites are not approved for heightened scrutiny OLTL will work with participants to choose appropriate alternate sites and safely achieve transition.

## Resources

Pennsylvania's Final STP is available at <https://www.dhs.pa.gov/Services/Assistance/Pages/HCBS-Statewide-Transition-Plan.aspx>

CMS Guidance Regarding the HCBS Rule is available at

<https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>