

# Colorado HCBS Final Rule Provider Validation Process

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Includes Site Visit Protocol and Heightened  
Scrutiny Process

April 2016

## Contents

I. Introduction .....	1
II. Provider Transition Plan (PTP) Process .....	3
III. Protocol for Initial Set of Site Visits.....	4
Preparation for Site Visits .....	4
Site Visit Agenda .....	4
Site Visit Wrap-up .....	7
Site Visit Follow-Up.....	10
IV. Heightened Scrutiny Process .....	11
The Heightened Scrutiny Concept .....	11
Identifying Settings That Are Presumed To Be Institutional (Step 1) .....	11
Identifying Presumed-Institutional Settings to Put Forward for Heightened Scrutiny (Step 2-a) .....	13
Collecting Evidence To Provide to CMS with Requests for Heightened Scrutiny (Step 2-b) .....	15
What Happens Next (Steps 3 through 6) .....	17
Appendix A: Setting-Specific Compliance Actions and Responsible Parties .....	19
Appendix B: Responsibilities of Site Visit Team Members.....	20
Appendix C: CMS Guidance Documents .....	21
Appendix D: Provider Transition Plan (PTP) Workflow for Settings Subject to Site Visits .....	22
Appendix E: Colorado PTP – Pre-Population of Heightened Scrutiny Elements for Adult Residential, Nonresidential, and Children’s Residential Providers.....	23

## I. Introduction

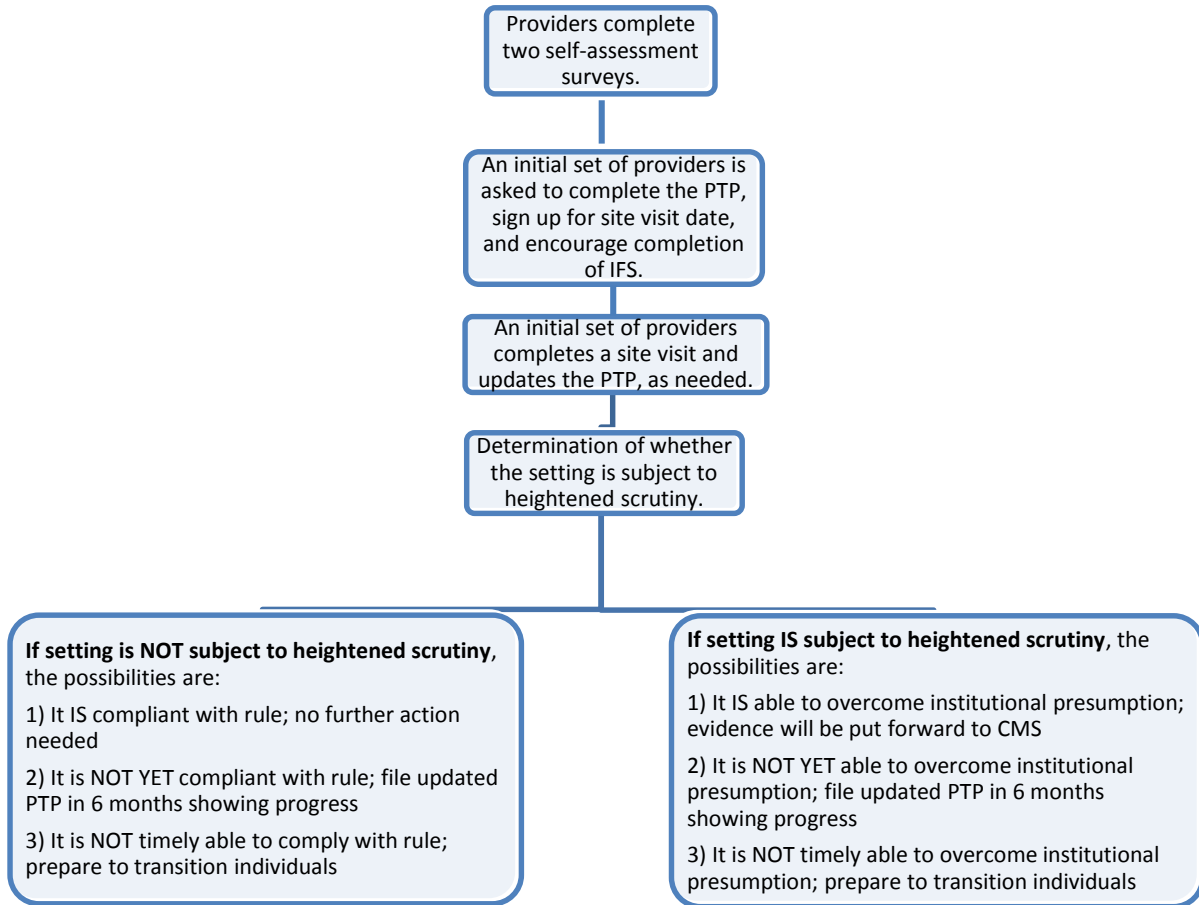
Please begin by reading the cover letter being sent to providers and the HCBS Provider Transition Plan User Manual. These materials provide helpful background on the HCBS Settings Final Rule and the processes other than site visits that have already been implemented to assess compliance with the rule, including two provider self-assessment surveys, the individual and family surveys (IFS), and the Provider Transition Plan (PTP). Information from these sources will inform, and be verified during, on-site visits at selected provider settings.

From April through June 2016, the Colorado Department of Health Care Policy and Financing (HCPF or “the Department”) will complete site visits for the initial set of settings selected for such visits. Additional site visits will be conducted through December 2016.

The site visit process will validate providers’ level of compliance with the HCBS Settings Final Rule and facilitate the submission to CMS of requests for heightened scrutiny. The site visit process will also advance remedial action and help Colorado to identify the ongoing support needs of Colorado’s HCBS providers.

**Exhibit 1** reflects the flow of providers from self-assessment to completion of the Provider Transition Plan to site visit to resolution of outstanding issues (including remedial action and pursuit of heightened scrutiny, if appropriate).

*Exhibit 1: Provider Validation Methodology*



## II. Provider Transition Plan (PTP) Process

The PTP is an Excel document created to help providers review their own policies in light of the federal rule, to guide site visits (if applicable), to support providers in making needed changes, and/or to capture current promising practices (*i.e.*, methods of achieving compliance that might be shared as best practices with other providers). There are three PTP templates: one for residential settings for adults, one for residential settings for children, and one for nonresidential settings for adults and children. Please review the PTP templates and the related User Manual.

All providers will be required to complete a PTP, whether or not they are selected for a site visit.

Completed PTPs and supporting documentation will be emailed by providers to the Department, which will make the materials available to the site visit team.

Before each site visit, the site visit team will review the PTP submitted by the provider, paying special attention to compliance issues, proposed remedial action steps, and the timelines for completion for each site visit setting. The team will also review the supporting documentation submitted by the provider. This information will help inform areas to focus on during the site visit and guide continued remedial action until the provider is compliant or removed from the HCBS program.

Upon completing this review, and prior to the site visit, the site visit team should approve the PTP as initially submitted by the provider, or add any notes explaining why the PTP is not approved. This information is recorded in the row labeled “Initial” in the PTP tab for State Review of PTP.

State Review of PTP - State Use Only				
	Approved?	Reviewed By:	Date:	Notes:
Initial	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
6-month update	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Validation	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
6-month update	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

### III. Protocol for Initial Set of Site Visits

Pursuant to the Statewide Transition Plan submitted to CMS on March 25, 2016, Colorado will conduct site visits to verify self-assessment responses, to further assess particular settings, to prompt providers to take remedial actions, and to monitor remedial progress. This protocol will focus on the initial group of settings visited.

#### Preparation for Site Visits

Your team will send emails to an initial set of selected providers. Each email will attach a letter from the Department that informs the provider of its setting's compliance support level (see template provided to you). The letter will also explain the provider validation process, and it will enclose the PTP Excel document and the *HCBS Provider Transition Plan User Manual* with instructions on completing the PTP and submitting required documentation. The cover letter will also include instructions to distribute the Individual and Family Survey (IFS) to clients, family members, and guardians. Providers will have until April 29, 2016 to submit a completed PTP (along with required documentation) and have their clients and clients' families and/or guardians complete the IFS.

The cover letter to the provider will also inform them that they have been selected to receive a site visit. Site visits are mandatory for the initial set of selected providers and will generally last one to two business days. The letter will instruct the provider to expect a call from you within a few days to schedule a site visit in May-June 2016. (After the initial set of site visits, the cover letter will be modified to reflect the fact that some providers will be asked to complete the PTP without receiving a site visit.)

In preparing for each site visit, the site visit team will review 1) the IFS data specific to the provider, 2) the PTP and supporting materials submitted by the provider, and 3) any other information provided by the Department or other state agencies to identify areas of focus for the site visit.

The site visit team should promptly contact each provider to schedule a site visit. (See *HCBS Provider Transition Plan User Manual*, Appendix A, for schedule.) During this preparation call, the site visit team will also review the purpose of the site visit and discuss any needs or concerns that the provider wishes to address during the visit. The team will work with providers unable to email their supporting materials by ensuring that the providers will have hard copies on hand during the day of the site visit.

#### Site Visit Agenda

During the site visit, Department staff will engage various stakeholders within each setting, including setting staff, setting management, and, as appropriate, individuals receiving services and their family members. The Department will also share an agenda with each setting prior to the site visit for additional suggestions. **Exhibit 2** details a draft site visit agenda.

Throughout the site visit, the site visit team should take notes.

**Exhibit 2: Site Visit Agenda Outline**

<b>Task</b>	<b>Time</b>	<b>Action Items</b>
I. Kick-off	.5 hour	<ul style="list-style-type: none"> <li>➤ Welcome and introductions</li> <li>➤ Goals of the site visit</li> <li>➤ Brief overview of the HCBS Settings Rule</li> <li>➤ Brief review of provider compliance status</li> <li>➤ Review of agenda</li> <li>➤ Plans for client interviews later in the day</li> <li>➤ Collect supporting documentation if the provider was not able to email it before the site visit</li> </ul>
II. Walking Tour of Site; Observation	.5 hour	<ul style="list-style-type: none"> <li>➤ In addition to taking notes, site visit team should take photos of the setting, as appropriate (e.g., to show access to or isolation from community). Individuals should not be photographed without their permission.</li> </ul>
III. Discussion of Community Integration and Institutional Characteristics	1 to 2 hours	<ul style="list-style-type: none"> <li>➤ Detailed review of Community Integration section of PTP: <ul style="list-style-type: none"> <li>○ Compliance Issues</li> <li>○ Remedial Actions</li> <li>○ Documentation</li> </ul> </li> <li>➤ Detailed review of Institutional Characteristics section of PTP: <ul style="list-style-type: none"> <li>○ Compliance Issues</li> <li>○ Remedial Actions</li> <li>○ Documentation</li> </ul> </li> <li>➤ Detailed review of IFS results relating to these issues</li> <li>➤ Discussion of promising practices that the provider can share with other providers relating to these issues</li> </ul>
IV. Interviews with individuals receiving services and/or family members	1 to 2 hours	<ul style="list-style-type: none"> <li>➤ Focus is on the lived experiences of clients</li> <li>➤ Note: Discussions with individuals receiving services should be completed in a person-centered manner, with respect for individual privacy and rights at all times.</li> </ul>
V. Discussion of Informed Choice	.5 hour	<ul style="list-style-type: none"> <li>➤ Detailed review of Informed Choice section of PTP: <ul style="list-style-type: none"> <li>○ Compliance Issues</li> <li>○ Remedial Actions</li> <li>○ Documentation</li> </ul> </li> <li>➤ Detailed review of IFS results relating to these issues</li> <li>➤ Discussion of promising practices that the provider can share with other providers relating to these issues</li> </ul>
VI. Discussion of Rights/Autonomy	1.5 hours	<ul style="list-style-type: none"> <li>➤ Detailed review of Rights/ Autonomy section of PTP: <ul style="list-style-type: none"> <li>○ Compliance Issues</li> <li>○ Remedial Actions</li> <li>○ Documentation</li> </ul> </li> <li>➤ Detailed review of IFS results relating to these issues</li> <li>➤ Discussion of promising practices that the provider can share</li> </ul>

		with other providers relating to these issues
VII. Discussion of Heightened Scrutiny	1 hour	<ul style="list-style-type: none"> <li>➤ If setting is potentially subject to heightened scrutiny, site visit team should make the Heightened Scrutiny tab of the PTP visible to the provider by right-clicking on the tabs at the bottom of the Excel file, selecting “Unhide” from the menu, and then selecting “Heightened Scrutiny” from the list.</li> <li>➤ Detailed review of Heightened Scrutiny section of PTP: <ul style="list-style-type: none"> <li>○ Compliance Indicators for Overcoming Presumption that Setting Is Institutional</li> <li>○ Remedial Actions</li> <li>○ Documentation</li> </ul> </li> </ul>
VIII. Additional Observations followed by Internal Site Visit Team Meeting	1 hour	<ul style="list-style-type: none"> <li>➤ Site visit interviewers to observe setting on their own, continue candid conversations with individuals receiving services and others as necessary, identify additional compliance issues, and reach preliminary conclusion about what status will be recorded in the Provider Status Summary tab of the PTP.</li> </ul>
IX. Strategic Planning Session and Closing of Visit	1 hour	<ul style="list-style-type: none"> <li>➤ In partnership with the provider, update the PTP, focusing in particular on remedial action steps and timeline for same</li> <li>➤ Site visit team should remind the provider to submit an updated PTP and new/ revised supporting documents in six months.</li> </ul>
Total	8 to 10 hours	<ul style="list-style-type: none"> <li>➤ Site visits may take more or less time, depending on the circumstances.</li> </ul>

Each site visit will have its own agenda depending on availability of stakeholders, overall compliance status, particular compliance issues and questions/concerns raised by the provider, and the potential application of heightened scrutiny. As set forth in the timeline in Appendix A of the *User Manual*, all agendas should be finalized and sent to the provider five days before the site visit.

As guidance for discussions on particular facets of the federal HCBS Settings Rule, the site visit team should refer to the site visit checklist that accompanies this Protocol.

During the site visit, the site visit team should confirm that the PTP completely identifies all compliance issues. If the PTP submitted by the provider omits any compliance issues, the site visit team should identify the missing issues in the red Validation Submission field of the appropriate tab(s). The site visit team should also work with the provider to identify an appropriate remedial action plan for the additional compliance issue(s), and they should enter this information into the Validation Submission field (see below for an example screen shot). Please use the Validation Submission field instead of editing existing entries in the green Initial Submission field.



**Update: Validation Submission (if applicable—e.g., in conjunction with a site visit)**

Please enter the date:

Please review and edit the compliance issues listed below.

Please review the issue sources for the compliance issues. If unknown, please select "unknown."

Compliance Issue	Issue Source(s)
<input type="checkbox"/> Individuals are told that they must reside in or receive services from the setting, even if they would prefer something else. <input type="checkbox"/> Individuals are not informed of and given a chance to choose among options <input type="checkbox"/> Setting does NOT offer individualized supports that enable individuals to choose activities of their own interests (within a group or individually) <input type="checkbox"/> Setting options are not identified and documented in the person-centered service plan <input type="checkbox"/> Setting options are not based on the individual's needs, preferences, and, for residential settings, resources available for room and board <input type="checkbox"/> Provider is otherwise noncompliant with the federal requirements above relating to informed choice Other compliance issues not identified by the above examples include: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="checkbox"/> Provider has no compliance issues relating to informed choice	<input type="checkbox"/> Individual/Family Survey data (if available) <input type="checkbox"/> Initial Provider Survey data <input type="checkbox"/> Second Provider Survey data <input type="checkbox"/> Provider's records or personal knowledge <input type="checkbox"/> Provider's data file supplied by the Dept. <input type="checkbox"/> Site visit data <input type="checkbox"/> Other - Please enter below: <input type="text"/> <input type="checkbox"/> Unknown

Please select the action steps that will be taken to address the compliance issue. If the action step is not included, please select "other" and describe the action step in the applicable text box below. Use the HCBS settings standards and other guidance when developing action steps (links below).

[Federal Register HCBS Settings Standards](#)      [Other Guidance available on the State's HCBS Website](#)

Provider training, outreach, and education	Policy change at the provider level	Education at the participant level
<input type="checkbox"/> Provider participation in specific education and outreach events on informed choice sponsored by the Department <input type="checkbox"/> Staff participation in specific education and outreach events on informed choice sponsored by the Department	<input type="checkbox"/> Modify policies/procedures to align with federal/state requirements enabling choice among options (e.g. non-disability settings and a private unit in a residential setting) <input type="checkbox"/> Enhanced monitoring of staff application of informed choice	<input type="checkbox"/> Development of tools/messaging materials to educate individuals and families on informed choice <input type="checkbox"/> Development of peer advocacy or peer support programs empowering effective decision-making

## Site Visit Wrap-up

Once the site visit is complete, the site visit team is required to compile a report in the Site Visit Report tab of the PTP and to provide an assessment of the provider's compliance level in the Provider Status Summary tab of the PTP. The site visit team should also submit any outstanding supporting documentation, including hard copies collected during the site visit, the completed site visit checklist, scanned-in copies of the site visit team's notes, and any relevant photographs taken during the site visit.

The Site Visit Report tab borrows from your findings on the site visit checklist and the preceding tabs, of the PTP. It includes space to identify documentation submitted by the provider, compliance issues, and remedial action steps.

### Site Visit Report - State Use Only

Setting Name:

Provider Name:

Provider ID #:

Setting Type:

Setting Address:

Size:

**Section One: Submitted Supporting Documentation**

- Policies or Procedures
- Staff manuals
- Resident agreements/leases
- Other client agreements or client contracts
- Client Handbooks
- Training schedules and/or learning objectives
- Training materials
- Other:

Findings from supporting documentation:

**Section Two: Site Visit Results**

Site Visit Date:

Site Visit Team Members:

Areas of Noncompliance, Remedial Action Steps, and Deadlines for Same

Rights and Autonomy		
Areas of Noncompliance	Remedial Action Steps	Deadlines

Informed Choice		
Areas of Noncompliance	Remedial Action Steps	Deadlines

As identified throughout the site visit, promising practices that might be worth suggesting to other providers should be discussed and documented within the Site Visit Report tab.

Promising Practices (methods of achieving compliance that might be shared as best practices with other providers)

The site visit team must also note within this section the remedial actions to be taken so that the provider can overcome heightened scrutiny (if applicable).

Section Three: Heightened Scrutiny (if applicable)		
Areas of Noncompliance	Remedial Action Steps	Deadlines

The site visit team must also assess the provider’s compliance level. This assessment is completed in the Provider Status Summary tab. The assessment options are illustrated below:

**Provider Transition Plan Summary**

- Setting is NOT subject to heightened scrutiny and IS compliant with rule; evidence of compliance is currently attached; no further action needed
- Setting is NOT subject to heightened scrutiny and NOT YET compliant with rule; file updated PTP in 6 months with evidence showing progress
- Setting is NOT subject to heightened scrutiny and NOT timely able to comply with rule; prepare now to transition clients
- Setting IS subject to heightened scrutiny and IS able to overcome institutional presumption; evidence is currently attached and will be put forward to CMS
- Setting IS subject to heightened scrutiny and is NOT YET able to overcome institutional presumption; file updated PTP in 6 months with evidence showing progress
- Setting IS subject to heightened scrutiny and is NOT timely able to overcome institutional presumption; prepare now to transition clients
- Not yet known

The Provider Status Summary will be completed by the Department for settings that do not receive a site visit.

The site visit team should also approve the PTP as it was updated in conjunction with the site visit, or add any notes explaining why the PTP is not being approved. This information is recorded in the row labeled “Validation” in the PTP tab for State Review of PTP.

State Review of PTP - State Use Only				
	Approved?	Reviewed By:	Date:	Notes:
Initial	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
6-month update	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Validation	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
6-month update	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Finally, the site visit team should email the completed, updated PTP simultaneously to the provider at the provider’s email address and to the Department at [ptpsubmission@state.co.us](mailto:ptpsubmission@state.co.us). In doing so, confirm that the Heightened Scrutiny tab is unhidden if applicable to the setting. Confirm that the remaining State Use Only tabs remain hidden to the provider. (These tabs should still be visible to HCPF, which has the password to unlock the workbook.) Immediately after sending this email, send an additional email to the Department at [ptpsubmission@state.co.us](mailto:ptpsubmission@state.co.us) attaching relevant photographs and scanned-in versions of any hard copy provider materials, checklists, and notes.

The site visit team should email or call Caitlin Phillips ([Caitlin.Phillips@state.co.us](mailto:Caitlin.Phillips@state.co.us) or 303-866-6873) or Adam Tucker ([Adam.Tucker@state.co.us](mailto:Adam.Tucker@state.co.us) or 303-866-5472) to discuss any questions or requests for guidance that could not be resolved during the site visit.

### Site Visit Follow-Up

Within six months, providers that had any compliance issues and remedial action plans will need to submit an updated PTP and revised supporting documents (if applicable – e.g., revised resident agreements) showing their progress on their remedial actions. The progress may be verified through an additional site visit. This process continues until the provider is compliant or until December 31, 2017 (at which point the process shifts to planning to transition clients to other providers).

## IV. Heightened Scrutiny Process

### The Heightened Scrutiny Concept

Home and community based services (HCBS) must be provided in a homelike, non-institutional setting. Hence, HCBS settings do not include nursing facilities, institutions for mental diseases (IMDs), intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and hospitals. See 42 C.F.R. § 441.301(c)(5).

In addition, HCBS settings do not include “[a]ny other locations that have qualities of an institutional setting.” *Id.* In order to apply this rule, you will need to determine whether any of the sites that you visit have institutional qualities. The analysis is as follows:

[Step 1] Any setting that is [i] located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or [ii] in a building on the grounds of, or immediately adjacent to, a public institution, or [iii] any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless [Step 2] the Secretary 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.

*Id.* In other words, you will first need to determine whether a site that you visit fits into one of the three categories above (i through iii) that triggers potential heightened scrutiny. If it does, then CMS presumes that it is institutional. This presumption does not necessarily mean that the setting is actually institutional; it just means that CMS will take a closer look (so-called “heightened scrutiny”). A setting can overcome the presumption that it is institutional by providing evidence demonstrating that it is actually homelike and not institutional.

### Identifying Settings That Are Presumed To Be Institutional (Step 1)

In Tab E of the PTP, Institutional Characteristics, determine whether the setting is “[i] located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,” is “[ii] in a building on the grounds of, or immediately adjacent to, a public institution,” and/or “[iii] has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.”

#### Compliance Issue

- Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment
- Setting is located in a building on the grounds of, or immediately adjacent to, a public institution
- Setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS
- Provider has no compliance issues relating to institutional characteristics

It should be relatively straightforward to determine whether a setting is in one or both of the first two categories based on your observations and walking tour of the site. To determine whether a setting is in the third category, you should study CMS’s Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community

(attached in [Appendix C](#)). Under this guidance,

[s]ettings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.
- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

CMS’s Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community, at 1. In this guidance, CMS provides a number of examples of the kinds of settings that typically have the effect of isolating people receiving HCBS from the broader community. *Id.* at 2-3. Again, if a setting has this effect, it is not necessarily precluded from providing HCBS services, but it will need to provide evidence that it meets the HCBS settings criteria. This inquiry is discussed in the next section.

You should do preparatory work before the site visit to identify settings that are located in the same building as an inpatient facility, are located on the grounds of or adjacent to a public institution, and/or that may isolate individuals. Exhibit 3 reflects the questions in the provider self-assessment surveys and the IFA survey that should be used to identify sites that are potentially subject to heightened scrutiny.

**Exhibit 3: Survey Questions by Compliance Category**

Compliance Category	Questions in Initial Survey	Questions in Secondary Survey	Questions in IFA Survey
<b>ALL SETTING TYPES</b>			
Presumed Non-compliant - Location	None	None	None
Presumed Non-compliant - Isolating Effect	None	1, 3, 5, 7, 8	None
Rights, Autonomy and Choice	None	2, 4, 6, 9, 10	None

Compliance Category	Questions in Initial Survey	Questions in Secondary Survey	Questions in IFA Survey
<b>ADULT RESIDENTIAL SETTINGS</b>			
Presumed Non-compliant - Location	1	None	None
Presumed Non-compliant - Isolating Effect	3, 4, 5, 6	15, 18	1, 4, 5, 6, 7, 11
Rights, Autonomy and Choice	2, 7, 8, 9, 10, 11	11, 12, 13, 14, 16, 17, 19, 20, 21	2, 3, 8, 9, 10, 12, 13, 14, 15
<b>CHILD RESIDENTIAL SETTINGS</b>			
Presumed Non-compliant - Location	1	None	None
Presumed Non-compliant - Isolating Effect	2, 3, 4, 6, 7	None	None
Rights, Autonomy and Choice	5, 8	None	None
<b>ADULT NON-RESIDENTIAL SETTINGS</b>			
Presumed Non-compliant - Location	None	None	None
Presumed Non-compliant - Isolating Effect	1, 3, 6, 7	1	1, 2
Rights, Autonomy and Choice	2, 4, 5	2, 3, 4, 5, 6	3, 4, 5, 6, 7

During each site visit, you should verify your initial assessment of whether the setting fits within any of the three categories that triggers the institutional presumption. If it does, proceed to Step 2 below; if it does not, the heightened scrutiny inquiry is complete.

#### Identifying Presumed-Institutional Settings to Put Forward for Heightened Scrutiny (Step 2-a)

CMS has stated that “[a]ny setting presumed to have institutional qualities will not be approved as a home and community-based setting through heightened scrutiny unless [CMS] determines that the state has submitted sufficient information to explain and document that the setting does not have qualities of an institution and does have the qualities of a home and community-based setting.” CMS, FAQ on Home and Community-Based Setting Requirements, at A1 (June 26, 2015) (attached in *Appendix C*). In reviewing settings for this purpose, CMS “will review the information to determine whether *each and every one of the qualities* of a home and community based setting outlined in 42 CFR 441.301(c)(4)/ 441.530(a) are met” and “whether the state can demonstrate that persons receiving services are not isolated from the greater community of individuals not receiving Medicaid [HCBS services].” *Id.* at A2 (emphasis added).

Your task during the site visit, therefore, is to determine whether a setting presumed to be institutional actually meets all of the HCBS settings requirements, such that CMS should scrutinize it and allow it to continue providing HCBS services. You will use the Heightened Scrutiny tab of the PTP to make this determination. If use of this tab is necessary, you should make it visible to the provider. To make the Heightened Scrutiny tab visible, right click on the tabs at the bottom of the Excel file, select “Unhide” from the menu, and then select “Heightened Scrutiny” from the list.

In this tab, you will consider each HCBS setting requirement, assessing whether the setting complies with the requirement or not. An excerpt of this analysis is shown below:

Compliance Indicators for Overcoming Institutional Presumption	Assessment	Remediation Plan	In compliance following remediation?
The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.	<input type="text"/>	<input type="text"/>	<input type="text"/>
The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	<input type="text"/>	<input type="text"/>	<input type="text"/>
The setting is selected by the individual from among options including non-disability specific settings and a private unit in a residential setting.	<input type="text"/>	<input type="text"/>	<input type="text"/>

At the bottom of this list of requirements, you will determine whether the setting meets “each and every one of the qualities” of an HCBS setting, as CMS requires:

<p>Conclusion: Based on the factors set forth above, the setting does not have the qualities of an institution and does have the qualities of home and community-based settings.</p>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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To help with the assessment of whether all of the required compliance indicators are present, the Heightened Scrutiny tab will be partially prepopulated with a “No” assessment (*i.e.*, the setting appears not to comply with a given requirement) based on compliance issues that have been checked in the PTP tabs relating to Rights/Autonomy, Informed Choice, and Community Integration. You can over-write the pre-populated answer if appropriate by selecting another option from the dropdown box. To err on the side of caution, Heightened Scrutiny compliance indicators will not be pre-populated with “Yes”; a favorable determination will have to be made manually based on consideration of *all* the relevant facts and evidence (and not just the *example* compliance issues identified in other tabs of the PTP). *For a discussion of the relevant facts and evidence, see the section below on Step 2-b.* In the PTP, “Partial” and “N/A” determinations will also have to be made manually. (See *Appendix E* for details on the pre-population process.)

If you determine that a setting fails to meet one or more HCBS settings requirements, you should discuss possible remediation plans with the provider. *The provider’s remediation plans for compliance issues in the tabs for Rights/Autonomy, Informed Choice, and Community Integration may already address all concerns.* In the Heightened Scrutiny tab, describe the remediation plans from other tabs that must be completed for the setting to pass heightened scrutiny, as well as any additional steps the provider must take:



Summary of Remedial Action(s) initiated for this setting:			
	Action	Outcomes	Please enter the appropriate timeline and the person responsible for each for each action
1			<input type="text" value="Less than one month"/> <input type="text" value="1-3 months"/> <input type="text" value="4-6 months"/> <input type="text" value="6 months+"/>
2			<input type="text" value="Less than one month"/> <input type="text" value="1-3 months"/> <input type="text" value="4-6 months"/> <input type="text" value="6 months+"/>
3			<input type="text" value="Less than one month"/> <input type="text" value="1-3 months"/> <input type="text" value="4-6 months"/> <input type="text" value="6 months+"/>

**Collecting Evidence To Provide to CMS with Requests for Heightened Scrutiny (Step 2-b)**

In order for the site visit team, the Department, and CMS to determine that a presumed-institutional setting actually meets the HCBS settings criteria, the following types of information and evidence must be considered in connection with Step 2-a. During the site visit, you should collect as much of this information as you can through observation and conversations (which you should document in the PTP and your notes) and through gathering documents from the provider:

- Answers to CMS’s exploratory questions (attached in [Appendix C](#)) that shed light on how the setting is integrated in and supports full access of individuals receiving HCBS services into the greater community. Please review these exploratory questions carefully. You may also find them helpful in investigating compliance issues outside of the heightened scrutiny context.
- “Residential housing or zoning requirements that demonstrate how the setting is integrated in and supports full access to the greater community.”
- “Description of the proximity to and scope of interactions with community settings used by individuals not receiving Medicaid funded [HCBS services].”
- “Provider qualifications for staff employed in the setting that indicate training or certification in [HCBS services], and that demonstrate the staff is trained specifically for home and community-based support in a manner consistent with the HCB settings regulations.”
- “Service definitions that explicitly support the setting requirements. For example, definitions of employment supports that facilitate community-based integrated employment or, for facility-based programs, maximize autonomy and competitive employment opportunities.”
- Documentation that if a setting is residential and provider-owned or controlled, it complies with the additional requirements for such settings (*i.e.*, (1) a written agreement with landlord/tenant protections relating to evictions and appeals; (2) privacy including lockable doors, choice of roommates, and freedom to

furnish/decorate; (3) freedom over schedule and access to food at any time; (4) visitors at any time; and (5) physical accessibility), and that any modifications to these additional conditions are supported by a specific assessed need and justified in the person-centered service plan. (See Tab B, Rights/Autonomy, in the PTPs for residential settings.)

- “Procedures in place by the setting that indicate support for activities in the greater community according to the individual’s preferences and interests, staff training materials that speak of the need to support individuals’ chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.).”
- “Documentation that the individuals selected the setting from among setting options, including non-disability-specific settings.”
- “Description of the proximity to avenues of available public transportation or an explanation of how transportation is provided where public transportation is limited.”
- “Pictures of the site and other demonstrable evidence (taking in consideration the individual’s right to privacy).”

CMS, FAQ on Home and Community-Based Setting Requirements, at A3. CMS will also evaluate information that the Department will compile on its own (e.g., relating to licensure requirements for particular kinds of settings).

In addition, for each of the three kinds of settings that trigger the institutional presumption, you should consider and collect the kinds of information and evidence that CMS thinks is particularly relevant to that kind of setting. *See id.* at Q&A 4 (publicly or privately owned facility that provides inpatient treatment), 5 (building located on the grounds of or immediately adjacent to a public institution), and 6 (setting that may have the effect of isolating individuals). Some examples include:

- “Interconnectedness between the [facility/institution] and the setting in question, including administrative or financial interconnectedness, does not exist or is minimal.”
- The setting and the facility/institution “have separate entrances and signage.”
- “The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities.”
- “The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires. Such activities do not include only

those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff; community activities should foster relationships with community members unaffiliated with the setting.”

- “Services to the individual, and activities in which the individual participates, are engaged with the broader community.”

*Id.*

After evaluating all the evidence, make a recommendation for the Department as shown below:

Based on the above information, the site visit team recommends this setting:

be deemed subject to heightened scrutiny and ABLE to overcome institutional presumption; evidence is currently attached and will be put forward to CMS

Date that evidence will be submitted to HCPF:

be deemed subject to heightened scrutiny and NOT YET able to overcome institutional presumption; file updated PTP in 6 months with evidence showing progress

Date that evidence will be submitted to HCPF:

be deemed subject to heightened scrutiny and NOT timely able to overcome institutional presumption; prepare now to transition clients (describe plan for same in text box below)

Finally, provide all of the information/notes, documents, photographs, and other materials that you collect to the Department so that the Department can decide whether to request heightened scrutiny for the setting.

### What Happens Next (Steps 3 through 6)

The following information is for reference only.

**Step 3.** Based on the information and documents collected by the site visit team, the site visit team’s recommendations, and its own review of the evidence, the Department will prepare a report of the settings subject to heightened scrutiny, identifying particular settings in the following categories:

- Settings that are presumptively institutional for which the state will submit evidence to overcome the presumption. This would include settings assessed as:
  - (a) Settings that are subject to heightened scrutiny and are able to overcome the institutional presumption, for which evidence will be put forward to CMS; and
  - (b) Settings that are subject to heightened scrutiny and are NOT YET able to overcome the institutional presumption; these settings will need to file updated PTPs in six months with evidence showing their progress.
- Settings that are institutional. This would include nursing facilities, ICF/IIDs, IMDs,

and hospitals, if any have been providing HCBS services; it would also include settings that are subject to heightened scrutiny and not able to overcome the institutional presumption in a timely fashion. These settings will have to work with the state to prepare to transition their clients to other providers.

Note: at the same time, a report will be prepared for settings not subject to heightened scrutiny. This report will discuss settings in the aggregate by setting type (without identifying particular settings):

- Settings that are not subject to heightened scrutiny and are compliant; no further action needed.
- Settings that are not subject to heightened scrutiny and will be made compliant with remediation; these settings will need to file updated PTPs in six months with evidence showing their progress.
- Settings that are not subject to heightened scrutiny, cannot meet the federal requirements, and must be removed from the HCBS program. These settings will have to work with the state to prepare to transition their clients to other providers.

**Step 4.** Provide public notice and opportunity to comment on settings reports prepared in Step 4 (to be published as part of a revised Statewide Transition Plan (STP)).

**Step 5.** Submit amended STP to CMS, including settings reports prepared in Step 4, requests for heightened scrutiny, and evidence relating to individual settings (if seeking heightened scrutiny for such settings). Monitor and respond to CMS questions and requests for more information.

**Step 6.**

- Determine and implement ongoing remediation strategies and next steps associated with settings confirmed to be institutional (*e.g.*, relocation of clients, transfer of services to non-HCBS funding source).
- Receive approval from CMS on heightened scrutiny request and transmit letter of approval to provider.






## Appendix A: Setting-Specific Compliance Actions and Responsible Parties

Action	Timeline	Responsible Party
Phase 1: Regulatory Analysis and Assessment of Settings (complete)		
Phase 2: Validation and Remedial Action (initial group of settings)		
Identify initial group of settings to receive a site visit	By April 5	HCPF
Prepare Provider Transition Plans for initial group of settings receiving a site visit	By April 8	Lewin
Finalize site visit protocol and prepare reference materials for site visit team (including blank PTP Excel files showing all tabs, PTP user manual, site visit protocol and checklist, HCBS Settings Rule, and CMS guidance)	By April 8	HCPF
Send emails to the initial set of providers receiving a site visit with prepopulated PTPs and the PTP User Manual	By April 11	Telligen
The initial set of providers receiving a site visit distribute the IFS surveys to all residents and engaged family members	By April 11	Providers
The site visit team calls each provider to schedule site visit	By April 14	Telligen
The initial set of providers receiving a site visit complete their PTPs including submitting supporting evidence	By April 29	Providers
Review PTPs, including supporting documentation, in addition to setting-specific IFS survey results, to develop a site visit agenda	April-June 2016	Telligen
Begin site visits	By May 1	Telligen
Update PTP with provider during site visit	May-June 2016	Telligen
Complete initial set of site visits and provide Consolidated Written Summary of On-Site Visit Results to HCPF	By June 30	Telligen
Discuss next steps based on the initial set site visit processes	TBD	HCPF; Telligen
Phase 3: Validation and Remedial Action (all other settings)		
Prepare for expanded PTP distribution and more site visits	TBD	HCPF

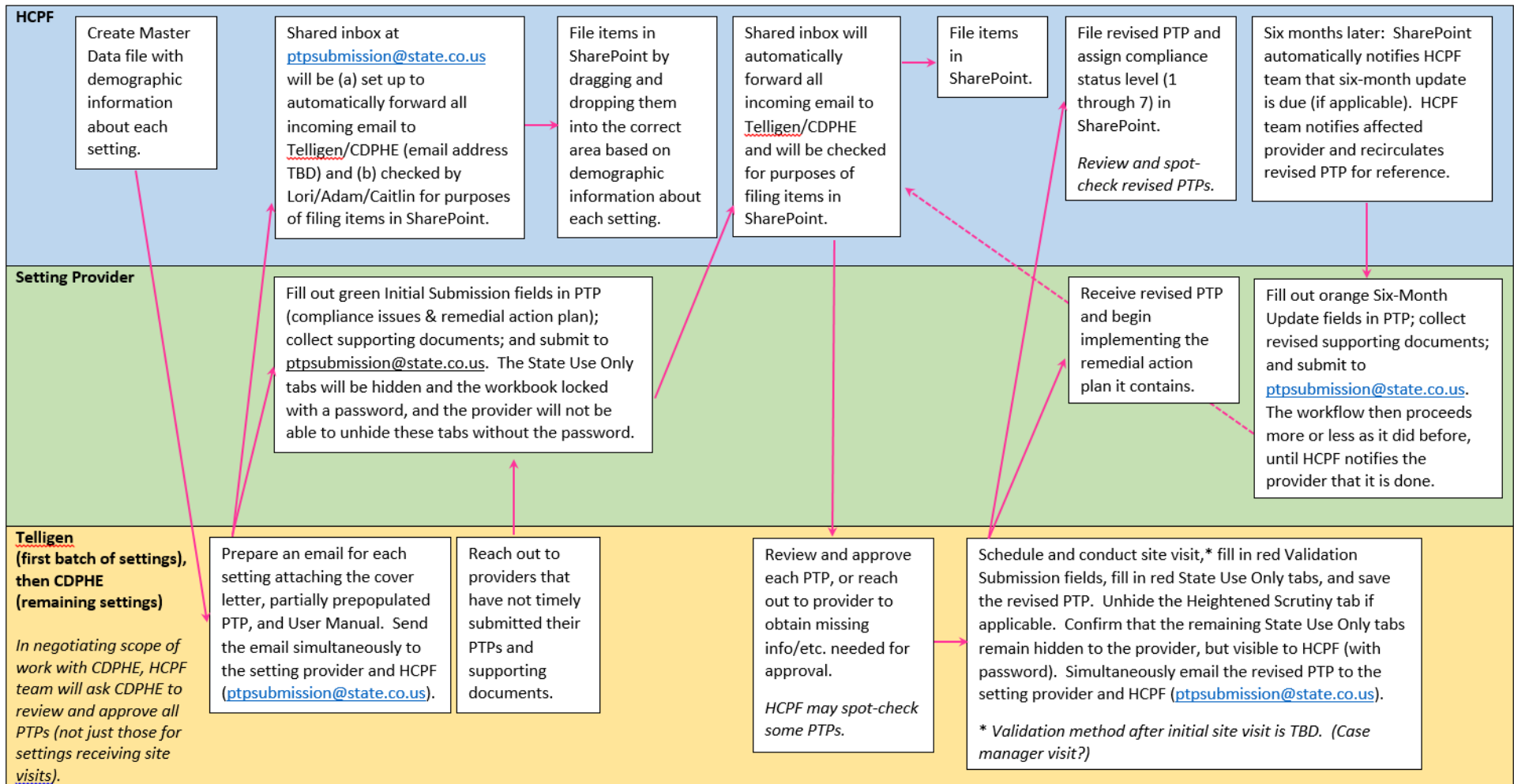
## Appendix B: Responsibilities of Site Visit Team Members

Site Visit Team Member(s)	Responsibility
<b>Department Site Visit Lead and Department Site Visit Support</b>	<ul style="list-style-type: none"> <li>• Develop agenda and provide logistical support for site visit.</li> <li>• Review the completed PTP and submitted documentation to inform the development of the site visit agenda.</li> <li>• Review any available individual/family survey data.</li> <li>• Conduct site visit.</li> <li>• Assess setting’s compliance with the final rule, as noted in Sections B through E of the PTP, and add any necessary information to the Validation Submission portion of these tabs.</li> <li>• Complete the Heightened Scrutiny tab, as appropriate, with the provider’s involvement and input.</li> <li>• Complete site visit report and provider status summary tabs of the PTP.</li> <li>• Provide completed PTP to both the provider and the Department.</li> <li>• Provide any additional materials to the Department.</li> <li>• Raise with Department staff any questions or requests for guidance that could not be resolved during the site visit, and convey responses back to provider.</li> <li>• Conduct any other necessary follow-up.</li> </ul>
<b>Department Site Visit Lead</b>	<ul style="list-style-type: none"> <li>• Coordinate with provider to schedule site visit, plan agenda, and identify and invite stakeholders.</li> <li>• Lead the site visit discussions through proper framing of each discussion.</li> <li>• Engage participants in discussion through duration of the visit.</li> <li>• Ask follow-up questions or clarification, as needed.</li> <li>• Offer guidance and recommendations, as needed.</li> <li>• Confirm that provider has submitted all required supporting documents and make follow-up requests relating to same.</li> </ul>
<b>Department Site Visit Support</b>	<ul style="list-style-type: none"> <li>• Participate in discussions.</li> <li>• Take notes during the site visit.</li> <li>• Engage participants in discussion through duration of the visit.</li> <li>• Ask follow-up questions or clarification, as needed.</li> <li>• Offer guidance and recommendations, as needed.</li> <li>• Assist Site Visit Lead in collecting and keeping track of supporting documents.</li> </ul>

## Appendix C: CMS Guidance Documents

Document Name	URL for the document	PDF of document
Questions and Answers Regarding Home And Community-Based Settings	<a href="https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/q-and-a-hcb-settings.pdf">https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/q-and-a-hcb-settings.pdf</a>	 2015.03.99 -- CMS Q&A regarding HCB
FAQ on Home and Community-Based Setting Requirements (June 26, 2015)	<a href="https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/home-and-community-based-setting-requirements.pdf">https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/home-and-community-based-setting-requirements.pdf</a>	 2015.06.26 -- CMS FAQ regarding HCB:
Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community	<a href="https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf">https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf</a>	 2015.03.99 -- CMS guidance on setting
Exploratory Questions to Assist States in Assessment of Residential Settings	<a href="https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-re-settings-characteristics.pdf">https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-re-settings-characteristics.pdf</a>	 2015.03.99 -- CMS exploratory question
Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Service (HCBS) Settings	<a href="https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-non-residential.pdf">https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-non-residential.pdf</a>	 2015.03.99 -- CMS exploratory question

## Appendix D: Provider Transition Plan (PTP) Workflow for Settings Subject to Site Visits





## **Appendix E: Colorado PTP – Pre-Population of Heightened Scrutiny Elements for Adult Residential, Nonresidential, and Children’s Residential Providers.**

Provider Transition Plans (PTPs) will assist the Colorado Department of Health Care Policy and Financing (HCPF) with determinations around Heightened Scrutiny. Compliance issues will be selected as appropriate in the PTP tabs relating to Rights/Autonomy, Informed Choice, and Community Integration. These compliance issues can then feed into the Heightened Scrutiny tab to ensure that compliance issues that may affect a decision for or against seeking Heightened Scrutiny from the Centers for Medicare & Medicaid Services (CMS) are not overlooked.

The Heightened Scrutiny tab applies to settings that have certain institutional characteristics (*e.g.*, settings that are located in the same building as a facility that provides inpatient institutional treatment). The setting can overcome the presumption that it is institutional if it can show that it complies with all the criteria for being a truly home- or community-based setting. In the Heightened Scrutiny tab, these criteria are called “Compliance Indicators for Overcoming Institutional Presumption.” To help with the assessment of whether these compliance indicators are present, the Heightened Scrutiny tab will be partially prepopulated, as described below.

The first column in the table below lists the elements that are on the Heightened Scrutiny tab in the PTP (*i.e.*, the compliance indicators for overcoming the institutional presumption). If the element is present (“Yes”), it weighs in favor of the setting’s being able to pass heightened scrutiny. If the element is not present (“No”), then it may prevent the setting from being able to pass heightened scrutiny.

The second column in the table below indicates the tab(s) in the PTP containing compliance issue(s) that may inform the Heightened Scrutiny element. The third column lists the individual compliance issue or issues that, if present, would trigger the pre-population of “No” for this Heightened Scrutiny element (in other words, because of the presence of certain compliance issues, the provider presumably does not satisfy a given compliance indicator for overcoming the institutional presumption). Compliance issues are numbered based on the order in which they occur in the PTP. For example, compliance issue 1 in the Rights and Autonomy tab is the first issue listed: *The setting does not allow individuals to manage their own finances (e.g., access to their own funds or checking account when they choose), or requires them to receive unwanted/non-optional assistance in managing their finances.* Multiple compliance issues inform certain Heightened Scrutiny elements.

When the site visit team or HCPF staff review the PTP, they can over-write the pre-populated answer if appropriate by selecting another option from the dropdown box. To err on the side of caution, Heightened Scrutiny elements will not be pre-populated with “Yes”; a favorable determination will have to be made manually based on consideration of *all* the relevant facts (and not just the *example* compliance issues identified in other tabs of the PTP). “Partial” and “N/A” determinations will also have to be made manually.

Adult Residential Providers - Compliance Indicators for Overcoming Institutional Presumption (Elements from Heightened Scrutiny Tab)	Applicable Tab(s) in the PTP To Be Used To Prepopulate	Compliance Issue(s) Used To Prepopulate Heightened Scrutiny Tab With a “No”
<p><b>1</b> The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.</p>	<p>B. Rights and Autonomy</p>	<p>1. The setting does not allow individuals to manage their own finances (e.g., access to their own funds or checking account when they choose), or requires them to receive unwanted/non-optional assistance in managing their finances. If an individual wants such assistance or has an SSI rep payee, this fact should be documented in their service plan.</p> <p>5. Individuals do NOT have full access to the typical facilities in the home (kitchen, dining area, laundry, comfortable seating in shared areas)</p> <p>6. Individuals must share a home/room and do NOT have choice of roommates/housemates</p> <p>9. The setting employs chemical, mechanical, or physical restraints</p> <p>10. Individuals cannot lock their bedroom doors</p> <p>13. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy</p>
<p><b>2</b> The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>B. Rights and Autonomy</p>	<p>3. Individuals have ONLY scheduled times that they are allowed to be away from the facility</p> <p>4. Individuals DO NOT have access to food when they choose</p> <p>6. Individuals must share a home/room and do NOT have choice of roommates/housemates</p>

			7. Individuals do NOT have the opportunity to exercise personal choice (e.g., haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person-centered plan
			8. The setting regiments daily activities
			12. Individuals do NOT have the ability to participate in religious or spiritual ceremonies and communities
			13. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy
<b>3</b>	The setting is selected by the individual from among options including non-disability specific settings and a private unit in a residential setting.	C. Informed Choice	1. Individuals are told that they must reside in or receive services from the setting, even if they would prefer something else
			2. Individuals are not informed of and given a chance to choose among options, including non-disability specific settings
			6. Provider is otherwise noncompliant with the federal requirements above relating to informed choice
<b>4</b>	The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	C. Informed Choice	4. Setting options are not identified and documented in the person-centered service plan
			5. Setting options are not based on the individual's needs, preferences, and, for residential settings, resources available for room and board
<b>5</b>	The setting facilitates individual choice regarding services and supports, and who provides them.	C. Informed Choice	1. Individuals are told that they must reside in or receive services from the setting, even if they would prefer something else
			2. Individuals are not informed of and given a chance to choose among options, including non-disability specific settings
			3. Setting does NOT offer individualized supports that enable individuals to choose activities of their own interests (within a group or individually)
			6. Provider is otherwise noncompliant with the federal requirements above relating to informed choice

<b>6</b>	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	D. Community Integration  and/or	1. Individuals interact only with people with disabilities and paid staff
			2. Setting has a Medicaid-only resident or client population
			3. Setting has policies preventing individuals from interacting with or receiving services in the community
			4. Provider is otherwise noncompliant with the federal requirements above relating to community integration
<b>7</b>	If residential and provider-owned or controlled, the setting provides a specific unit/dwelling that is owned, rented, or occupied under legally enforceable agreement.	B. Rights and Autonomy	1. The setting does not allow individuals to manage their own finances (e.g., access to their own funds or checking account when they choose), or requires them to receive unwanted/non-optional assistance in managing their finances. If an individual wants such assistance or has an SSI rep payee, this fact should be documented in their service plan.
			3. Individuals have ONLY scheduled times that they are allowed to be away from the facility
			12. Individuals do NOT have the ability to participate in religious or spiritual ceremonies and communities
<b>8</b>	If residential and provider-owned or controlled, the setting provides the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity.	B. Rights and Autonomy	2. Individuals do NOT have a legally enforceable lease or residency agreement that provides protections for evictions and appeals at least comparable to those under the jurisdiction's landlord tenant law

<b>9</b>	If residential and provider-owned or controlled, if the tenant laws do not apply, there is an assurance that a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	B. Rights and Autonomy	2. Individuals do NOT have a legally enforceable lease or residency agreement that provides protections for evictions and appeals at least comparable to those under the jurisdiction's landlord tenant law
<b>10</b>	If residential and provider-owned or controlled, the setting provides that each individual has privacy in their sleeping or living unit.	B. Rights and Autonomy	<p>6. Individuals must share a home/room and do NOT have choice of roommates/housemates</p> <p>7. Individuals do NOT have the opportunity to exercise personal choice (e.g., haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person-centered plan</p> <p>10. Individuals cannot lock their bedroom doors</p>
<b>11</b>	If residential and provider-owned or controlled, the setting provides units with lockable entrance doors, with appropriate staff having keys to doors as needed.	B. Rights and Autonomy	10. Individuals cannot lock their bedroom doors
<b>12</b>	If residential and provider-owned or controlled, the setting provides that individuals sharing units have a choice of roommates.	B. Rights and Autonomy	6. Individuals must share a home/room and do NOT have choice of roommates/housemates
<b>13</b>	If residential and provider-owned or controlled, the setting assures that individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	B. Rights and Autonomy	7. Individuals do NOT have the opportunity to exercise personal choice (e.g., haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person-centered plan
<b>14</b>	If residential and provider-owned or controlled, the setting assures that individuals have the freedom and support to control their schedules and activities and have access to food any time.	B. Rights and Autonomy	<p>3. Individuals have ONLY scheduled times that they are allowed to be away from the facility</p> <p>4. Individuals DO NOT have access to food when they choose</p> <p>5. Individuals do NOT have full access to the typical facilities in the home (kitchen, dining area, laundry, comfortable seating in shared areas)</p> <p>8. The setting regiments daily activities</p>

<b>15</b> If residential and provider-owned or controlled, the setting assures that individuals may have visitors at any time.	B. Rights and Autonomy  and/or	11. Individuals do NOT have the ability to have visitors at any time and to socialize with whomever they choose (including romantic relationships)
	D. Community Integration	3. Setting has policies preventing individuals from interacting with or receiving services in the community
<b>16</b> If residential and provider-owned or controlled, the setting assures physical accessibility.	B. Rights and Autonomy	5. Individuals do NOT have full access to the typical facilities in the home (kitchen, dining area, laundry, comfortable seating in shared areas)
<b>17</b> If residential and provider-owned or controlled, any modification of the additional conditions for such settings are supported by a specific assessed need and justified in the person-centered service plan.	B. Rights and Autonomy	7. Individuals do NOT have the opportunity to exercise personal choice (e.g., haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person-centered plan
		13. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy

<b>Nonresidential Providers - Compliance Indicators for Overcoming Institutional Presumption (Elements from Heightened Scrutiny Tab)</b>		<b>Applicable Tab(s) in the PTP To Be Used To Prepopulate</b>	<b>Compliance Issue(s) Used To Prepopulate Heightened Scrutiny Tab With a “No”</b>
<b>1</b> The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.	B. Rights and Autonomy		5. The setting employs chemical, mechanical, or physical restraints
			6. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy
<b>2</b> The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	B. Rights and Autonomy		2. Pre-vocational service providers do NOT provide financial/benefits planning
			4. The setting regiments daily activities
			6. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy
<b>3</b> The setting is selected by the individual from among	C. Informed Choice		3. Individuals are told that they must receive services

	options including non-disability specific settings and a private unit in a residential setting.		from this setting, even if they would prefer something else.
			4. Individuals are NOT informed of and given a chance to choose among options including non-disability specific settings
			7. Provider is otherwise noncompliant with the federal requirements above relating to informed choice
4	The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	C. Informed Choice	5. Setting options are not identified and documented in the person-centered service plan
			6. Setting options are not based on the individual's needs and preferences
5	The setting facilitates individual choice regarding services and supports, and who provides them.	C. Informed Choice	1. Adult day service/setting that does NOT offer individualized supports that enable individuals to choose activities of their own interests (within a group or individually)
			3. Individuals are told that they must receive services from this setting, even if they would prefer something else.
			4. Individuals are NOT informed of and given a chance to choose among options including non-disability specific settings
			6. Setting options are not based on the individual's needs and preferences
			7. Provider is otherwise noncompliant with the federal requirements above relating to informed choice
6	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving	D. Community Integration	1. Employment setting is segregated from the larger community
			2. The majority of individuals do NOT work in competitive employment and earn sub-minimum wage
			3. Adult day setting/service that do NOT offer opportunities for individuals to engage in activities with non-disabled community members, other than paid staff

Medicaid HCBS.			<p>4. Employment and adult day service/setting that does NOT offer access to age appropriate activities and knowledge of community resources</p> <p>5. Employment and adult day service/setting that does NOT offer opportunities for community relationships or natural supports</p> <p>6. Provider is otherwise noncompliant with the federal requirements above relating to community integration</p>
		B. Rights and Autonomy	<p>1. Employment settings/services do NOT pay individuals minimum wage</p> <p>2. Adult day services/setting that restrict or limit engagement in community activities that align with individual interests</p> <p>3. Employment settings/services do NOT offer opportunities for individuals to volunteer or to receive support in finding competitive employment, training (i.e. job coaching) or postsecondary education</p>
7	If residential and provider-owned or controlled, the setting provides a specific unit/dwelling that is owned, rented, or occupied under legally enforceable agreement.	N/A	N/A
8	If residential and provider-owned or controlled, the setting provides the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity.	N/A	N/A
9	If residential and provider-owned or controlled, if the tenant laws do not apply, there is an assurance that a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	N/A	N/A



<b>10</b>	If residential and provider-owned or controlled, the setting provides that each individual has privacy in their sleeping or living unit.	N/A	N/A
<b>11</b>	If residential and provider-owned or controlled, the setting provides units with lockable entrance doors, with appropriate staff having keys to doors as needed.	N/A	N/A
<b>12</b>	If residential and provider-owned or controlled, the setting provides that individuals sharing units have a choice of roommates.	N/A	N/A
<b>13</b>	If residential and provider-owned or controlled, the setting assures that individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	N/A	N/A
<b>14</b>	If residential and provider-owned or controlled, the setting assures that individuals have the freedom and support to control their schedules and activities and have access to food any time.	N/A	N/A
<b>15</b>	If residential and provider-owned or controlled, the setting assures that individuals may have visitors at any time.	N/A	N/A
<b>16</b>	If residential and provider-owned or controlled, the setting assures physical accessibility.	N/A	N/A
<b>17</b>	If residential and provider-owned or controlled, any modification of the additional conditions for such settings are supported by a specific assessed need and justified in the person-centered service plan.	N/A	N/A

Children’s Residential Providers - Compliance Indicators for Overcoming Institutional Presumption (Elements from Heightened Scrutiny Tab)	Applicable Tab(s) in the PTP To Be Used To Prepopulate	Compliance Issue(s) Used To Prepopulate Heightened Scrutiny Tab With a “No”
<p><b>1</b> The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.</p>	<p>B. Rights and Autonomy</p>	<p>2. Youth do NOT have full access to the typical facilities in the home (kitchen, dining area, laundry, comfortable seating in shared areas)</p> <p>5. Youth must share a room and do NOT have a choice of roommates</p> <p>8. The setting employs chemical, mechanical, or physical restraints</p> <p>9. Youth cannot lock their bedroom doors</p> <p>13. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy</p>
<p><b>2</b> The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>B. Rights and Autonomy</p>	<p>1. Youth have ONLY scheduled times that they are allowed to be away from the facility</p> <p>4. Youth do NOT receive supports to transition to adult programs and access to competitive employment opportunities</p> <p>5. Youth must share a room and do NOT have a choice of roommates</p> <p>6. Youth do NOT have the opportunity to exercise personal choice (e.g. haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person centered plan</p> <p>7. The setting regiments daily activities</p> <p>12. Youth do NOT have the ability to participate in religious or spiritual ceremonies and communities</p> <p>13. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy</p>
<p><b>3</b> The setting is selected by the individual from among options including non-disability specific settings and a private unit in a residential setting.</p>	<p>C. Informed Choice</p>	<p>1. Youth are told that they must reside in or receive services from this setting, even if they would prefer something else</p>

			2. Youth are not informed of and given a chance to choose among options including non-disability specific settings
			6. Provider is otherwise noncompliant with the federal requirements above relating to informed choice
4	The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	C. Informed Choice	4. Setting options are not identified and documented in the person-centered service plan
			5. Setting options are not based on the youth's needs, preferences, and, for residential settings, resources available for room and board
5	The setting facilitates individual choice regarding services and supports, and who provides them.	C. Informed Choice	1. Youth are told that they must reside in or receive services from this setting, even if they would prefer something else
			2. Youth are not informed of and given a chance to choose among options including non-disability specific settings
			3. Setting does NOT offer individualized supports that enable youth to choose activities of their own interests (within a group or individually)
			6. Provider is otherwise noncompliant with the federal requirements above relating to informed choice
6	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	D. Community Integration	1. Youth interact only with people with disabilities and paid staff
			2. Setting has a Medicaid-only resident or client population
			3. Setting has policies preventing youth from attending school in the community
			4. Setting has other policies preventing youth from interacting with or receiving services in community
			5. Provider is otherwise noncompliant with the federal requirements above relating to community integration
		B. Rights and Autonomy	1. Youth have ONLY scheduled times that they are allowed to be away from the facility

		<p>3. Youth do NOT have access to transportation to public school and receive education on the grounds of the residential center</p> <p>4. Youth do NOT receive supports to transition to adult programs and access to competitive employment opportunities</p> <p>12. Youth do NOT have the ability to participate in religious or spiritual ceremonies and communities</p>
<b>7</b>	If residential and provider-owned or controlled, the setting provides a specific unit/dwelling that is owned, rented, or occupied under legally enforceable agreement.	<p>B. Rights and Autonomy</p> <p>10. Youth are NOT protected by a legally enforceable lease or residency agreement signed by their parent/guardian/custodian that provides protections for evictions and appeals at least comparable to those under the jurisdiction's landlord tenant law</p>
<b>8</b>	If residential and provider-owned or controlled, the setting provides the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity.	<p>B. Rights and Autonomy</p> <p>10. Youth are NOT protected by a legally enforceable lease or residency agreement signed by their parent/guardian/custodian that provides protections for evictions and appeals at least comparable to those under the jurisdiction's landlord tenant law</p>
<b>9</b>	If residential and provider-owned or controlled, if the tenant laws do not apply, there is an assurance that a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<p>B. Rights and Autonomy</p> <p>10. Youth are NOT protected by a legally enforceable lease or residency agreement signed by their parent/guardian/custodian that provides protections for evictions and appeals at least comparable to those under the jurisdiction's landlord tenant law</p>
<b>10</b>	If residential and provider-owned or controlled, the setting provides that each individual has privacy in their sleeping or living unit.	<p>B. Rights and Autonomy</p> <p>5. Youth must share a room and do NOT have a choice of roommates</p> <p>6. Youth do NOT have the opportunity to exercise personal choice (e.g. haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person centered plan</p> <p>9. Youth cannot lock their bedroom doors</p>

<b>11</b>	If residential and provider-owned or controlled, the setting provides units with lockable entrance doors, with appropriate staff having keys to doors as needed.	B. Rights and Autonomy	9. Youth cannot lock their bedroom doors
<b>12</b>	If residential and provider-owned or controlled, the setting provides that individuals sharing units have a choice of roommates.	B. Rights and Autonomy	5. Youth must share a room and do NOT have a choice of roommates
<b>13</b>	If residential and provider-owned or controlled, the setting assures that individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	B. Rights and Autonomy	6. Youth do NOT have the opportunity to exercise personal choice (e.g. haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person centered plan
<b>14</b>	If residential and provider-owned or controlled, the setting assures that individuals have the freedom and support to control their schedules and activities and have access to food any time.	B. Rights and Autonomy	1. Youth have ONLY scheduled times that they are allowed to be away from the facility 2. Youth do NOT have full access to the typical facilities in the home (kitchen, dining area, laundry, comfortable seating in shared areas) 7. The setting regiments daily activities
<b>15</b>	If residential and provider-owned or controlled, the setting assures that individuals may have visitors at any time.	B. Rights and Autonomy	11. Youth do NOT have the ability to have visitors at any time and to socialize with whomever they choose (including romantic relationships)
		D. Community Integration	4. Setting has other policies preventing youth from interacting with or receiving services in community
<b>16</b>	If residential and provider-owned or controlled, the setting assures physical accessibility.	B. Rights and Autonomy	2. Youth do NOT have full access to the typical facilities in the home (kitchen, dining area, laundry, comfortable seating in shared areas)
<b>17</b>	If residential and provider-owned or controlled, any modification of the additional conditions for such settings are supported by a specific assessed need and justified in the person-centered service plan.	B. Rights and Autonomy	6. Youth do NOT have the opportunity to exercise personal choice (e.g. haircut and style, preferred clothing, personal items in rooms) and such limitations are not outlined in a person centered plan 13. Provider is otherwise noncompliant with the federal requirements above relating to rights and autonomy