# INFORMATIONAL LETTER

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<th>Transmittal:</th>
<th>17-INF-01</th>
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| To:                | Voluntary Provider Executive Directors  
|                    | Developmental Disabilities State Operations Offices Directors  
|                    | Developmental Disabilities Regional Offices Directors |
| Issuing OPWDD Office: | Division of Person-Centered Supports  
|                    | Division of Quality Improvement  
|                    | Counsel's Office               |
| Date:              | March 1, 2017                 |
| Subject:           | Home and Community Based Settings Heightened Scrutiny Provider Self-Report and Evidence Questionnaire |
| Suggested Distribution: | Executive Directors and Executive Staff  
|                    | Quality Assurance Staff  
|                    | HCBS Waiver Program Managers |
| Contact:           | Casey Downey, Program Operations Specialist, Division of Person Centered Supports (DPCS), Home and Community Living, (518) 486-9863  
|                    | heightened.scrutiny@opwdd.ny.gov |
| Attachments:       | Appendix A: October 13, 2015 Communication to Providers on the Home and Community Based Settings (HCBS) Heightened Scrutiny Process and Requirements for certified settings where waiver services are delivered  
|                    | Appendix B: HCBS Settings Heightened Scrutiny Provider Evidence Questionnaire Self-Report |
|                    | Appendix B-1: Instructions and Content Guidance for OPWDD’s HCBS Settings Heightened Scrutiny Self-Report  
|                    | Appendix C: How to register for a webinar covering instructions for how to complete the Heightened Scrutiny Provider Evidence Questionnaire Self-Report  
<p>|                    | Appendix D: Home and Community-Based Services (HCBS) Settings Compliance Work Plan |</p>
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<tr>
<th>Related ADMs/INFs</th>
<th>Releases Cancelled</th>
<th>Regulatory Authority</th>
<th>MHL &amp; Other Statutory Authority</th>
<th>Records Retention</th>
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<tr>
<td>October 13, 2015 Communication to Providers on the Home and Community Based Settings (HCBS)</td>
<td>None</td>
<td>42 CFR §441.301, 42 CFR §441.530, 42 CFR §441.710, 14 NYCRR §633.4, 14 NYCRR Subpart 635-10, 14 NYCRR Part 671</td>
<td>Mental Hygiene Law Sections 13.07, 13.09(b), and 16.00</td>
<td>6 Years from Date of Service: 18 NYCRR 504.3(a)</td>
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<tr>
<td>Heightened Scrutiny Process and Requirements for certified settings where waiver services are delivered</td>
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Purpose:

The purpose of this Informational Letter is to communicate to Home and Community Based Services (HCBS) waiver providers the evidence questionnaire and timeframe/process for evidence submittal for each setting subject to heightened scrutiny that is identified by OPWDD, the Department of Health (DOH) and/or its contractors, or the provider agency.

This is a continuation of the information provided in the October 13, 2015, “Communication to Providers on the Home and Community Based Settings (HCBS) Heightened Scrutiny Process and Requirements for certified settings where waiver services are delivered”. See Appendix A or http://www.opwdd.ny.gov/node/6252. The October 13, 2015 memo outlined the criteria for determining whether a setting is subject to heightened scrutiny. It also described the required evidence documentation for settings subject to heightened scrutiny and noted that OPWDD would develop a questionnaire for providers to include in their evidence package. Please note that all the content in Appendix A (October 2015 memo) remains substantively the same except for the timelines. The evidence questionnaire template is contained in Appendix B.

All HCBS Waiver Providers must complete Appendix B no later than May 5, 2017. The revised heightened scrutiny process timeline is included in this Informational Memo. OPWDD will hold several webinars on how to complete the evidence package. See Appendix C for times and dates and how to register for this webinar. OPWDD highly recommends that agency Executive Directors and other applicable executive level staff plan to attend.

Background:

The Centers for Medicare and Medicaid Services (CMS) is seeking to ensure that individuals receiving services through HCBS Medicaid waiver programs have full access to the greater community in which they live. On March 17, 2014, CMS issued final regulations regarding characteristics and requirements for settings in order to be considered “home and community based” for purposes of Medicaid (42 CFR 441.301, et. seq). The federal regulations can be found at the following link: https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider.

To be considered a HCBS setting, it must neither be institutional in nature nor isolate individuals from the broader community. It must be a home or work place that is well-integrated in the community. Federal regulations and guidance help to identify settings that are presumed to be institutional or isolating and therefore, do not meet the requirements of HCBS Settings. Settings that are presumed to be institutional or isolating are subject to “heightened scrutiny”.

States may only include settings that are presumed to be institutional or isolating in nature in their HCBS program with the approval of CMS. CMS requires these presumed
institutional settings to undergo “heightened scrutiny” to verify that they, in fact, do not isolate individuals from the broader community, are not institutional in nature, and meet HCBS settings standards. The state must first determine whether the site does meet and/or can meet the HCBS requirements; the state will then submit the basis for its determination (the “evidence package”) to CMS.

Directions:

Appendix B, “HCBS Settings Heightened Scrutiny Evidence Questionnaire Self-Report” is a pdf print out of the evidence questionnaire template that the provider will use to report information for each heightened scrutiny setting electronically in FluidSurveys that can be accessed through the internet using the following link: http://opwddnygov.fluidsurveys.com/s/HeightenedScrutiny/

We strongly recommend that providers read all of the instructions in Appendix B prior to getting started. The following information is a summary of the instructions.

The Evidence Questionnaire Self-Report for each provider and setting subject to heightened scrutiny must be completed electronically in FluidSurveys no later than May 5, 2017.

A. **All HCBS waiver providers:** Complete Section A, “Agency Information”, even if the provider does not believe they operate any heightened scrutiny settings.

B. **For each waiver setting subject to heightened scrutiny,** the HCBS waiver provider must self-identify which residential and non-residential settings (excluding sheltered workshops that must close or convert) that trigger heightened scrutiny. **Providers must include:**

- Settings deemed heightened scrutiny by DQI surveyors via exit conference form or letter;

  **AND**

- Settings not yet assessed by DQI where the provider self-identifies the site as requiring heightened scrutiny;

  **AND**

- Settings the provider self-identifies that they believe should have been deemed heightened scrutiny by DQI surveyors but was not.
Then, complete 1 questionnaire for each of these settings.

1. Complete Section B through Section F of the Evidence Questionnaire Self-Report. Do not include names or other personal/confidential information protected by Federal and/or New York State Law when completing the survey.

2. Upload a site map of the setting that clearly identifies the setting by operating certificate number. Also identify other settings on the site map such as private residential homes, stores, businesses, parks, etc.

   If a site was triggered for heightened scrutiny due to being clustered or collocated and/or is a campus setting, identify all settings on the site map that are collocated and/or clustered by agency, operating certificate and address.

   Site maps can be obtained at http://maps.google.com. Once there, click the satellite button. Before uploading, save the image with the following naming convention: agency-OC#-sitemap.

3. Upload up to 5 pictures that depict the setting and the surrounding neighborhood. Do not include pictures or other identifying information for program participants. Before uploading, save the image with the following naming convention: agency-OC#-pic1of5 (e.g., opwddcapitaldistrict-012345678-pic1of3).

4. Section E-1 is to be completed for all settings that triggered heightened scrutiny. These questions are to be answered for all settings where waiver services are delivered. Questions in Section E-2 are specific to the type of setting (i.e., residential or day setting). Select "residential" for an assessment being completed for a residential setting and "non-residential" for an assessment being completed for a non-residential setting.

5. Upload the setting work plan that indicates how compliance with each standard will be achieved no later than October 1, 2018. The setting may use the work plan format that is located on the OPWDD HCBS Settings Toolkit under heightened scrutiny http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit, or may use their own format as long as it includes the following:
   - Action items, including timeframes to come into compliance with the HCBS settings requirements;
   - Milestones for the action item timelines;
   - Responsible parties for implementing the action items;
Method for tracking and monitoring the plan to ensure ongoing compliance (e.g., self-assessment and data collection activities); and

Other evidence demonstrating progress toward full HCBS compliance.

Please note: The work plan submitted with the FluidSurveys may need to be revised/updated if any HCBS requirement/standard is identified by DQI as “not met” during the October 1, 2016 through September 30, 2017 survey cycle that did not include a corresponding set of action items on the work plan uploaded with the FluidSurveys. In this case, the provider of the setting is required to forward an updated work plan to heightened.scrutiny@opwdd.ny.gov no later than 20 business days after the DQI survey visit that includes action items for the standards/requirements that DQI identifies as “not met”.

6. Section G is a narrative that enables the heightened scrutiny setting provider to explain how the setting is home and community based including how the setting facilitates full access for each person to the broader community. OPWDD highly recommends that providers complete this section to demonstrate how the setting is community integrated and overcomes the presumption that it is institutional and/or isolating as this information will help OPWDD to make a case that the setting is HCBS eligible. Additionally, agencies should also provide evidence demonstrating that there is little or no interconnectedness of the administrative and fiscal operations of co-located or adjacent settings. If the space allocated in the FluidSurveys is not sufficient, the setting may upload additional information using this naming convention: Agency-OC#-addinfo.

7. Maintain a print out of the questionnaire, the work plan, and all supporting documentation evidencing its effective implementation at the site or access and verification by reviewers during the survey process or for other audits/reviews.

More detailed instructions are included in Appendix B within the FluidSurveys evidence questionnaire template. The webinars outlined in Appendix C will cover these instructions and any questions that providers have on these requirements and the process.

In the meantime, questions can be directed to heightened.scrutiny@opwdd.ny.gov or to Casey Downey, Program Operations Specialist, (518) 486-9863.

Next Steps, Additional Information, and Revised Timeline:

As indicated in the October 2015 Provider Communication Memo on Heightened Scrutiny (Appendix A), all settings subject to heightened scrutiny will be reviewed by DQI to:
Determine the status of HCBS compliance; Verify the setting’s evidence package; and Validate that the setting’s HCBS compliance work plan is implemented and achieving intended results.

DQI will conduct this review during the 10/1/2017 survey cycle.

DQI Survey findings for this period will be included as a component of the evidence package to overcome the institutional presumption if the setting demonstrates compliance and/or conscientious implementation of its work plan as applicable.

If the provider is not in full compliance with HCBS settings standards and/or implementation of an effective work plan at the time of the DQI review, the setting’s compliance work plan must be developed/revised to include the action steps for each area of non-compliance that the provider will take to bring the setting into full compliance no later than October 1, 2018. This is a very important component of the evidence package, as CMS specifies in its June 26, 2015 memo that 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, whether the state can demonstrate that persons receiving services are not isolated from the greater community of individuals not receiving Medicaid HCBS, and whether CMS concludes that the information indicates that there is strong evidence the setting does not meet the criteria for a setting that has the qualities of an institution’1. If the setting work plan previously uploaded to the FluidSurveys does not align with the areas of non-compliance identified by DQI, the provider must resubmit the work plan to: heightened.scrutiny@opwdd.ny.gov no later than 20 days after the DQI survey of the setting (beginning October 1, 2017).

Once evidence has been reviewed and accepted by OPWDD, settings supported by OPWDD as overcoming the institutional presumption will undergo a public input process after which OPWDD will send evidence to CMS for a final determination2.

The following is a revised timeline and required action that applies to all residential and non-residential settings where HCBS waiver services are delivered.

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1 See CMS Memo dated June 26, 2015, page 2 http://www.opwdd.ny.gov/node/6253
2 CMS will review the information or documentation to ensure that all participants in the setting are afforded the degree of community integration required by the regulation and desired by the individual. The evidence must be sufficient to overcome the presumption that the site is institutional or isolating. If the setting withstands this “heightened scrutiny”, it will be deemed home and community-based.
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<th>Heightened Scrutiny Timeline</th>
<th>OPWDD Actions</th>
<th>Actions Required of Voluntary and state operated providers</th>
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<tr>
<td>October 1, 2015 through September 30, 2016</td>
<td>OPWDD DQI completes routine on-site surveys of certified residential and non-residential settings and determines which ones are subject to heightened scrutiny. DQI reviews certified residential settings (IRAs and CRs) for baseline HCBS settings compliance for those settings that are deemed subject to the heightened scrutiny process.</td>
<td>Continue to make progress towards full compliance with the HCBS settings rules and person-centered planning and process requirements</td>
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<td>March 1, 2017</td>
<td>Distribute specific information to provider agencies on developing evidence package.</td>
<td>Complete and submit information required for evidence package with copy remaining on-site for verification by DQI.</td>
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<td>October 1, 2017 through March 2018</td>
<td>OPWDD DQI reviews HCBS settings compliance for all heightened scrutiny settings (residential and non-residential) and verifies provider self-survey/evidence information. Review information will be made public and becomes part of the evidence package. Effective 10/1/16, HCBS settings standards become part of routine survey activity going forward for all settings where waiver services are delivered.</td>
<td>Continue to make progress towards full compliance.</td>
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<tr>
<td>August through September 2018</td>
<td>OPWDD opens heightened scrutiny public input process</td>
<td>Continue to make progress towards full compliance.</td>
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<tr>
<td>October through December 2018</td>
<td>OPWDD submits heightened scrutiny settings to CMS</td>
<td>Continue to make progress towards full compliance.</td>
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<tr>
<td>October 2018</td>
<td>OPWDD begins to enforce HCBS settings requirements</td>
<td>Full compliance required.</td>
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