



South Dakota Heightened Scrutiny Settings Summary

The South Dakota Department of Human Services (DHS) is submitting a list of settings for heightened scrutiny review by the Centers for Medicare and Medicaid Services (CMS). According to the Home and Community Based Services (HCBS) Settings Final Rule, the submitted settings were determined to have the presumption of an institution. The Department of Human Services has collected evidence that demonstrates these settings have overcome the presumption of having institutional qualities. This document summarizes the heightened scrutiny process, next steps to ensure compliance by March 17, 2023, and a list of South Dakota's heightened scrutiny settings.

Heightened Scrutiny Settings

The goal of the HCBS Settings Rule is to ensure that individuals on Medicaid who are residing in HCBS settings are given the opportunity to engage with the community in which they live. Largely due to physical location, CMS presumes some settings to be institutional or to have the effect of isolating individuals. The following categories of settings are presumed by CMS to be institutional or isolating and are subject to review by CMS:

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| Category 1: | Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment. |
| Category 2: | Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution. |
| Category 3: | Any other settings that have the effect of isolating individuals receiving Medicaid home and community-based services from the broader community of individuals not receiving Medicaid HCBS. |
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All settings that South Dakota is submitting for heightened scrutiny review fall into Category 1 due to their colocation with a nursing facility or hospital. South Dakota is designated as a frontier state by the Affordable Care Act. Due to the fact over half of South Dakotans live in a county that has been classified as a rural non-metro county, DHS has determined there are no category 3 settings in the state.

State Strategies to Categorize Residential Settings

Following the release of the HCBS Settings Rule in 2014, providers were required to complete a self-assessment of their setting. The assessment was prepared collaboratively by the Department of Social Services and the Department of Human Services. It contained 57 questions covering seven key concept areas: location, living arrangements, privacy, dignity and respect, physical accessibility, autonomy, and community integration. Assessment questions were developed using guidance from CMS' HCBS Took Kit and South Dakota's analysis of the federal regulation. South Dakota chose a three-step assessment process for residential settings. The assessment process included collection and analysis of providers' responses to a self-assessment and validation of self-assessment responses by state staff through an onsite assessment and consumer experience data. South Dakota received a response from all enrolled providers and has continued to assess providers as new settings are opened and in the event of a change of ownership. The HOPE Waiver, operated by the DHS Division of Long-Term Services (LTSS), is the only waiver that was determined to have settings that are categorized as heightened scrutiny.

Assessment and Evidence Package

In 2019, South Dakota updated the assessment tool and has utilized this tool to review all HCBS settings, including heightened scrutiny settings, to ensure and monitor compliance with the HCBS Settings Final Rule. South Dakota's "HCBS Setting Final Rule Evidence and Onsite Review Assessment" is designed to analyze each setting's policy and procedure and to corroborate provider's responses to the self-assessment. The seven integral traits of a home and community-based setting are broken down to five key points in the evidence package: Physical Location, Community Integration, Resident Rights, Living Arrangement, and Policy Implementation and Enforcement. A setting is determined to be compliant with the HCBS Settings Final Rule when sufficient evidence has been reviewed and determined compliant with all objectives outlined the "HCBS Settings Final Rule Evidence and Onsite Review Assessment" and described below.

Physical Location

To determine whether a setting falls under one of the three heightened scrutiny categories, assessors use provider attestation, Google Maps or other satellite imaging, photos, and/or architectural renderings of the physical space. If a provider is operating multiple setting types in the same vicinity, they are asked to provide policy and documentation that HCBS and institutional settings are administratively and operationally separated, and residents' experiences are distinct.

Community Integration

The Community Integration section of the assessment breaks down methods for ensuring resident's right to access the broader community. Assessors look for options for community integration, awareness of activities in the community, opportunities to work and volunteer, access to services in the community such as barber shops, hair salons and restaurants, the right to attend religious services and schedule appointments outside of the setting, and the right for residents to come and go as they please. Potential forms of evidence for community integration include provider policies and procedures, resident handbooks, resident agreements, admission policies, marketing materials, staff training curriculum, and letters of support from residents.

Resident Rights

The goal of the Resident Rights section of the assessment is to determine that all residents have a legally enforceable agreement with the setting landlord and that the setting offers the same responsibilities and protections from eviction for Medicaid recipients as all other tenants under state and local law. Assessors look at provider policies and procedures, resident handbooks, resident agreements, and/or admission policies to determine compliance in Resident Rights.

Living Arrangement

The Living Arrangement section of the assessment ensures that each resident maintains their autonomy within the setting. Residents need to have workable locks on their unit and their restroom, and staff should only use a key to enter the living unit under limited circumstances that are agreed upon with the resident. Residents have the right to privacy in their living space and have provided informed consent for the use of any cameras or video monitoring used in the setting. Residents have the right to furnish and decorate their living space as they choose, eat meals in their room if they want, and have access to food at any time. Assessors also look for evidence showing that residents know how to access and use public transportation. Potential forms of evidence for the Living Arrangement section include provider policies and procedures, resident handbooks, resident agreements, admission policies, staff training curriculum and materials, training requirements and schedules, letters of support from residents, and information provided to residents about transportation options.

Policy Implementation and Enforcement

Policy Implementation and Enforcement is reviewed through policies and procedures, staff training curriculum and materials, training requirements and schedules, and organizational charts. The purpose of this section is to ensure that staff and volunteers are trained in residents' rights and HCBS rules. It is also in place to ensure that all administrative and operational functions of settings that are also nursing facilities are clearly separate and distinct.

Onsite Review

DHS LTSS utilized state staff to complete an on-site review of heightened scrutiny settings to validate evidence submitted by the provider to ensure compliance with the HCBS Settings Final Rule.

Consumer Experience Survey

All HOPE waiver participants are asked to complete a participant experience survey each year. The survey is designed to gather information on the participant experience in each area of the "HCBS Setting Final Rule Evidence and Onsite Review Assessment". The responses are summarized according to total favorable responses per setting and are included in the "HCBS Setting Final Rule Evidence and Onsite Review Assessment".

Public Comment

DHS LTSS invites the public, providers, stakeholders, and people receiving services and their families to submit comments on the identified heightened scrutiny settings and DHS's conclusion that these settings are not institutional and individuals residing in these settings have full access to the benefits of community living.

The heightened scrutiny list is available for public comment for 30 days beginning Tuesday October 11th, 2022 and continuing through November 10th, 2022. DHS appreciates your questions and comments.

There are four ways to comment:

Email:
hcbs@state.sd.us

Mail:
Department of Human Services
Division of Long Term Services and Supports
Attention: Caitlin Clarey
2908 W. 11th St.
Sioux Falls, SD 57104

Phone:
LTSS: (605)773-3656

Town Hall Conference Call:
Tuesday, October 18th at 2:00 PM
Conference Call #: 1(605)679-7263
Code # 215486169#

How DHS will use Public Comments

All comments supporting the state's conclusion that the setting is not institutional will be compiled and readily available for submission to CMS upon request. Any comments that do not support the state's conclusion will be evaluated to determine next steps which may include corrective action by the provider or removal from the state's heightened scrutiny request.

Process for Applying CMS Feedback on Specific Settings to Similarly Situated Settings

Following the public comment period, South Dakota will submit the evidence package of a random sample of heightened scrutiny providers to CMS. CMS' review may result in feedback that will require additional corrective actions by providers and/or the state by the end of the transition period. If the setting is not able to comply with additional requirements, or chooses not to complete correction action, DHS LTSS staff will work with individuals in that setting to transition to an alternative setting.

List of Assisted Living Settings

Category 1:

Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.

Category 1 settings that have overcome the presumption of being institutional based on DHS' review of policies and procedures, an onsite review, provider attestation, consumer experience data are listed below. These settings will continue to provide home and community based assisted living services to South Dakotans pending the public comment period and approval from CMS.

1	Avera Brady	1414 W. Cedar Ave, Mitchell, SD 57301
2	Avera Prince of Peace	4504 S. Prince of Peace Pl, Sioux Falls, SD 57103
3	Avera St. Benedict Health Center	400 W. Fir St, Parkston, SD 57366
4	Bethany Lutheran Home Sioux Falls	1901 S. Holly Ave, Sioux Falls, SD 57105
5	Bethany Meadows	3008 E. Aspen Blvd, Brandon, SD 57005
6	Bethel Lutheran Home	1001 S. Egan Ave, Madison, SD 57042
7	Bethesda Towne Square	1425 15th Ave SE, Aberdeen SD 57401
8	Courtyard Villa	225 E. 4th St, Miller, SD 57362
9	Eastern Star Home of South Dakota	126 W. 12th Ave, Redfield, SD 57469
10	Eureka Community Health Services	200 J Ave, Eureka SD, 57437
11	Good Samaritan Society – Howard	300 W. Hazel Ave, Howard, SD 57349
12	Good Samaritan Society – Miller	421 E. 4th St, Miller, SD 57362
13	Johnson Center Sun Dial Manor	410 S. 2nd St, Bristol, SD 57219
14	Marion Assisted Living Center	312 E. State Street, Marion, SD 57043
15	Marshall County Healthcare Center	413 9th Street, Britton, SD 57430
16	Meadows of Faulkton	1401 Pearl St, Faulkton, SD 57438
17	Nano Nagle Village	1002 N. Jay Street, Aberdeen, SD 57401
18	Parkview Wakonda	515 Ohio St, Wakonda, SD 57073
19	Prairie Sunset Village	1401 10th Ave W, Mobridge, SD 57601
20	Vermillion Dakota Gardens	126 S. Plum St, Vermillion, SD 57069
21	Wellshire Huron	1251 Arizona Ave SW, Huron, SD 57350
22	Wilmot Care Center	501 4th St, Wilmot, SD 57279

Category 1 settings that may overcome presumption that the setting is institutional pending the completion of corrective action by January 31, 2023, are listed below. DHS LTSS will provide technical assistance and will oversee completion of the corrective plans. These settings will continue to provide home and community based assisted living services to South Dakotans pending all required corrective actions, public comments and approval from CMS.

1	Aurora Brule	408 S. Johnston St. White Lake, SD 57383
2	Medicine Wheel Village	24266 1 Airport Rd, Eagle Butte, SD 57625
3	Diamond Care-Grandview Assisted Living	901 N. Main Ave, Bridgewater, SD 57319

Category 2:

Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution.

DHS has determined there are no category 2 settings in the state.

Category 3:

Any other settings that have the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

DHS has determined there are no category 3 settings in the state.

Others:

The following site has been removed from the list as the State determined this site did not meet the three categories of residential or non-residential settings that are presumed to have the qualities of an institution.

1	Wellshire Millbank	1105 S. 2 nd St, Millbank, SD 57252
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