

# Statewide Transition Plans (STPs)

## HCBS Implementation: Small Group State TA for STP Development

TA Virtual Discussion #3 of 4:  
Heightened Scrutiny

# AGENDA

- Check-in:
  - *Any additional questions or comments from Week 2 topics?*
- Technical Presentation of Today's Thematic Topics & Information Dissemination of Promising State Examples
- Question & Answer Session/Interactive Dialogue
- Transfer of Knowledge
  - *Informal Dialogue among State Teams*

# Week #3:

## *Today's Thematic Topics of Discussion*

### Heightened Scrutiny

- Settings that are Presumed to NOT be HCBS
- General Requirements under HS
- Evidentiary Standard & Tools for States
- HS Process
- Implementation with Integrity
  - Recommended Strategies
  - Promising Practices/State Examples
- CMS Review Process

# Settings Presumed NOT to be HCB

Prong I

Settings in a publicly or privately operated facility that provides inpatient institutional treatment.

Prong II

Settings in a building on the grounds of, or adjacent to, a public institution

Prong III

Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

# Settings with the Effect of Isolating Individuals

- CMS' *Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community* states that the following two characteristics alone might, but will not necessarily, have the effect of isolating individuals:
  - The setting is designed specifically for people with disabilities, or for people with a certain type of disability
  - Individuals in the setting are primarily or exclusively people with disabilities and the on-site staff that provides services to them.

# Settings with the Effect of Isolating Individuals (cont'd)

- Settings that isolate individuals 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/activities on-site such as 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
  - The setting uses/authorizes interventions/restrictions used in institutional settings or deemed unacceptable in Medicaid institutional settings (e.g. seclusion)

# Settings with the Effect of Isolating Individuals: *Examples*

Farmstead or disability-specific farming community

Gated/Secured “community” (intentional communities)

Residential Schools

Multiple settings co-located and operationally related

# Settings with the Effect of Isolating Individuals: Farmsteads or Disability Specific Farming Community

A farmstead or disability-specific farm community that has the following characteristics:

- Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals.
- Daily activities and non-home and community-based services, such as religious services, take place on-site so that an individual generally does not leave the farm
- People from the broader community may sometimes come on site, but people from the farm seldom go out into the community as part of daily life

# Settings with the Effect of Isolating Individuals: Gated/Secured Community ("Intentional Communities")

A gated/secured "community" for individuals with disabilities that has the following characteristics:

- The community typically consists primarily of individuals with disabilities and the staff that work with them
- Locations provide residential, behavioral health, day services, social and recreational activities, and long term services and supports all within the gated community
- Individuals often do not leave the grounds of the gated community in order to access activities or services in the broader community

# Settings with the Effect of Isolating Individuals: Residential Schools

**Residential schools** that have the following characteristics:

- The setting incorporates both the educational program and the residential program in the same building or in buildings in close proximity to each other so individuals do not travel into broader community
- Individuals served in the setting typically interact only with other residents of the home and the residential and educational staff
- Activities such as religious services are held on-site
- Individuals’ experience with the broader community is limited to large group activities on “bus field trips”

# Heightened Scrutiny and Settings that Isolate: *Private Homes*

- **If the state presumes that private homes meet the settings requirements**, the state needs to confirm that the homes were not purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid-funded HCBS.
  - Example: *Did a group of families purchase an isolated property solely for their family members with disabilities?*

# Settings with the Effect of Isolating Individuals: Multiple Settings Co-Located and Operationally Related

**Multiple settings co-located and operationally related** (ie. operated and controlled by the same provider) which congregate a large number of people with disabilities together such that people's ability to interact with the broader community is limited

- Depending on the program design, examples include:
  - Group homes on the grounds of a private ICF
  - Numerous residential settings co-located on a single site or in close proximity, such as multiple units on the same street

# Heightened Scrutiny: *Requirements*

- If a state identifies settings that are presumed to have the qualities of an institution such as characteristics that isolate HCBS beneficiaries, the state is obligated to identify them in the Statewide Transition Plan
- The settings regulations require that, in order to overcome the presumption that a setting has the qualities of an institution, CMS must determine that the setting:
  - Does not have* the qualities of an institution and
  - Does have* the qualities of a home and community-based setting

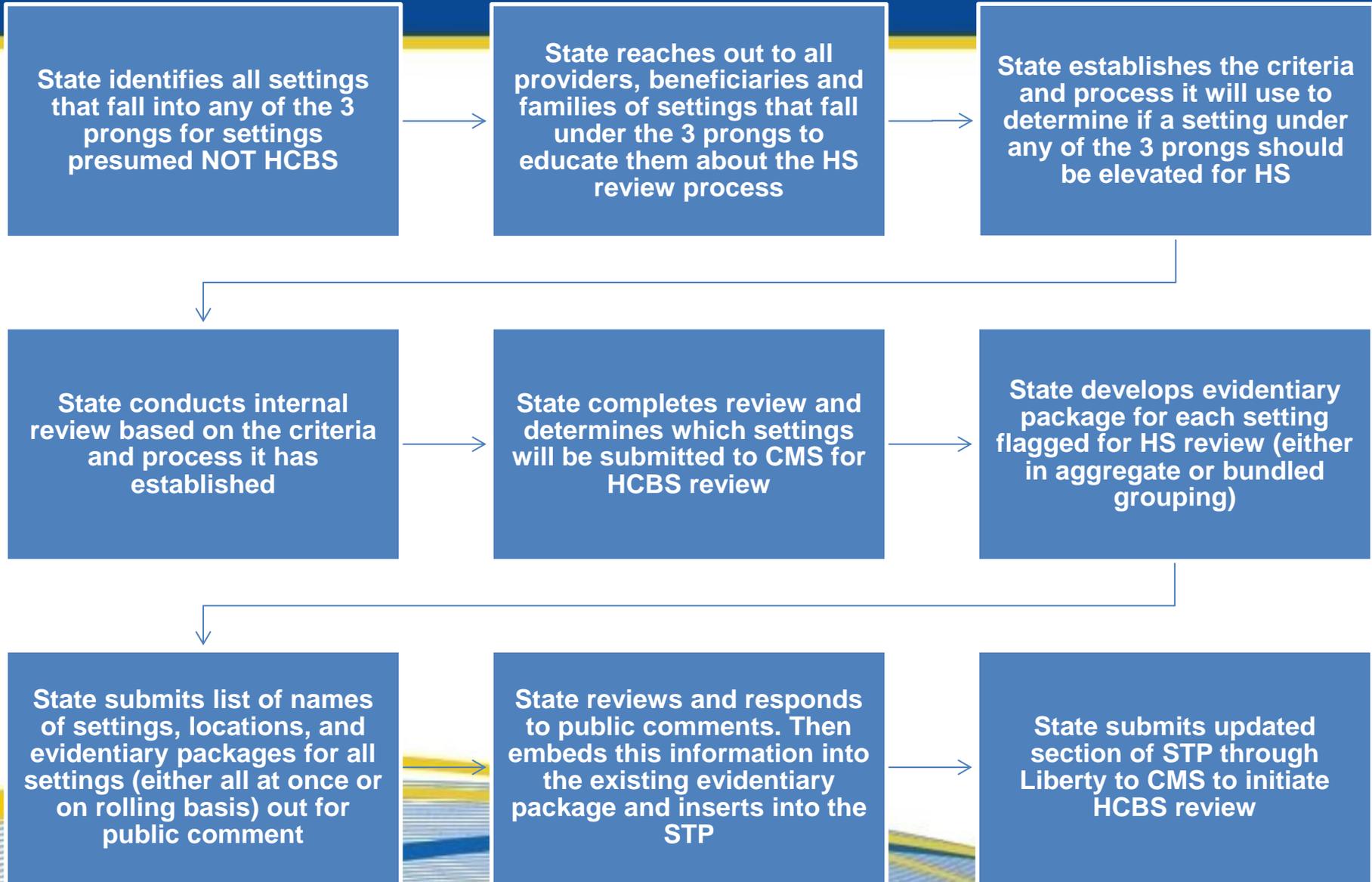
# Heightened Scrutiny: *When Should HS be Applied?*

- **Heightened Scrutiny should only be applied if and when a state believes that a setting that falls into one of the three prongs has overcome the presumption** that a setting has institutional qualities or characteristics that isolate beneficiaries **AND** comports fully with the HCBS settings rule.
  - If a state does not feel that a setting has overcome the institutional presumption or characteristics that isolate, it should not submit the setting to CMS for heightened scrutiny review.
  - If a state does not feel that the setting fully complies with the HCBS settings rule, then the state should first work with the setting to develop and begin implementation of a remediation plan that would bring the setting in full compliance with the rule before initiating HS review

# Heightened Scrutiny: *Process*

- If a state feels that a setting has overcome the presumption of institutional qualities or characteristics that isolate, AND that the setting either is in or can be brought into full compliance with the settings rule by March 2019, then the state may submit evidence to CMS demonstrating the setting does not have the qualities of an institution and that it does have the qualities of a home and community-based setting
- Under the heightened scrutiny process, CMS reviews the evidence submitted by the state and makes a determination as to whether the evidence is sufficient to overcome the presumption

# Heightened Scrutiny: *Suggested State Process*



# Heightened Scrutiny: *Evidentiary Criteria*

- Criteria CMS uses to review state requests for HS:
  - Whether all of the qualities of a home and community based setting outlined in the federal settings regulations are met
  - Whether CMS concludes there is strong evidence the setting does not meet the criteria for a setting that has the qualities of an institution

# Heightened Scrutiny: *General Evidentiary Requirements*

## Evidence Should Focus On:

- **Qualities of the setting and how it is integrated in and supports full access of individuals receiving HCBS into the greater community**
- **All information received about the setting during the public input process**

## Evidence Should NOT Focus On:

- **The aspects and/or severity of the disabilities of the individuals served in the setting**
- **Rationale for why existing institutional qualities or characteristics that isolate beneficiaries are justified**

# Heightened Scrutiny: *Evidentiary Requirements* (*Prongs I & II*)

- As part of the state's HS evidentiary package for settings under Prongs I or II, the state should include:
  - ❑ Information clarifying that there is a meaningful distinction between the facility and the community-based setting such that the latter is integrated in and supports full access of individuals receiving HCBS to the greater community
  - ❑ Services to the individual, and activities in which each individual participates, are engaged with the broader community
  - ❑ Examples of documentation that can be submitted as evidence for this prong can be found under [Question 4 in the June 2015 CMS FAQs](#)

# Heightened Scrutiny: *Evidentiary Requirements* (*Prong III: Settings that Isolate*)

- As part of the state's HS evidentiary package for any setting that isolates (Prong III), the state should provide evidence of the following qualities:
  - ❑ Setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to persons with disabilities
  - ❑ Beneficiaries participate regularly in typical community life activities outside of the setting to the extent the individual desires and those activities:
  - ❑ Services to the individual, and activities in which each individual participates, are engaged with the broader community

# Heightened Scrutiny: *Tools for States to Assess Settings Presumed NOT to be HCB*

Tools for states to use in collecting information for CMS' heightened scrutiny process:

- Exploratory Questions (as a framework against which to examine settings):
  - [Exploratory Questions for Residential Settings](#)
  - [Exploratory Questions for Non-residential Settings](#)
- States' own tools for collecting and evaluating the information received
- Public input on settings the state has flagged for HS\* as part of a Statewide Transition Plan, or a waiver or state plan submission

# Heightened Scrutiny: *Public Notice*

- Public notice associated with settings for which the state is requesting HS should:
  - Be included in the Statewide Transition Plan or addressed in the waiver or state plan submission to CMS
  - List the affected settings by setting name and location and identify the number of individuals served in each setting
  - Be widely disseminated
  - Include the entire evidentiary package of information for each setting that the state is planning to submit to CMS

# Heightened Scrutiny: *Public Notice* (*continued*)

- Public notice associated with settings for which the state is requesting HS should (continued):
  - Include all justifications as to why the setting:
    - is home and community-based, and
    - does not have institutional characteristics
  - Provide sufficient detail such that the public has an opportunity to support or rebut the state's information
  - State that the public has an opportunity to comment on the state's evidence
- CMS expects that states will provide responses to those public comments in the Statewide Transition Plan or submission to CMS

# HS Implementation with Integrity:

## *What additional information should states submit in the HS process?*

**Examples of additional documentation that a state may wish to include in its evidentiary package for a setting under HS could include:**

- ✓ Observations from on-site review.
- ✓ Licensure requirements or other state regulations
- ✓ Residential housing or zoning requirements
- ✓ Proximity to/scope of interactions with community settings
- ✓ Provider qualifications for HCBS staff
- ✓ Service definitions that explicitly support setting requirements
- ✓ Evidence that setting complies with requirements of provider-owned or controlled settings
- ✓ Documentation in PCP that individual's preferences and interests are being met
- ✓ Evidence individual chose the setting among other options, including non-disability specific
- ✓ Details of proximity to public transport or other transportation strategies to facilitate integration
- ✓ Pictures of the site and other demonstrable evidence\*

# HS Implementation with Integrity:

## *Site Visits*

- To facilitate CMS review of the evidence presented for heightened scrutiny, a state should also submit a report of any on-site visit conducted by the state
- The purpose of the site visit is to observe the individual's life experience and the presence or absence of the qualities of home and community-based settings. The data submitted should support the presence of qualities that support home and community-based settings.

# HS Implementation with Integrity: *Beneficiary Experience*

- Additional supplemental information attempting to capture beneficiary experience that could be a part of an HS evidentiary package could include:
  - consumer experience surveys that can be linked to the site for which evidence is being submitted
  - consumer experience participant interviews outside the presence of the provider conducted by an independent entity or state staff with demonstrated expertise and/or training working with the relevant population
  - samples of person centered plans and narrative descriptions of the process completed to inform the PCP

# Potential Effective Practices in Assessing Setting Compliance under HS

Category	Recommended Strategies
<b>Establishes clear, easy-to-digest approach to HS setting identification, categorization, and information dissemination within the STP and to the public</b>	<b>Utilized an exhaustive set of strategies for identifying all settings in the state that currently fall into one or more of the prongs under “Settings Presumed NOT to be HCB”</b> <b>Clearly listed within its STP either (a) the state’s initial estimate of settings that fall under the three prongs; and (b) the full list of settings being elevated to CMS for HS</b> <b>Has included this initial list of settings that the state has identified under HS in a public comment period and has widely disseminated this list to stakeholders across the state for feedback</b>
<b>Lays out a multi-faceted process for implementing the state’s own internal review process to determine whether to elevate any setting in the three prongs to HS review</b>	<b>May include a multitude of activities, including but not limited to comprehensive documentation, onsite review by state, capturing of beneficiary experience</b>

# Potential Effective Practices in Assessing Setting Compliance under HS (continued)

Category	Recommended Strategies
<p><b>State provides an easily digestible, comprehensive evidentiary package for every setting submitted to CMS under HS review</b></p>	<p><b>Suggest submitting an outline of a suggested organized format to CMS STP review team and receive feedback in advance. Also suggest keeping the evidentiary package to approximately 10 pages/setting.</b></p>
<p><b>As the state submits settings for HS review on a rolling basis to CMS, the state continues to update the STP with new information on its HS activities in a clear, organized and transparent fashion.</b></p>	<p><b>Briefly summarizes within the state plan an update of the progress made to date under HS by the state and the latest findings the state has made</b></p> <p><b>Adds the full name, location and evidentiary package of each setting being submitted for CMS review under HS to an easily identifiable location within the STP, waiver application or state plan application (ie. appendix, or easily identifiable section).</b></p> <p><b>Submits and widely disseminates this entire update out for public comment, includes the comments and the state's responses within the formal submission to CMS</b></p>

# Heightened Scrutiny: *CMS Review Process*

- CMS' response to the state's submission of evidence for heightened scrutiny of a setting:
  - CMS will respond in writing as part of its review of the action pending – whether in response to a Statewide Transition Plan, new waiver, or state plan amendment
  - CMS will make one of the following determinations
    - All regulatory requirements are met by the setting in question; OR
    - Not all regulatory requirements are met
  - CMS will notify the state in writing of its determination and next steps

# Heightened Scrutiny: *CMS' Response on HS Determinations*

## When ALL Regulatory Requirements are Met

- Approval of a HS request pertains only to the individual setting or settings subject to the request
- Any material changes approved through HS will require the state to update CMS and may result in a reevaluation of the setting
- The state must describe a monitoring process for ensuring that these settings and all settings continue to comply with HCB qualities even after the transition period ends.

## When All Regulatory Requirements are NOT Met

- If the setting is included in the STP, the state has several options [[See Q10 in June 2015 FAQs](#)]
- If the setting is included in a new 1915(c) waiver, or new 1915(i) or (k) state plan benefit, or as part of new services added to an existing state plan benefit, federal reimbursement for services in that setting will not be available unless or until the setting has achieved compliance with all requirements

# Interactive Dialogue: Q&A

*What is on your mind regarding the topics covered today as they relate to your state's approach to HCBS implementation?*

# Interactive Dialogue: *Knowledge Transfer*

- *How is your state planning to identify all settings that should be flagged as being presumed non-HCBS by virtue of being captured in one of the three HS prongs?*
- *What is the approach you as a state are contemplating to review each of these settings and determine whether or not you as a state will submit them to CMS for HS review?*
- *What additional questions or concerns do you have about the evidentiary criteria or the packaging of information to CMS?*
- *How will you ensure that the public is fully engaged in the HS process? How will you factor the public comments you receive and feedback from external stakeholders on particular settings into your internal HS review process? How will you organize your summary of comments into themes and responses?*

# Resources

- **Main CMS HCBS Website:** <http://www.medicaid.gov/HCBS>
  - Final Rule & Subregulatory Guidance
  - A mailbox to ask additional questions
  - Exploratory Questions (for Residential & Nonresidential Settings)
  - All FAQs on Heightened Scrutiny, Planned Construction, and Settings that Isolate
- **CMS Training on HCBS – SOTA (State Operational Technical Assistance) Calls:**  
<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/hcbs-training.html>
- **Statewide Transition Plan Toolkit:**  
<https://www.medicaid.gov/.../statewide-transition-plan-toolkit.pdf>

# THANK YOU!

## SCHEDULE OF ADDITIONAL TA WEBINARS

- **Week #4 (5/31/16-12:30 -2:00 PM EST.)**
  - Relocation, Ongoing Monitoring/Quality Improvement
  - Charting Milestones
  - Next Steps
  - Setting up regular communications with CMS on state's progress
  - “Office Hours” Discussion – Wrap up of Small Group TA

# Acknowledgment

**CMS wants to acknowledge the partnership with the Administration for Community Living (ACL) on the role of providing technical assistance and presenting to States participating in the Small TA Group.**