

173-39-03.1

**ODA provider certification: federal heightened scrutiny of provider settings with institutional characteristics.**

Introduction: In 42 C.F.R. 441.301(c)(5)(v), HHS requires heightened scrutiny by HHS's secretary to determine if a setting presumed to have the qualities of an institution meets HCBS settings requirements. This rule applies to settings subject to heightened scrutiny to become or remain an ODA-certified provider.

(A) Scope: A setting presumed to have the qualities of an institution requires heightened scrutiny by HHS's secretary, based on information presented by the state or other parties, to determine whether the setting has the qualities of an institution or has the qualities of a HCBS setting. A setting is presumed to have the qualities of an institution if it has any of the following characteristics:

(1) The entire setting is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment.

(2) The setting is in a building on the grounds of, or immediately adjacent to, a public institution.

(3) The setting has the effect of isolating individuals receiving medicaid HCBS from the broader community of individuals not receiving medicaid HCBS.

(B) Process: ODA shall determine if a setting requires heightened scrutiny by HHS's secretary. If ODA determines a setting requires heightened scrutiny under paragraph (A) of this rule, ODA shall review information submitted by the provider, conduct an on-site visit of the setting, and complete form ODM 10204, titled "Heightened Scrutiny Evidence Package" (02/2017). ODA may recommend the provider undertake remediation of any possible deficiencies in its compliance with HCBS settings requirements and may establish deadlines for completion of any remediation. If the provider fails to complete requested remediation or provide evidence of the same to ODA, ODA may withhold submission of the provider's application for heightened scrutiny.

(C) Public-comment periods: Before submitting an application for heightened scrutiny to the HHS secretary, ODA shall offer the public a thirty-day opportunity to comment on the application. ODM, on behalf of ODA, shall offer public-comment periods four times per year.

(D) Request for heightened scrutiny: Following the completion of the public-comment period, ODM, on behalf of ODA, shall submit form ODM 10204 and any supplemental material, if requested, to HHS's secretary for heightened scrutiny of the setting.

(E) HHS heightened scrutiny determination:

(1) For providers seeking ODA certification:

- (a) If HHS's secretary determines the setting meets HCBS settings requirements, ODA may approve the provider's application for certification.
- (b) If HHS's secretary determines the provider's setting does not meet HCBS settings requirements, ODA shall notify the provider of the final determination and any applicable hearing rights established in section 173.391 of the Revised Code. If ODA denies a provider's certification, the provider is ineligible to reapply for certification for one year after the mailing date of ODA's final determination.

(2) For certified providers:

- (a) If HHS's secretary determines the provider's setting meets HCBS settings requirements, the provider shall retain its certification so long as it continues to comply with this chapter.
- (b) If HHS's secretary determines the provider's setting does not meet HCBS settings requirements, ODA may impose discipline against the provider and notify the provider of any applicable hearing rights established in section 173.391 of the Revised Code.

Effective: 7/1/2019  
Five Year Review (FYR) Dates: 07/01/2024

CERTIFIED ELECTRONICALLY

---

Certification

06/17/2019

---

Date

Promulgated Under: 119.03  
Statutory Authority: 173.01, 173.02, 173.391, 173.52, 173.522, 173.54,  
173.543  
Rule Amplifies: 173.39, 173.391, 173.52, 173.522, 173.54, 173.543; 42  
C.F.R. 441.352