

**PROVIDERS SUBJECT TO FEDERAL HEIGHTENED SCRUTINY**  
Ohio Administrative Code (OAC) 173-39-03.1  
**FACT SHEET**

The purpose of Ohio Administrative Code (OAC) 173-39-03.1 is to codify a process for providers of the assisted living service in the Assisted Living Program and the adult day service in the PASSPORT Program to ensure they meet the federal requirements in the Home and Community Base setting rule.

On March 17, 2014, the Centers for Medicaid and Medicare Services (CMS) adopted its [final rule](#) regarding settings for home and community-based services (HCBS) offered through the Assisted Living Waiver and the PASSPORT Waiver. For those settings presumed to be institutional, the state may submit evidence to CMS demonstrating the setting does not have the qualities of an institution for a Heightened Scrutiny (HS) Review. The Department of Aging has codified the process in OAC 173-39-03.1.

**Under what situations is a provider subjected to the federal heightened scrutiny?**

- Under 42 C.F.R. 441.301(c)(5)(v), as determined by the Secretary of the U.S. Department of Health and Human Services (HHS), states are required to submit certain settings to HHS for a HS review to determine if the setting has the qualities of an institution or the qualities of an HCBS setting. If a setting has any of the following characteristics, it is presumed to be institutional and subject to review by HHS:
  - The setting is located in a building that is also a publicly or privately-operated facility that provides institutional treatment.
  - The setting is in a building on the grounds of, or immediately adjacent to, a public institution.
  - The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.
- All settings must adhere to the requirements for HCBS settings in OAC 5160-44-02.

**How does the Department of Aging determine if the provider has the characteristics listed above?**

- At application, the provider submits documentation, which may include a floor plan of the entire business entity, the ODM 10172 form, and any other relevant supporting documentation to assist in the preliminary evaluation of your setting.
- The state considers all submitted supporting documentation and its observations of the setting during the precertification visit pursuant to 173-39-03 to determine if the setting must be submitted for HS review by CMS.

OAC 173-39-03.1 outlines the Department of Aging's process for submitting a setting to HHS for a HS review.

- The federal regulations governing this process requires a thirty-day public comment period.
- The public comment periods are offered four times a year, at the discretion of the state.

Following the completion of the public comment period, the state shall complete and submit the ODM 10204 to the HHS secretary for a HS review.

If the HHS secretary determines the setting meets the HCBS settings requirements, the Department of Aging shall process the provider's application for certification.

If a provider has purchased a previously certified provider pursuant to 173-39-03.2, and the previously certified provider has already undergone the HS review by the HHS secretary, the new provider shall undergo a HS review by the Department of Aging or their designee during the precertification review, to ensure:

- The provider understands the HS regulation; and
- The provider's documentation continues to support the full integration into the community and other obligations as described in 42 C.F.R 441.301.