

## Addendum A

### ***When Heightened Scrutiny Referrals May Be Appropriate***

#### **What is Heightened Scrutiny?**

Heightened Scrutiny is a federally required process for the Department of Human Services/d Oregon Health Authority and the Centers for Medicare & Medicaid Services (CMS) to determine if a provider of Home and Community-Based Services (HCBS) has the effect of isolating individuals from the broader community.

#### **What criteria was used to identify Providers who need to go through the Heightened Scrutiny process?**

The State's initial review of documentation submitted by providers identified certain settings as meeting at least one of the CMS criteria for Heightened Scrutiny.

1. The setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
2. The setting is located in a building on the grounds of, or immediately adjacent to, a public institution; or
3. The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals who do not receive Medicaid HCBS.

While Oregon believes the identified settings will meet HCBS expectations and overcome the presumption of isolating individuals from the broader community, the State submitted them to CMS because they appear to meet the criteria developed by CMS for Heightened Scrutiny review.

#### **For providers who were not identified as needing to go through Heightened Scrutiny by the State, what else may trigger the State that a provider may need to go through this process?**

Providers may be identified as needing to be reviewed for possible inclusion in the Heightened Scrutiny process through one or more of the following activities.

- Public input from consumers, family, friends, neighbors, or consumer advocates.
- On-site visits by Medicaid Case Managers.
- On-site reviews by Licensors or Surveyors indicating that the provider's operations have the effect of isolating individuals from the broader community or ability to interact directly with those whom they wish to interact.
- Other factors, including feedback from Legal Aid, the Long-Term Care Ombudsman, or other advocates.

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### **How will the ongoing Heightened Scrutiny process work, after the State has submitted the initial group of providers to CMS?**

As settings are identified as needing to be reviewed for possible inclusion in the heightened scrutiny process, the State will work with Case Managers, Licensors and Surveyors to determine if the criterion are met. The provider will be given the opportunity to rebut the possible isolating effect. The Heightened Scrutiny process is a multi-step process intended to provide the state, and potentially CMS sufficient information to determine if a facility or program has the effect of isolating individuals from the broader community or if they meet the requirements of the Home and Community Based Services.

A provider who have one of the triggers or indicators would not necessarily mean an automatic referral to CMS. There are several steps before a referral would be made to CMS, including a final determination by the state. The first step is an opportunity for the provider to rebut the concept that they have the appearance of isolating individuals from the broader community.

### **Questions to Think About When Deciding to Give Input About a Provider:**

Integration in the broader community: Where is the setting? Is it integrated into the community to the same degree as other HCBS settings? Does the individual have regular opportunities be part of the broader community? Does the setting support full access of individuals to the broader community, including supporting their choice to engage in community life? Does it isolate people from the broader community? Does it provide on-site services, like housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities, so that people who live there have limited, if any, interaction with the broader community?

Independence: Does the individual create his/her own schedule? Does the individual decide when to wake, sleep, eat and bathe? Does he/she choose whether or not to participate in social or recreational opportunities? Does the provider allow individuals to control their personal resources? Is the individual able to receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS? Does the provider encourage and support the individual's independence in making life choices?

Communication: Is the individual able to communicate privately within the setting? Can the individual communicate with those on the outside of the residential setting, or is it limited?

Visitors at any time: Can the individual have visitors of his/her own choosing? Does the provider limit the individual's ability to have visitors at any time? Does the provider discourage visitors on 'off hours' (e.g., late at night or early in the morning)?

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APD followed-up with these settings requesting additional information regarding their services. An internal review process focused on the following four areas:

### **On Site Licensor Reviews**

If, at the time of an on-site review, a Licensor discovers indicators that there are conditions that have the effect of isolating individuals from the broader community, the licensors will discuss issues with the provider to determine if the issue can be addressed through a corrective action plan, prior to referring the provider for possible Heightened Scrutiny.

### **Public Feedback and Complaints**

Public feedback may trigger a provider needing to go through heightened scrutiny. Prior to initiating the heightened scrutiny process, the State may consult with Licensors/Surveyors, discuss issues with the provider, and conduct on-site reviews. Complaints around general HCBS compliance will be addressed through corrective action plans.