



**CABINET FOR HEALTH AND FAMILY SERVICES  
DEPARTMENT FOR MEDICAID SERVICES**

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**TO:** Acquired Brain Injury Providers  
Community Mental Health Center Providers  
Supports for Community Living Providers  
Model Waiver II Providers  
Home and Community Based Waiver Providers  
Adult Day Health Care Providers

**FROM:** Deborah Anderson, Director   
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**DATE:** February 8, 2017

**RE:** **Heightened Scrutiny Communication to Individuals**  
(17) – Provider Letter #A-29  
(30) – Provider Letter #A-104  
(33) – Provider Letter #A-48  
(41) – Provider Letter #A-18  
(42) – Provider Letter #A-87  
(43) – Provider Letter #A-49

The Department for Medicaid Services (DMS) would like for you to be aware of upcoming communication that will be distributed to **some** individuals receiving services in Kentucky's Home and Community Based Services (HCBS) waivers. Kentucky operates six HCBS waivers: Acquired Brain Injury (ABI), Acquired Brain Injury-Long Term Care (ABI-LTC), Home and Community-based (HCB), Michelle P. (MPW), Model II (MIIW), and Supports for Community Living (SCL). The communications are related to the HCBS Final Rules, requirements that the Centers for Medicare and Medicaid Services (CMS) developed in new regulations that became effective in March 2014.

The HCBS Final Rules contain multiple requirements for the settings where waiver services are provided. These requirements are designed to encourage integration within the community, ensure individuals have full access to their homes, are able to choose their roommates, choose who provides services to them, and determine how they will spend each day. All settings must be in compliance with these rules no later than March 2019.

As part of the HCBS Final Rules, CMS defined waiver settings that are presumed not to be home and community-based as:

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



2. Settings in a building on the grounds of, or adjacent to, a public institution, and
3. Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

For these settings that are presumed not to be home and community-based, states may present evidence of their home and community-based characteristics to CMS through a process known as Heightened Scrutiny. In Heightened Scrutiny, CMS will review the evidence that the state submits about the setting and determine if the evidence is strong enough to support that the setting is not institutional in nature and is an appropriate home and community based setting. CMS is responsible for making the final decision about the status of the setting.

The Cabinet for Health and Family Services (CHFS) conducted site visits to these settings to collect information on the home and community based-characteristics of each setting. During the visits, site visitors observed the settings and interviewed staff and individuals receiving services at each setting. CHFS staff then created a ten page summary for each setting. These summaries will be submitted to CMS in multiple rounds throughout 2017 and will be published for a 30-day public comment period prior to submission.

Individuals who receive services at these settings will be notified before the settings are published for public comment. Attached is an example of the aforementioned notification that the individuals will be receiving. **Please assure the individual(s) for whom you are a case manager that there is no impact to their waiver services and help them understand the Heightened Scrutiny process, as well as how to submit their input.** Once CMS completes its heightened scrutiny review, we will communicate to both you and the individual if any action is needed.

## **Attachment: Sample Letter to Individual**

The Centers for Medicare and Medicaid Services (CMS) made new rules for Home and Community Based Services (HCBS) waivers. These rules are called the HCBS Final Rules and Kentucky is working to follow them. You are getting this letter because we want to get your thoughts and feelings about the places where you get your waiver services.

**Why did CMS make the HCBS Final Rules?** CMS made these rules because it wants to make sure that people who receive waiver services are able to:

- Be integrated with the community, meaning that people who receive waiver services are included in their community, along with people who don't receive waiver services;
- Choose who you live with;
- Choose who provides your services;
- Choose what you do during the day.

**How does this affect my waiver setting?** Each setting where you get services must follow all of these rules by March 2019. As part of the HCBS Final Rules, CMS determined that some settings may not seem to be good home and community-based settings. These settings include those that:

1. Are inside of a hospital or nursing facility that has inpatient institutional treatment;
2. Are in a building next to, a state-owned hospital or institution; and/or
3. Separate people who receive waiver services from other people that do not receive waiver services.

Your home is in the third group of settings. Because your home is one of these settings, Kentucky's Department for Medicaid Services (DMS) has to tell CMS about your home. This is called heightened scrutiny.

**What is heightened scrutiny?** Heightened scrutiny means that CMS will look at the information DMS gives them and decide whether or not your home is a good home and community-based setting. A good home and community-based setting is a place where people are included in their community and can make their own choices.

**What information did DMS collect about my setting?** The information that DMS will give to CMS comes from the visit we made to your home. We collected information about your home like what it looks like and what is inside. We also talked to people who live there and the staff who give them services. Your provider had a chance to give extra information to DMS that showed the good things about your home.

Kentucky wrote a summary about your home that included all of the information we collected. We call this summary the evidence summary package. The package was read by people who are self-advocates, family members, advocates, and providers. These people decided that your home's summary package has enough information to prove to CMS that it is a good setting that is like other homes in the community. After CMS gets this summary package, they will decide if your home is home and community based.

**Can I see my setting's summary package?** Yes! Before we send this package to CMS, we want you to tell us what you think and feel about where you live. We will add your thoughts and feelings into the evidence summary package to show to CMS. Starting on February 17, you can give us your thoughts and feelings on your home. The evidence summary package will be posted on DMS's webpage <http://chfs.ky.gov/dms/> until March 18. Anyone in the public can also tell DMS what it thinks about your setting at this time. This is called the public comment period.

