**Section 115.310 Geographic Location of Community-Integrated Living Arrangements**

a) Provider-owned or controlled CILA sites shall be located to enable individuals to participate in and be integrated into their community and neighborhood. Homes shall be typical of homes in the community and residential neighborhood and their inclusion should not appreciably alter the characteristics of the neighborhood.

b) Provider-owned or controlled CILA sites shall be located to promote integration of individuals with developmental disabilities within the range of communities throughout the State.

c) Provider-owned or controlled CILA sites shall operate according to 42 CFR 441.301(c)(4) and related CMS guidance.

d) CILAs owned or controlled by a CILA agency and funded by the Department shall comply with all of the following requirements:

1) Current provider-owned or controlled CILAs shall be reviewed and evaluated for isolating characteristics. The provider-owned or controlled CILA shall not have the effect of isolating individuals receiving Medicaid HCBS Waiver services from the broader community of individuals not receiving Medicaid HCBS Waiver services.

2) Any provider-owned or controlled CILA for individuals in the Medicaid DDD Waiver that has the effect of isolating individuals receiving Medicaid HCBS service and is operational during the transition period established by the federal government shall be designated by the Department for a heightened scrutiny review to determine whether it meets the qualities of home and community-based settings listed in 42 CFR 441.301(c)(4). The Department may perform heightened scrutiny reviews in accordance with federal rules and related guidance. The following factors shall be taken into account in determining whether a setting may have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS:

A) Due to the design or model of service provision in the setting, individuals have limited, if any, opportunities for interaction in and with the broader community, including with individuals not receiving Medicaid-funded HCBS. Such opportunities, as well as identified supports to provide access to and participation in the broader community, should be reflected in both individuals’ person-centered plans and the policies and practices of the setting;

B) The setting restricts individual choice to receive services or to engage in activities outside of the setting; or

C) The setting is physically located separate and apart from the broader community and does not facilitate individual opportunity to access the broader community and participate in community services, consistent with an individual’s person-centered plan.

3) Settings must be validated by the State as in compliance with federal settings rules by March 17, 2023. Ongoing compliance with the Settings Rules will be incorporated into ongoing reviews and surveys.

e) When CILA providers own or control units in a multi-unit building, CILA providers should recognize and consider the number of CILA and non-CILA residents located in the same building and, in order to meet the right of individuals with disabilities to live in the most integrated environment possible, strive to have an integrated grouping of people in any building composed of a mix of both CILA and non-CILA residents. No more than 25% of the total units in each building are CILAs funded by the Department and owned or controlled by CILA providers. Each unit must meet the requirements for a CILA as defined in Section 115.300.

f) Any new provider-owned or controlled CILA site for individuals in the DDD Medicaid HCBS Waiver must comply with the federal settings rules’ requirements and shall only be eligible for funding from the Department if:

1) Subject to the proximity waiver process in subsection (j), it is not adjacent to (next to, across, or diagonal from or immediately behind) any Medicaid HCBS waiver-funded residential or day program site or property owned or controlled by the same CILA provider;

2) It is not located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment;

3) It is not located in a building on the grounds of, or adjacent to, a publicly or privately-operated facility that provides inpatient institutional treatment; or

4) It is not any of the settings defined in 42 CFR 441.301(c)(5).

g) New provider-owned or controlled CILAs must be in compliance with the settings rules when they are licensed.

h) Individuals in individually owned or controlled homes and apartments in which the individual receiving Medicaid HCBS Waiver services lives independently or with family members, friends, or roommates are presumed to be in compliance with the regulatory criteria of a home and community-based setting. Settings where the individual lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS to the individual) are considered provider-owned or controlled settings and will be evaluated as such.

i) A proximity waiver can be requested from DDD for HCBS adult waiver funded residential sites converting to CILA sites.

j) Provider agencies can request a proximity waiver from DDD from the provisions in subsection (f)(1) for a potential provider-owned or controlled CILA site. The provider shall present to DDD its rationale for the waiver request, including evidence of efforts to comply with subsection (f)(1). The request must be submitted before the agency leases, purchases, or takes possession of the property to be used as a CILA, or in the case of any agency having possession of the property, before the property is used as a CILA site. DDD shall grant the waiver for the duration of the CILA, if it determines that the granting of the waiver would meet the criteria described in 42 CFR 441.301(c)(5)(v) and related federal CMS guidance, including, but not limited to:

1) The Centers for Medicare & Medicaid Services Home and Community-Based Settings Regulation - Heightened Scrutiny, March 22, 2019 (available at https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf);

2) Center for Medicaid and CHIP Services, SUBJECT: Heightened Scrutiny Review of Newly Constructed Presumptively Institutional Settings, August 2, 2019 (available at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/cib080219\_124.pdf); and

3) CMS Technical Guidance on Settings that Isolate to Inform their Process for Identifying Prong 3 Settings (available at: https://www.medicaid.gov/medicaid/hcbs/downloads/settings-that-isolate.pdf).

(Source: Amended at 47 Ill. Reg. 8485, effective May 31, 2023)