

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

On March 17, 2014, new federal Medicaid rules for Home and Community Based Services (HCBS) went into effect. The rules impact many parts of HCBS. One of the most important topics is the places where HCBS can be provided.

Because HCBS programs are offered as alternatives to nursing and intermediate care facility services, the new rules make sure that HCBS are provided in settings that are not institutional in nature. To follow this rule, states must make sure that HCBS settings are part of a larger community, people are able to have choices about their service settings, and that people are assured their rights to privacy, dignity and respect.

States must evaluate their HCBS programs to determine the level of compliance with the new rules. The setting indicated on this form has been identified as requiring to go through the heightened scrutiny process as part of the compliance process.

Additional information on Heightened Scrutiny can be found here: [HCBS Settings Rule: Heightened Scrutiny](#)

Setting Information

Site Name:	Rise Inc.	Site ID:	2251
Site Address:	3795 Kiesel Avenue, Ogden 84405		
Website:	https://riseservicesinc.org/		
# of Individuals Served at this location regardless of funding:	32	# of Medicaid Individuals Served at this location:	32
Waiver(s) Served:		HCBS Provider Type:	
<input checked="" type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input checked="" type="checkbox"/> Community Supports <input checked="" type="checkbox"/> Community Transition <input type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> https://medicaid.utah.gov/ltc/		<input checked="" type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living <input type="checkbox"/> Employment Preparation Services	
Heightened Scrutiny Prong:			
<input type="checkbox"/> Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment <input type="checkbox"/> Prong 2: Setting is in a building on the grounds of, or immediately adjacent to, a public institution <input checked="" type="checkbox"/> Prong 3: From the initial assessment, the setting was found to have the effect of isolating individuals from the broader community. The following is the area that was identified: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> A. Individuals have limited, if any, opportunities for interaction in and with the broader community and /or 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 			

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<p>community services consistent with their person centered service plan</p> <p><input type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting</p> <p><input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include:</p> <ul style="list-style-type: none"> • The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place • The setting does not ensure an individual’s rights of privacy, dignity, and respect
Onsite Visit(s) Conducted:	8/20/2019 Onsite, 12/20/22 (Virtual)
Description of Setting:	
The setting is a day service program located in Ogden, UT, near Smiths Food, Costco and In-N out Burger.	
Current Standing of Setting:	
<input checked="" type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above	
<input type="checkbox"/> Approved Remediation Plan: the setting has an approved remediation plan demonstrating how it will come into compliance. The approved timeline for compliance is:	

Evidence the Setting is Fully Compliant or Will Be Fully Compliant

Prong 1: The setting is in a publicly or privately operated facility that provides inpatient institutional treatment; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

Prong 2: The setting is in a building on the grounds of, or immediately adjacent to, a public institution; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

Prong 3 A: The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary 8/20/19 (onsite):</p> <p>The setting does not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services. Better planning in regards to activities to make them more meaningful to individuals to ensure integration into the greater community. There are limited active measures taking place to facilitate activities outside of the setting. Groups seem to be created around the level of assistance required/disability; this has a segregating effect for individuals receiving services.</p> <p>Community based outings occur only once weekly for individuals.</p>

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<p>Remediation Plan Summary:</p> <p>The setting put a plan in place to provide and support participants in their personal choice, preferences, and interests. They will provide Community integrated employment, add more independence with choosing daily routines. Implement teaching skills to seek integrated employment in the community. Will support people in their current day programs by helping to build more independence into their daily routine. Clients have a suggestion board that they write down the activities that they would like to do. On Friday the coordinator sits down with everyone and goes through the activities they have chosen. At that time if there are not enough ideas the coordinator and staff put out ideas that the clients select. The coordinator uses their activities and creates a schedule for the following week with activities. Each day when the client comes in they put their name by the activities that they would like to participate in for the day. Staffing is then determined by the group size of the activities the clients selected. Client quality surveys are being conducted.</p> <p>Onsite Visit Summary 12/20/22 (Virtual):</p> <p>Staff interviewed prepare a monthly calendar around 1 on 1 interviews of what the individuals are interested in doing in the upcoming month. This staff member also solicits community activities from staff and other day programs that they include in the interviews with individuals. Staff indicated that if an individual shares interest in an activity, they make accommodations to facilitate that activity within their monthly/daily schedule depending on the type of activity. These activities are either added to the daily or monthly calendar depending on the amount of preparation needed (distance and fees for activity). Staff indicated that there is a community activity planned daily but typical individuals are going out 3-4x week. Staff indicated that if a participant does not want to participate, they are able to stay at RISE and choose an activity within RISE for the day. Individuals interviewed expressed that they were able to choose the activity they participate in in the community. Individuals mentioned they liked to go to the farm, Union Station, ride the bus and visit the mall. Individuals indicated that if they do not want to participate in the activity they are able to stay at RISE and do an activity there. Individuals expressed that staff ask them what types of activities they want to do. Staff indicated that groups were usually from 2-8 individuals depending on the day and activity. There was no language used by staff that indicated groups were picked around support needs, staff said the groups were based on who wanted to participate in the activity.</p> <p>Policy/Document Review:</p> <ul style="list-style-type: none"> ● Human rights ● Staff training ● Weekly/monthly schedule for clients ● Planning activity board
--	---

Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	Onsite Visit Summary 8/20/19 (onsite): The setting does not restrict access to non-disability settings.

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Prong 3 C: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices. The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint. The setting ensures the individual has the freedom and support to control his/her own schedule and activities.

Compliance: Met Remediation Plan demonstrating will be compliant

Summary:

Onsite Visit Summary 08/20/19 (onsite):
The setting does not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities. The setting goes into the community twice weekly; they do the same activity with different individuals.

Remediation Plan Summary:
The setting put a plan in place to provide and support participants in their personal choice, preferences, and interests. They will provide Community integrated employment, add more independence with choosing daily routines. Implement teaching skills to seek integrated employment in the community. Will support people in their current day programs by helping to build more independence into their daily routine. Clients have a suggestion board that they write down the activities that they would like to do. On Friday the coordinator sits down with everyone and goes through the activities they have chosen. At that time if there are not enough ideas the coordinator and staff put out ideas that the clients select. The coordinator uses their activities and creates a schedule for the following week with activities. Each day when the client comes in they put their name by the activities that they would like to participate in for the day. Staffing is then determined by the group size of the activities the clients selected. Client quality surveys are being conducted.

Onsite Visit Summary 12/20/22 (Virtual):
Both staff and individuals indicated that there are no rights restrictions. Staff indicated that they encourage individuals while in the community to create relationships. Staff mentioned that they prompt and facilitate communication including body language, money management to help individuals with skill building. Staff indicated that they receive training upon hire and annually. One staff mentioned she participates in annual PCSP planning. Staff have access to the individual's care plans which are reviewed multiple times per week. Staff participate in company wide conference calls to discuss the Setting’s Rule. Staff indicated they have monthly staff meetings where they brush up on any needed training and updates. Staff participate in a lot of hand on activities to better understand individuals preferences and support needs. Staff interviewed prepare a monthly calendar around 1 on 1 interviews of what the individuals are interested in doing in the upcoming month. This staff member also solicits community activities from staff and other day programs that they include in the interviews with individuals. Staff indicated that if an individual shares interest in an activity, they make accommodations to facilitate that activity within their monthly/daily schedule depending on the type of activity. These activities are either added to the daily or monthly calendar depending on the amount of preparation needed (distance and fees for activity). Staff indicated that there is a community activity planned daily but typical individuals are going out 3-4x week. Staff indicated that if a participant does not want to participate, they are able to stay at RISE and choose an activity within RISE for the day. Individuals interviewed expressed that they were able to choose the activity they participate in in the community. Individuals mentioned they liked to go to the farm, Union Station, ride the bus and visit the mall. Individuals indicated that if they do not

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<p>want to participate in the activity they are able to stay at RISE and do an activity there. Individuals expressed that staff ask them what types of activities they want to do. Staff indicated that groups were usually from 2-8 individuals depending on the day and activity. There was no language used by staff that indicated groups were picked around support needs, staff said the groups were based on who wanted to participate in the activity.</p> <p>Policy/Document Review:</p> <ul style="list-style-type: none"> ● Human rights ● Staff training ● Weekly/monthly schedule for clients ● Planning activity board
--	---

Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	The setting has remediated all required areas to come into compliance. The State has validated all areas to determine compliance with the Settings Rule.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Individuals enjoy participating in activities and using transportation in the community. <p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Individuals expressed they go out into the community to the mall, Fat Cats, UTA and The Union Station. They mentioned that they are able to stay at RISE if they choose not to do the activity. ● Individuals expressed that staff ask them what types of activities they want to do. ● Individuals interviewed expressed that they were able to choose the activity they participate in in the community. ● Individuals said they don't have any rights restrictions. ● Individuals indicated that they give feedback on the activity calendar.
Staff Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Receives annual and as needed training. Can improve on involving individuals in their weekly planning for activities. <p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Staff indicated that they encourage individuals while in the community to create relationships. Staff mentioned that they prompt and facilitate communication including body language, money management to help individuals with skill building. ● Staff said there are no rights restrictions. ● Staff indicated that if a participant does not want to participate, they are able to stay at RISE and choose an activity within RISE. ● Staff indicated that there is a community activity planned daily but typical individuals are going out 3-4x week. ● Staff indicated that if an individual shares interest in an activity, they make accommodations to facilitate that activity within their monthly/daily schedule.

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<ul style="list-style-type: none"> Staff interviewed prepare a monthly calendar around 1 on 1 interviews of what the individuals are interested in doing in the upcoming month.
--	--

Ongoing Remediation Activities	
Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	N/a
Ongoing Monitoring Activities	<p>The State will use the following tools to ensure settings continue compliance with the Settings Rule criteria:</p> <ul style="list-style-type: none"> Conducting individual served experience surveys Addressing settings compliance during the annual person centered service planning process Ongoing provider training and certification Monitoring through critical incident reporting Case Management/Support Coordinator visit monitoring HCBS Waiver Reviews/Audits

Summary of Stakeholder Workgroup Comments Received and State Response:

Stakeholder Workgroup Review: January 3, 2023 - January 18, 2023	
General Comments Received	
Comment:	<p>The materials provided by the State in the newly-released evidentiary packets (“batch 5”) raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a virtual review instead of an in-person visit. In our experience as the P&A, it is difficult to accurately assess characteristics of an institution as well as to communicate effectively with waiver participants without an in-person visit.</p>
Response:	<p>The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process.</p>
Comment:	<p>In many instances, the packages state that the setting is compliant based on a remediation plan and indicate that a validation visit will be completed in the future. Many of the reviews state that individuals are not getting into the community to the degree they would wish and that there are still institution-like restrictions on individuals in the settings. It is difficult for stakeholders to provide feedback on whether a setting has the characteristics of an HCBS setting if it is still in the process of remediating. The remediation plans seem to lack the detail necessary to assist a setting with becoming compliant and the short time frame until the final compliance deadline leads us to believe that these sites will not remediate in time.</p>

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of actions to certify they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process.

Comment:

The reviews in many instances lack the detail necessary to determine whether a setting is institutional/segregating. For example, there are reviews of 14c certificate holders that do not indicate whether the setting will pay subminimum wage moving forward. Reviews indicate that individuals access the community, but in many instances don't specify how large the groups are, what types of activities they engage in and the frequency with which activities occur. Some reviews mention work groups/work enclaves, but do not specify what type of work individuals engage in, where people work and how large the work groups are. The reviews frequently say that the setting does not restrict access to the community, that community amenities are within "miles" and that there is access to public transportation, but often do not specify how the facility supports individuals to access these amenities/public transportation.

Response:

While the State agrees that certain criteria can create concerns with compliance, several elements described do not determine on their own whether a setting meets or fails requirements. Individual settings are reviewed and assessed on their merit. For example, payment of sub-minimum wage work or group sizes in and of themselves are not including or excluding criteria. The state determines compliance based on factors such as person centered planning, individual choice and autonomy, individualized schedules, and individuals self-reporting they are accessing the community at the level that they desire.

Comment:

We are very concerned about how the state has handled non-residential settings, particularly large day programs and sheltered workshops. These reviews do not demonstrate that the state has ensured that these particularly problematic settings have remediated sufficient to comply with the settings rule as well as title II of the ADA and Olmstead. Again, many final reviews have not been completed in person, and most frequently the state is submitting sites that have submitted a remediation plan but have not been validated as remediated.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of actions to certify they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process. The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process. While the State does acknowledge that activities for remediation extended into March 2023, it does not believe strategies deviated from its Statewide Transition Plan, or that inappropriate methods were used in validating compliance. The State also acknowledges that Settings compliance is not a one time activity and the usage of ongoing monitoring will aid to reinforce core tenants of the Rule as well as the development and dissemination of best practices. The State encourages the submission of providers who are believed to be non-compliant with requirements of the Settings Rule, including the elements/criteria which are not sufficiently meeting expectations.

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Comment:

Reviews indicate that individuals are still being segregated by “level of functioning” and even by whether an individual resides in an ICF or an HCBS setting.

Response:

The State agrees that settings identified as having this concern are institution and segregating in nature. The purpose of the heightened scrutiny process was to identify settings that were institutional and segregating in nature and go through the process of showing how they overcame those qualities. Settings submitting for heightened scrutiny were required to remediate through training of staff, provide evidence of compliance, and demonstrate compliance through validation that they were compliant in these areas of concern.

Comment:

Reviews do not indicate that the EPR codes which contemplate meaningful, individualized, time-limited pre-vocational programs are being implemented in Workshops. Reviews do not indicate that individuals are spending at least 20% of their time in the community engaging in activities chosen by the individual. Reviews do not (for the most part) indicate whether or not the provider is continuing to pay subminimum wage. Reviews do not consider what type of work individuals engage in the setting and whether or not that work is chosen by the individual. Frequently, specificity as to how many individuals are working in a group is not given. Frequently, information about how settings are supporting individuals to gain competitive, integrated employment as guaranteed by the settings rule is not given.

Response:

As with all settings, the State’s review was for the purpose of determining whether the tenants of the Settings Rule had been met, regardless of which specific services were delivered at the location. The State has separate compliance monitoring for the appropriate authorization of Employment Preparation Services and the delivery of those services by providers.

Comment:

Frequently, reviews indicate that there are still restrictive practices in the settings indicating an institution-like environment.

Response:

The State agrees that many reviews indicated settings still had restrictive practices in place indicating an institution-like environment as they had not yet gone through their final validation process at the time they went out for heightened scrutiny. The State has spent considerable time with settings and providers providing technical assistance beyond what was documented in their remediation plans to remediate their institutional and segregating characteristics to come into compliance with the rule.

Summary of Public Comments Received and State Response:

Public Comment Period: January 2, 2023 to February 3, 2023

Setting Specific Comments:

Comment:

One commenter stated Rise Inc., is a day support services located at 3795 Kiesel Avenue, Ogden, Utah. It provides services to 32 waiver participants. The materials provided by the State in the evidentiary packet do not

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

demonstrate that the identified setting currently demonstrates the qualities of HCBS. We have concerns that the most recent assessments of the setting have not been completed in person. In our experience as the P&A, it is difficult to accurately assess characteristics of an institution as well as to communicate effectively with waiver participants without an in-person visit.

Response:

The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process.

Comment:

The same commenter had additional feedback stating while we applaud Rise for taking steps to facilitate more community integration for consumers, the state's evidentiary packet does not sufficiently demonstrate that the setting overcomes the institutional presumption. The packet states that the setting has regimented schedules, restrictive practices and does not ensure dignity, privacy and respect. The state does not detail these concerns or how they were remediated.

Response:

If the commenter was referring to: The box the State checked Prong 3 C which states that "The setting has qualities that are institutional in nature. These **can** include: The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place. The setting does not ensure an individual's rights of privacy, dignity, and respect. " There are additional areas in which can be identified as concerns in this area, as was indicated on the packet for this setting. The packet identifies the concerns, provides the remediation, and validation under the Prong 3 C section.

Comment:

The same commenter had additional feedback stating In addition, while the state does evaluate how the setting facilitates community integration, the information about how consumers spend their time in the setting is insufficient. In order to demonstrate that the setting is not institution like, the state should assess or include what options are given to consumers at the setting, how large are the groups, can individuals choose what they participate in, and how are individuals supported to seek competitive, integrated employment if they desire.

Response:

The processes at the setting are the same for both community and setting based activities. Staff interviewed prepare a monthly calendar around 1 on 1 interviews of what the individuals are interested in doing in the upcoming month. Staff indicated that if an individual shares interest in an activity, they make accommodations to facilitate that activity within their monthly/daily schedule depending on the type of activity. These activities are either added to the daily or monthly calendar depending on the amount of preparation needed. Individuals interviewed expressed that they were able to choose the activity they participate in. Individuals expressed that staff ask them what types of activities they want to do. There was no language used by staff that indicated groups were picked around support needs, staff said the groups were based on who wanted to participate in the activity; this is both for community groups and groups within the facility. The setting has a process in place for individuals to seek competitive integrated employment if they desire. Group size observed was not in and of itself is not an indicator of compliance or noncompliance of community integration. Group size of community integration observed and reported at this setting posed no concerns.

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

General Comments Received:

Comment:

As the Protection and Advocacy agency for people with disabilities for the State of Utah, the Disability Law Center (“DLC”) is uniquely suited to provide assistance and input during this process. Based on our own observations as the P&A as well as our evaluation of the state’s assessments of settings, the state did not engage in a sufficient assessment process or provide adequate support to bring settings into compliance with the rule prior to the March 17, 2023 deadline. We are concerned that HCBS waiver dollars will continue to be spent on segregated, institutional settings despite the state’s obligations under the HCBS settings rule, Title II of the ADA and Olmstead. This heightened scrutiny evidentiary package demonstrates these ongoing concerns as detailed below.

Response:

While the State does acknowledge that activities for remediation extended into March 2023, it does not believe strategies deviated from its Statewide Transition Plan, or that inappropriate methods were used in validating compliance. The State also acknowledges that Settings compliance is not a one time activity and the usage of ongoing monitoring will aid to reinforce core tenants of the Rule as well as the development and dissemination of best practices. The State encourages the submission of providers who are believed to be non-compliant with requirements of the Settings Rule, including the elements/criteria which are not sufficiently meeting expectations.

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: January 3, 2023 - January 18, 2023

We only got a response from one workgroup member. Their comments are noted above.

Utah’s Recommendation

Recommendation: Compliant

The State has determined the setting has overcome the effect of isolating individuals from the broader community and is in compliance with the HCBS Settings Rule.