

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:	PARC Community Partnership Foundation	Site ID:	275
Site Address:	485 PARC Circle, Clearfield, UT 84015		
Website:	https://www.parc-ut.org/		
# of Individuals Served at this location regardless of funding:	184	# of Medicaid Individuals Served at this location:	95
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 checked="" 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 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 community services consistent with their person centered service plan 			

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	<input type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting <input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include: <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:	10/25/19 (in person), 03/10/22 (virtual)
Description of Setting:	
<p>Setting is a Day program near many restaurants, and activities out in the community such as, yoga at the Aquatic Center, Dollar Store, animal Shelter, movie theaters.</p> <p>PARC Community Partnership Foundation (PARC) chose to apply for and participate in the USU technical assistance program. They engaged with industry experts through USU to identify what areas they needed to focus on to come into compliance with the settings rule and established a transformation plan for their setting. They also chose to go through the additional review onsite visit with the State in 2019.</p>	
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 (2019):</p> <p>The setting provides opportunities for community integration. The setting presented a person centered agency approach and was open to individualized interests/goals. Individuals are able to access the community 3-4 times a week. There are frequent opportunities for individuals to volunteer and gain skills in their community while giving back at locations of their choice.</p>

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Individuals are able to control their spending money when they are in the community. There are volunteering opportunities at the Animal shelter, food bank, antelope island, zoo, and fish farm. There are also volunteers at several different hospice providers. The setting has a unique partnership with St Olafs in Bountiful. They partnered together to raise money for PARC to participate in activities with St Olafs. Everyone handles their own money. Individuals can come and go without barriers. At the validation visit there were concerns identified providing informed choice for those providing work at PARC and ensuring there is a pathway to competitive integrated employment (CIE). Another concern identified was that community integration activities were more meaningful for those being served.

Transformation Plan Summary:

PARC has successfully implemented Person Centered Planning to support the interests, strengths and goals individuals in service set for themselves.

PARC has been a leader in the development and implementation of the Discovery and Extended Discovery assessment model. Discovery is an intensive 20–30-hour assessment designed to identify the settings and circumstances each individual desires for success. Extended Discovery provides individuals in services to participate in paid internships to help determine their best fit job match.

PARC activity schedules are developed by individuals in service and each individual chooses from a variety of activities and experiences daily. No two individuals in service have the same support strategies, or the same daily or monthly schedule.

PARC held a series of stakeholder meetings beginning in January of 2020. Meetings provided an opportunity for stakeholders to provide input into agency and program redesign. Multiple meetings were held for participants, family members, staff, and Support Coordinators. While many in-person services were suspended between March 2020 and May 2021 due to the COVID 19 pandemic, PARC developed multiple virtual opportunities for participants and families. PARC Provided 595 virtual opportunities and over 4,802 hours of virtual support service over the 14-month period. During the same period, PARC held quarterly stakeholder meetings virtually. PARC has successfully expanded employment models for individuals in service and has eliminated the use of commensurate piece rate.

PARC applied for and received several grants to assist in the transition from 14(c) commensurate rate employment to other employment models. PARC eliminated the use of commensurate rate employment options on March 15, 2020. Service models include competitive integrated employment, volunteerism, self-employment, Internships, career sampling, and pre-employment skills development. 14 individuals in service have successfully transitioned into competitive community employment, 31 individuals in service have participated in self-employment supports, 14 individuals are in process of applying for VR support services, Discovery, Expanded Discovery, and career exploration, and 3 individuals are pre-employment support services.

1. SourceAmerica Enterprise Innovation 14(c) Transition Grant
2. Davis County Social Services Block Grant

PARC partnered with the VR to provide benefits counseling to individuals and families in service. PARC is midway through the process of implementing new payroll and participant support systems of Workday and SetWorks.

PARC applied for and received several grants to help expand opportunities for meaningful community integration. PARC was awarded two accessible vehicles under an 80/20 purchase agreement with the UTA 5310 Grant. PARC was awarded an additional accessible vehicle under

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the UTA Used Vehicle Grant in 2021. As a result, PARC has increased community integration from 12% of time by hour in 2019, to over 30% of time by hour in 2021.

PARC has implemented additional policies and procedures to support community integration models including: Community Integration – Standard Operating Procedure, Participant Calendaring Request Procedure, Monthly Community Activity Calendars, Monthly Virtual Activity Calendars, Weekly Team Meetings, and Individualized Participant Daily Schedules.

Onsite Validation Visit Summary (2022):

Services observed were very person centered. The example given was the use of a gift card to a restaurant when a person came in requesting to go use it. An activity at the restaurant was planned. On the day of the interview multiple people had completed an hour- long snowshoeing activity based on an interest expressed by a person in PARC. This was a new experience for most people and they evaluated the experience with those that decided to try it. Staff in one interview stated “every activity can be a work skills activity” in relation to how to focus on skill-building in community settings

A couple asked to be interviewed together as part of the validation visit. They are currently engaged and are able to plan activities together when desired as part of support. Budgeting in a variety of settings was brought up as a skill.

Since 2020 PARC has been steadily walking back and ending their 14c contracts for sub-minimum wages. PARC uses paratransit and Frontrunner public transit as much as possible. Individuals had the freedom to come and go as they pleased. One concern observed during the validation visit was that some staff still categorized and referred to people they served based on function level.

Remediation Plan Summary:

PARC submitted their person centered training and attendance as evidence that they trained and have a plan on annually retraining their staff on ensuring individuals are communicated with and about in a person-centered manner. State staff validated through a desk review to determine compliance in this one remaining area of remediation.

Policy/Document Review:

The following were reviewed for compliance:

- PARC Community Integration SOP
- PARC Enrichment Activity Procedure
- Activity Calendar August 2019
- Virtual Zoom Calendar November 2020
- Participant Interest Questionnaire
- PARC Discovery Care Profile
- PARC Brochure
- PARC CIE Program Description
- PARC CIS Program Description
- Activity Calendar March 2020
- Virtual Zoom Calendar October 2020
- PARC Person Centered Training Attendance
- PARC Person Centered Training Slide Deck
- PARC Professional Development & Training Opportunities September 2022

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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:	<p>Onsite Visit Summary (2019): The setting does not restrict access to non-disability settings. The setting has an admission process that assesses individuals' needs and preferences and regularly reassesses to ensure services are provided in a person-centered manner.</p>

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:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Validation Visit Summary (2019): The setting has a process in place for individuals to give input and control their schedule and activities. Setting has a formal process in place for deciding what activities will be available. Meetings are monthly and talk with staff, developing calendar options based on individual preferences. Staff discusses options with individuals, promoting choice and variety. All activities are by choice and flexible for schedules. Individuals can choose with whom to do activities, in or outside the setting, and participation is voluntary. Individuals can have a meal/snacks at a time and place of their choosing. Individuals have access to food at any time.</p> <p>Transformation Plan Summary: PARC has successfully implemented Person Centered Planning to support the interests, strengths and goals individuals in service set for themselves. PARC activity schedules are developed by individuals in service and each individual chooses from a variety of activities and experiences daily. No two individuals in service have the same support strategies, or the same daily or monthly schedule. PARC has implemented additional policies and procedures to support community integration models including: Community Integration – Standard Operating Procedure, Participant Calendaring Request Procedure, Monthly Community Activity Calendars, Monthly Virtual Activity Calendars, Weekly Team Meetings, and Individualized Participant Daily Schedules.</p> <p>Onsite Validation Visit Summary (2022): People interviewed indicated individualized schedules and the freedom to come/go, and start activities at times that meet their needs. The leadership uses the PCSP, multiple survey and group planning sessions weekly to determine interests. The schedules are divided into 4 "periods" that are flexible throughout a 6 hour day.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● PARC Community Integration SOP ● PARC Enrichment Activity Procedure ● Activity Calendar August 2019 ● Virtual Zoom Calendar November 2020 ● Participant Interest Questionnaire

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	<ul style="list-style-type: none"> ● PARC Discovery Care Profile ● PARC Brochure ● PARC CIE Program Description ● PARC CIS Program Description ● Activity Calendar March 2020 ● Virtual Zoom Calendar October 2020
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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:	Overall, all segregating and institutional concerns were addressed through the remediation process and the State was able to validate that the areas were remediated through the validation process. Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will be reviewed through ongoing monitoring activities.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of Interviews (2019): Individuals stated some of the activities they participate in out in the community are, yoga at the Aquatic Center, Dollar Store (take own money and pay for own stuff), Animal Shelter, movies, out to eat. On individual reports they work at Syracuse Elementary a few days a week. One individual reported "My favorite part {about coming to the program} is to wash tables and eat lunch with coworkers." Individuals reported that the only restriction they know of is, tell staff if they want to leave the building.</p> <p>Summary of Interviews (2022): A couple asked to be interviewed together as part of the validation visit. They are currently engaged and are able to plan activities together when desired as part of support. Budgeting in a variety of settings was brought up as a skill. PARC uses paratransit and Frontrunner public transit as much as possible. Individuals interviewed indicated they had individualized schedules. Individuals interviewed reported they had the freedom to come/go. Individuals reported they start activities at times that meet their needs.</p>
Staff Summary:	<p>Summary of Interviews (2019): Staff reported there are 3-6 people in group 4-5 activities a day on the calendar but if staff and vehicle available will add spur of the moment trips Staff reported they do Bloom which is a self-employment model- make and sell cards, candles, and sell them at community boutiques (flower shop, and fairground booths, community fairs, etc). Staff interviewed indicated they provided Frontrunner training to learn about public transportation.</p>

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	<p>Staff reported they provided training on how to learn to manage your own money for that trip and learn how to pay/budget etc.</p> <p>Staff reported that every activity is job training or exposure to possible jobs or to learn about interests or social skills.</p> <p>Summary of Interviews (2022):</p> <p>Staff was able to describe a pathway to competitive integrated employment.</p> <p>Staff reported process for individualized schedules and how individuals can give input towards community integration opportunities</p> <p>Staff reported there are approximately 19 individuals that are currently competitively employed that go to the program.</p>
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Ongoing Remediation Activities	
Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	<input checked="" type="checkbox"/> N/A for currently compliant
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:

Public Comment Period: December 12, 2022 to January 13, 2023	
Setting Specific Comments:	
Comment:	One commenter reported I want to compliment this provider. It was the one in Davis County I had the greatest concern for how they could adapt to settings rule as they primarily focused on piece rate work. They offer choice of work or activities now. My activity based client's parents have commented how much happier she is with the choice. PARC has developed a good balance of opportunity and they are very good at offering choice.
Response:	Thank you for your positive feedback on the setting.
General Comments Received:	
Comment:	The materials provided by the State in the newly-released evidentiary packets raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a

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final desk review and/or virtual review instead of an in-person visit. We believe that this is insufficient to confirm that a setting does not isolate individuals or have the indices of an institution.

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:

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. The state needs to give the results of final validations to the work group and other stakeholders before it can submit the setting to CMS for heightened scrutiny.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of action's 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

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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 action's 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.

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:

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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: December 12, 2022 to January 13, 2023

General Comments Received:

Comment:

The Disability Law Center (DLC) appreciates the opportunity to provide comments on the HCBS Settings Rule Heightened Scrutiny process as both a member of the settings stakeholder committee and through the public comment process. 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 February 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: December 14, 2022- December 29, 2022

Only one member of the Stakeholder Workgroup Responded. Their specific 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.

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