

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:	LifeSkills Vocational Center	Site ID:	894
Site Address:	112 North 1200 West Orem, Utah 84057		
Website:	None		
# of Individuals Served at this location regardless of funding:	54	# of Medicaid Individuals Served at this location:	24
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 			

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	<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:	None. <i>Note: The decision was made to delay the validation visit for this setting after doing the visit for the LifeSkills Vocational Center setting site 899 in Midvale. The provider was given the opportunity to provide a remediation plan that encompassed both settings to bring them into compliance prior to conducting a validation visit.</i>
Description of Setting:	
<p>LifeSkills Vocational Center is a day service program that is located in an industrial area of the community. It is not located in an area that promotes independent community integration. The setting has a plan in place to ensure that the individuals at the setting are able to access their community to the same degree as others in their community.</p> <p>LifeSkills Vocational Center 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. As this was a very intensive and optional process, they did not go through the additional review onsite visit with the State in 2019.</p>	
Current Standing of Setting:	
<p><input type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above</p> <p><input checked="" 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: October, 2022. A validation visit will be scheduled in December, 2022.</p>	

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.	

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Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Transformation Plan Summary: LifeSkills will make the necessary changes to the program to meet the criteria of community integration through employment, volunteer groups, community activities related to their preferences, and needs and abilities that allow individuals in their services the opportunity to engage with their community. Individuals supported by LifeSkills will receive day services in the community based on their interests and that include activities and learning experiences that allow them to learn about possible jobs, gain both hard and soft employment skills and ultimately become competitively employed. Individuals supported by LifeSkills who are employed will receive community-based day services that wrap-around employment, if such supports are needed. The program will conduct community mapping focusing on opportunities for people to explore and learn about community activities and options from which to make informed choices. The setting will provide staff training to teach and train both hard and soft skills in community environments like volunteer sites. The setting will develop a plan to get staff trained in Customized Employment and become an active vendor for the Utah Vocational Rehabilitation agency.</p> <p>Remediation Plan Summary: <i>The decision was made to delay the validation visit for this setting after doing the visit for the LifeSkills Vocational Center setting site 899 in Midvale. The provider was given the opportunity to provide a remediation plan that encompassed both settings to bring them into compliance prior to conducting a validation visit. The concern identified that required remediation in this area was community integration; individuals were typically only accessing the community once per week. Individuals stated they would like to go out in the community more often.</i> The setting is committed to continuing community mapping to continue to get individuals out into the community. The program is focused on staff training. The ACRE trained staff have been attending virtual sessions with the U of U Education program to continue their progress in employment training. For individuals that are interested in community employment, a formal process has been put in place. Staffing due to COVID is currently limiting the ability of the program to access the program at a greater frequency. All policies, procedures, and staff training is in place to resume community integration once staffing has been retained. Meetings with the individuals as a group and individually will continue, to ensure each individual has opportunities to provide input and to be updated on the status of opportunities available and the schedule. Management will continue to meet with individuals individually and as a group, to discuss interests, review activities they have participated in to determine satisfaction and further interest(s). LifeSkills Vocational Center will seek and provide community activities for individuals to engage with other community members, through volunteer opportunities, learning opportunities, engagement and participation in local/holiday/themed events and other activities the individuals have interest in.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Community Log 1-3 ● Mission Statement Revision

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	<ul style="list-style-type: none"> ● Community Mapping Document (example) ● Community Mapping Data For Employment Form ● Monthly Activity Calendar ● Monthly Work Calendar
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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 type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Remediation Plan Summary: <i>The decision was made to delay the validation visit for this setting after doing the visit for the LifeSkills Vocational Center setting site 899 in Midvale. The provider was given the opportunity to provide a remediation plan that encompassed both settings to bring them into compliance prior to conducting a validation visit. The concern identified that required remediation in this area was that individuals stated that they did not choose to attend the program.</i></p> <p>We held a meeting to review the results of the audit with the individuals. They were offered the opportunity to ask questions about any of the items listed and asked for feedback on what would help them or be meaningful to them. Discussion regarding their choice of program and how to go about ensuring they are in a program that is suitable for them, (some have guardians and have overall say and we encouraged the individuals that have guardians to discuss this with them if they had questions as part of the meeting.</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 type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Transformation Plan Summary: The setting will start with a pilot program and will select individuals focused on compatibility, common interests, and ability of staff to balance needs of individuals served. Schedules will be developed based on individual interest and active input by individuals in the group. The setting will review existing policy and procedures and determine if revisions or additional procedures are needed. Additional staff training will be provided as needed.</p> <p>Remediation Plan Summary: <i>The decision was made to delay the validation visit for this setting after doing the visit for the LifeSkills Vocational Center setting site 899 in Midvale. The provider was given the opportunity to provide a remediation plan that encompassed both settings to bring them into compliance prior to conducting a validation visit. The concern identified that required remediation in this area was that individuals stated they were bored, particularly when they finished available contract work for the day. Individuals also stated that they didn't know what skills they were working on. One individual stated they are assigned work activities for the day and did not have a choice or alternative option.</i></p>

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	<p>We held a meeting to review the results of the audit with the individuals. They were offered the opportunity to ask questions about any of the items listed and asked for feedback on what would help them or be meaningful to them.</p> <p>The individuals were asked if they knew what skills they were working on, how they came about, if they chose and agreed with them, individuals were reminded that this is reviewed annually through their PCSP and when we conduct surveys, we asked for ideas on how we can ensure they know what skills they were building. In each meeting held with the individuals, they are strongly encouraged to offer ideas on any activities that they would enjoy, learn from, and engage in. Individuals are also reminded that they often choose to refuse activities offered. Individuals were asked how we could help them feel supported so that we can build a procedure or training(s) that would ensure this. Policy will be built with individual participation as they choose and will be implemented by 01/01/2022.</p> <p>We have asked the individuals to give us ideas on what they would like to do to keep them engaged and working on their goal(s). We offer different in-house activities that some individuals refuse.</p>
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Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.	
Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Overall, all segregating and institutional concerns were addressed through their remediation plan.</p> <p>Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will be reviewed through continued and ongoing monitoring activities.</p>

Input from Individuals Served and Staff

Individuals Served Summary:	None
Staff Summary:	None

Ongoing Remediation Activities	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	All remediation activities have been completed at this time. The State will conduct an additional validation visit to ensure compliance.
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

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- 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 stated that LifeSkills is located in Orem, Utah. It provides services to DPSP waiver participants. The materials provided by the State in the evidentiary packet raise concerns about whether the identified setting currently demonstrates the qualities of HCBS. In order to provide effective feedback, the state needs to present stakeholders with final validations of compliance with the rule rather than un-validated remediation plans. The state should not be submitting sites for public comment/heightened scrutiny if they haven't yet been assessed for compliance with the rule/full implementation of remediation plans. The evidentiary package states that there have been no visits (on-site or virtual) to this setting.

Response:

The State appreciates the recommendation, and likewise shares the concern. Disenrollment has been pursued for this setting where a determination of compliance cannot be made.

Comment:

The same commenter had additional feedback stating the evidentiary package states there is no information in the package about the setting or how it facilitates community integration. The packages states that the facility has paused community integration due to staffing limitations and that individuals are often bored. Participating in the USU transformation program should not substitute for compliance with the rule. Based on the information provided in the evidentiary package, the facility does not demonstrate compliance with the rule. This State has not completed the necessary steps to gather sufficient information that would be necessary to put the facility through heightened scrutiny. As there is no validation visit for this site, it is unclear how it is meaningful to submit an evidentiary report to CMS or how stakeholders could possibly provide feedback about the site. Given the short amount of time before the compliance deadline and the widespread nature of noncompliance, it is unlikely that this setting will remediate within the required timeline. The State should give thoughtful consideration as to how it can continue to maintain this setting as an enrolled waiver provider.

Response:

The State appreciates the recommendation, and likewise shares the concern. Disenrollment has been pursued for this setting where a determination of compliance cannot be made.

General Comments Received:

Comment:

The materials provided by the State in the newly-released evidentiary packets raise concerns about

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whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a 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.

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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: 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

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

Utah’s Recommendation

Recommendation: Setting Disenrolled

At the time the heightened scrutiny packet was submitted for public comment, the State had not completed the final validation visit. The State has since completed the final validation visit and determined the setting

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could not overcome the effect of isolating individuals within the required timeline and has been disenrolled as an HCBS provider.