

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Settings that Demonstrated Compliance by July 1, 2021

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 had initially been identified as requiring to go through the heightened scrutiny process as part of the compliance process. They were able to demonstrate compliance with the settings criteria by July 1, 2021, so they are not required to go through the entire heightened scrutiny process, but they are required to go out for public comment.

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

Setting Information

Site Name:	Ability and Choice Services, Inc.	Site ID:	341
Site Address:	12411 South 265 West, Suite A, Draper, UT		
Website:	https://www.abilitychoice.org/		
# of Individuals Served at this location regardless of funding:	47	# of Medicaid Individuals Served at this location:	47
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:			

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	<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 community services consistent with their person centered service plan <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:	9/27/2019 (onsite), 3/3/21 (virtual), 6/16/21 (virtual)
Description of Setting:	
The setting is a Day Program located in an industrial park. It is close to some community businesses such as a Chevron, Starbucks, a Health Food Store, and a couple of restaurants.	
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): The setting is located in an area that facilitates integration with the greater community. Individuals served are able to come and go as they please. Individuals regularly volunteer at different volunteer sites. Individuals were a part of the planning process. There was ample</p>

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transportation utilized to get individuals into the community. During the first onsite visit, there were some concerns identified that the setting needed better planning in regards to activities to make them more meaningful to individuals to ensure integration into the greater community.

Remediation Plan Summary:

The setting implemented a process to ensure activities were meaningful and individualized. Each individual who attends the Day Program Hub has goals that are collaboratively assessed by themselves and their support team during the PCSP process. After we receive the PCSP documents from the Support Coordinator, programming goals are written to match what was designated by the individual and their team. Each goal has specific instructions, tailored to the individual being served, on how to support them as they are learning skills in the community or at the day program hub. Staff are required to review these and sign off that they understand the expectations prior to working with the individual. Staff are expected to engage each person's goals throughout each activity regardless of who else may be in attendance. The focus is on individualized progress in all settings.

Onsite Visit Summary (3/2021):

Individuals being served reported they had jobs and job coaches that supported them while they worked. Job sampling was conducted before COVID-19 restrictions were put into place. Leadership reported at this time, only necessary trips are taken into the community and they are limiting trips to within 15 minutes to limit the time spent in the vans. Virtual experiences had not been explored and individuals expressed they wanted to be in the community to a greater degree. The setting was provided with technical assistance on how to expand their community integration activities during the COVID-19 pandemic.

Remediation Plan Summary:

The setting provided training regarding employment, community access, self determination, the settings rule, and anti discrimination and harassment.

Onsite Visit Summary (6/2021):

The setting primarily uses company vehicles to transport individuals into the greater community beyond the local community that facilitates integration with the greater community. The setting facilitates community integration activities regularly for individuals and has a formal process for individuals to create their schedules and determine what they participate in each day.

Individuals are able to choose who they participate in activities with. Community interaction and integration is encouraged by staff. Services are individualized when in the community. Competitive Integrative Employment is promoted and encouraged by staff.

Policy/Document Review:

The following were reviewed for compliance:

- ACS Policy and Procedure Manual
 - 102.0 Mission Statement
 - 203.0 Participant Bill of Rights
 - 204.0 Person Centered Services Planning
 - 401.0 Day Training Mission Statement
 - 407.0 Activities

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	<ul style="list-style-type: none"> ● Staff Training Logs <ul style="list-style-type: none"> ○ YouTube Trainings <ul style="list-style-type: none"> ■ Settings Rule ■ Anti-Discrimination and Harassment
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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> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● ACS Policy and Procedure Manual <ul style="list-style-type: none"> ○ 204.0 Person Centered Services Planning

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 Visit Summary (2019): Individuals were able to move throughout the setting. There was no observed personal information posted in the setting. Individuals were able to eat when they wanted and were able to eat out as well. During the first visit in 2019, there was a concern that the setting did not facilitate the opportunity for individuals to control their personal funds. There was also a concern reported about staff using disrespectful language towards individuals served. No other restrictions were observed or reported.</p> <p>Remediation Plan Summary: The setting provided training on individuals' rights to access and manage their own funds. The setting provided training to staff and evidence of ongoing training in respective communication.</p> <p>Onsite Visit Summary (3/2021): There was a concern identified during the onsite visit that the setting had become overly restrictive during the COVID-19 pandemic. Restrictions were placed across the board and individuals were not given the opportunities to make any individualized decisions about the risks they were willing or unwilling to manage in regards to accessing the community. Staff reported that individuals are divided into groups based on their "functioning levels" and "capabilities" and it was reported that individuals are placed in these groups by the setting and they are not able to move between the groups. There were concerns that staff were restricting</p>

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	<p>when individuals were able to eat lunch and that only parents could request different lunch times for individuals served. There were no additional reports of staff using disrespectful language towards individuals served. Due to individuals not being active in the community, the State was unable to verify if individuals were able to manage their own funds while in the community during this visit.</p> <p>Remediation Plan Summary: The setting provided training regarding employment, community access, self determination, the settings rule, and anti discrimination and harassment. The State provided technical assistance on how to establish groups in a person-centered manner and move away from a segregating practice. The setting provided remediation of a new process based on individuals preferences and needs and gave individuals the ability to request to move groups.</p> <p>Onsite Visit Summary (6/2021): The setting provided access to the community on a daily basis in a way that was meaningful to the individuals served in the setting. Individuals reported they were learning how to use public transportation if that was something they were interested in and were in control of their personal funds and encouraged to interact with community members and make their own purchases when in the community. Groups were no longer based on functioning level, but were person-centered and individuals were able to participate in activities both at the setting and in the community with those that they chose to. There were no additional reports of staff using disrespectful language towards individuals served or any restrictions on access to food.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● PCSP Training ● YouTube Trainings <ul style="list-style-type: none"> ○ Settings Rule ○ Anti-Discrimination and Harassment ● Staff Training Logs ● Rec Fund Options Form ● ACS Employee Handbook <ul style="list-style-type: none"> ○ 902.0 Orientation Training
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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:	<p>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 visit process.</p> <p>Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will be reviewed through ongoing monitoring activities.</p>

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Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019): Individuals reported they are able to participate in activities that are important to them in the community Individuals reported they make their own schedule and decide what activities to participate in Individuals reported they chose Ability and Choice as their provider One individual reported that staff said they can only spend money on Fridays Another individual reported that staff keeps money for them. Staff keeps money for all activities. One individual reported that staff does not always treat them with respect</p> <p>Summary of interviews (3/2021): Individuals reported they had the choice of what activities they participated in while at the day program One individual interviewed reported they could not go into the community because of COVID-19 One individual reported they missed going to the park and reported they had to stay indoors because of COVID-19</p> <p>Summary of interviews (6/2021): Individuals reported they got to go into the community often. Individuals reported they got to spend their own money. One individual reported they went out to TJ Maxx and the Dollar Store earlier that day. They are also learning to use the Trax to be more independent. One individual reported they have their own debit card and use it when they are in the community. Another individual reported they had just returned from the community before the interview. Individuals did not report any concerns with rules or restrictions.</p>
Staff Summary:	<p>Summary of interviews (2019): Staff reported personal assistance is always provided in private. Staff reported that individuals make their own schedule and decide what activities to participate in. Staff reported they handle the money; individuals do not. One staff member reported new hires can be problematic in terms of not utilizing respectful language. Other staff address it immediately. Another staff member reported that some staff can be abrupt in their communication with individuals.</p> <p>Summary of interviews (3/2021): Staff reported that they went into the community in a limited capacity due to COVID-19. One staff member reported that those with job coaches were still accessing the community. Staff reported that leadership determined what group/rooms individuals were placed in. Rooms are separated based on level of care needs.</p>

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	<p>Staff reported that there was not much training occurring since COVID-19. There used to be monthly staff meetings, but those had not occurred during the pandemic and there had been nothing to replace them.</p> <p>Summary of interviews (6/2021):</p> <p>Staff reported individuals participate in job sampling when in the community</p> <p>Staff reported that they are taking individuals into the community daily</p> <p>Staff reported that they have enough vehicles to meet their transportation needs</p> <p>One staff reported individuals are able to move between groups if they want to</p> <p>Staff reported individuals are independent with their own money</p> <p>Staff did not report any restrictions related to COVID-19</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:

Stakeholder Workgroup Review: October 24 to November 28, 2022
No comments received

Summary of Public Comments Received and State Response:

Public Comment Period: October 24 to November 28, 2022
<p>Comment:</p> <p>One commenter stated that at the March 2021 site visits, the State observed the settings had become overly restrictive in response to the COVID-19 pandemic. The State found that these concerns were remediated by June of 2021 after a virtual visit. We had concerns that the State has not conducted in person meetings with clients and staff since 2021. Our state has experienced multiple COVID-19 surges since this time and it's unclear if the noted restrictions have either been lifted or put back into place. We would urge the state to complete an in person assessment to ensure compliance with the rule.</p>

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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:

One commenter stated that they attend the ACS Draper Day Services. "I have been enjoying the off-site outings very much. The staff is very supportive. They are all very helpful and caring. They encourage me to choose for myself what I want to do and where I want to go. They plan a variety of places to go that I can choose from. I've been to many places that I have never been to before."

They continued with the following positive feedback; "I like day services. I missed it a lot during the pandemic. I'm glad things are better now and I can attend every weekday unless I have medical appointments."

Response:

Thank you for your positive feedback on the setting.

Comment:

The same commenter had additional feedback about their ability to get into the community to the degree that they choose due the setting only having one wheelchair accessible van. The van can only take 3 people in wheelchairs but there are 4 or more individuals that utilize wheelchairs at the setting. "So sometimes I can't go on the outing I want because of this. It's sometimes disappointing. Sometimes they reschedule the outing so those of us who wanted to go the first time can go the next time. I don't mind staying at the center sometimes because I have things that I like to do there. Sometimes they schedule an outing that is NOT wheelchair accessible. NO day program should do this. Instead we could write letters to these places and tell them the public needs accessibility. Thank you."

Response:

The State conducted a follow up interview with the commenter on December 6, 2022. The interview information has been added to the evidentiary package. The State was able to validate the individual is accessing the community at a frequency comparable to those not receiving HCBS services. The State agrees that the setting needs to address the commenters' concern around accessibility while in the community. The State has requested that the setting submit a remediation plan to address the concerns and will validate through a desk review. While the State has concerns with the commenters ability to access the community to the extent they prefer, the State has chosen to work with the provider directly on remediation. It is not believed that this comment/observation is indicative of a setting which is institutional in nature or one which necessitates review through the heightened scrutiny process.

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: October 24 to November 28, 2022

The Stakeholder Workgroup recommended that the heightened scrutiny packet is ready to be submitted to CMS (100% of those that responded).

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Utah's Recommendation

Date of Recommendation: 1/12/23

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.