

# 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

<b>Site Name:</b>	St Joseph Villa (AL)	<b>Site ID:</b>	152
<b>Site Address:</b>	451 East Bishop Federal Lane, Salt Lake City, UT		
<b>Website:</b>	<a href="https://stjosephvilla.com/">https://stjosephvilla.com/</a>		
<b># of Individuals Served at this location regardless of funding:</b>	32	<b># of Medicaid Individuals Served at this location:</b>	12
<b>Waiver(s) Served:</b>		<b>HCBS Provider Type:</b>	
<input type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input type="checkbox"/> Community Supports <input type="checkbox"/> Community Transition <input checked="" type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> <a href="https://medicaid.utah.gov/ltc/">https://medicaid.utah.gov/ltc/</a>		<input type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input checked="" type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living <input type="checkbox"/> Employment Preparation Services	
<b>Heightened Scrutiny Prong:</b>			
<input checked="" 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"> <li><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</li> </ul>			

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community services consistent with their person centered service plan <input checked="" 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"> <li>● The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place</li> <li>● The setting does not ensure an individual’s rights of privacy, dignity, and respect</li> </ul>	
<b>Onsite Visit(s) Conducted:</b>	3/8/2021 (virtual), 2/17/22 (Virtual), 1/13/23 (Virtual, Scheduled)
<b>Description of Setting:</b>	
The setting is an assisted living facility (ALF) that is in the same building/attached to a skilled nursing facility (SNF). It is also located on the same grounds of St. Joseph Senior Apartments, an independent living facility. The setting is located in Salt Lake City near to community resources such as other private residences, churches, restaurants, and other retail businesses.	
<b>Current Standing of Setting:</b>	
<input type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above  <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: The provider has identified areas of remediation that the State will verify on 1/13/23	

## Evidence the Setting is Fully Compliant or Will Be Fully Compliant

<b>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.</b>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input type="checkbox"/> Not Applicable
<b>Summary</b>	<p><b>Onsite Visit Summary (3/8/2021, virtual):</b>          The visit found that individuals at the assisted living facility have independent access to onsite amenities without needing to visit the secure nursing facility. The ALF has its own staff separate from the SNF. The setting facilitates transportation for those that cannot or do not drive. Public transportation is available close by and residents use transportation through the New Choices Waiver (NCW) and taxi services as well. Individuals can go out daily if they desire. The setting schedules a minimum of three community activities monthly, this is based solely off of resident input and increases if there is a desire.</p> <p><b>Interconnectedness between the institution (SNF) and the setting (Independent Living):</b></p> <ul style="list-style-type: none"> <li>● The ALF is located on the 2<sup>nd</sup> floor of the facility and the SNF is located on the 3<sup>rd</sup> floor. The 1<sup>st</sup> floor is the business floor of the facility.</li> <li>● The parking lot is shared.</li> <li>● Human resources conducts the initial new hire process for all new employees, then each floor is responsible to provide training specific to their services.</li> <li>● They share maintenance staff.</li> </ul>

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	<ul style="list-style-type: none"> <li>● Individuals with the ALF and SNF are able to utilize the laundry room, chapel, beauty shop, gift shop, and podiatrist (the chapel and gift shop are open to the public as well-pre COVID).</li> <li>● There is no shared direct support staff or nursing staff.</li> </ul> <p><b>Policy/Document Review:</b> The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● New Hire Packet</li> </ul>
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<b>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.</b>	
<b>Compliance:</b>	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

<b>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.</b>	
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<b>Compliance:</b>	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
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<b>Summary:</b>	<p><b>Onsite Visit Summary (3/8/2021, virtual):</b> During the visit it was found that the provider has scheduled community activities several times per month. They also plan a quarterly trip to Wendover. The provider helps facilitate transportation options (friends, family, public) for individuals who request it and New Choices Waiver individuals have access to non-medical transportation. Individuals talked about how they can participate in resident council meetings. Because of the impact and closures of COVID individuals said they aren't able to go out into the community and are bored.</p> <p><b>Remediation Plan Summary:</b> They will work to allow residents to be as involved in planning their activities as much as possible. The provider will work to help plan and prepare community activities that allow individuals to access the community to the level they desire.</p> <p><b>Onsite Visit Summary (2/17/22, virtual):</b> Most of the individuals reported that they were able to get out in the community as much as they desire. The provider has community activities and individuals have access to opportunities outside of what the provider offers for community activities. To help with the impacts of COVID the setting provides tablets that allow individuals to participate in virtual activities and telehealth. One individual said they didn't get out as much as they like because they didn't feel "capable".</p> <p><b>Remediation Plan Summary:</b> The provider will work with individuals to make sure that they have opportunities to access the community as they desire and with any support needed.</p> <p><b>Policy/Document Review:</b> The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● RESIDENT COUNCIL MEETING 5/25/2021</li> <li>● NEW CHOICE WAIVER TRAINING 5/28/21</li> </ul>
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	<ul style="list-style-type: none"> <li>● Transportation Resources</li> <li>● May 2021 Activity Calendar</li> </ul>
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**Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.**

<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Onsite Visit Summary (3/8/2021):</b>            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.            Individuals reported that they had the information available to choose this setting and their services.</p> <p><b>Policy/Document Review:</b>            The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Admission Agreement</li> </ul>

**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.**

<b>Compliance:</b>	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Onsite Visit Summary (3/8/2021, virtual):</b>            Staff and residents reported that they have no rights restrictions. Individuals have access to their own personal computer equipment. There was no personal information about individuals posted in common areas of the provider. Individuals said they can prepare simple meals in their rooms and ask for alternative meals at scheduled meal times. It was observed during a tour that there were plastic barriers in the dining room with individuals' names on them that constitute assigned seating. An individual said they can keep snacks in their room but they aren't sure if they are able to get snacks from the provider. Individuals also weren't sure if they could give feedback on meals.</p> <p><b>Remediation Plan Summary:</b>            The provider will work to make sure that a variety of snacks are available to residents. This will include items available in the pantry, refrigerator, and freezer. They will remind and educate individuals at the next resident council meeting. They will inform residents that input on meals can be given to staff at any time as well as during the resident council meetings. They will invite their dietary manager to the resident council every quarter to solicit feedback as well. The provider will remove any items in the dining room that constitute assigned seating and will inform residents at the next council meeting</p> <p><b>Onsite Visit Summary (2/17/22, virtual):</b>            The dining room has no indicators of assigned seating. A variety of snacks are available to residents at all times. Staff have keys to resident rooms in case of emergency. An individual said</p>

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	<p>they hadn't yet received a key. One resident said they had never been invited to the resident council meeting. One resident said that they had an assigned seat.</p> <p><b>Remediation Plan Summary:</b> The provider will make sure every individual has a key to their private space. They will continue to educate individuals on the lack of assigned seating in the dining room and will encourage individuals to participate in the resident council meeting.</p> <p><b>Policy/Document Review:</b> The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Photo of Dining Room</li> <li>● Photo of pantry</li> <li>● Photo of refrigerator</li> </ul>
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<b>Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.</b>	
<b>Compliance:</b>	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	The provider has identified areas of remediation that bring them into compliance with the Settings Rule. The state will validate this plan with a validation visit.

## Input from Individuals Served and Staff

<b>Individuals Served Summary:</b>	<p><b>Summary of Interviews (2021):</b></p> <ul style="list-style-type: none"> <li>● Both individuals reported since COVID, they no longer go into the community and the only thing being offered as an activity is Bingo.</li> <li>● One individual reported they are bored because there is nothing they can do.</li> <li>● Another individual reported they wished they did more activities.</li> <li>● An individual reported that they can keep snacks in their room but they are unaware of any snacks made available at the facility.</li> <li>● Individuals interviewed reported there is no way to give feedback formally about meals served or participate in the meal planning process.</li> <li>● One individual interviewed reported they cannot lock any of his doors and they were not given a key.</li> <li>● One individual reported she is no longer able to go shopping and buy groceries because of COVID.</li> <li>● Another individual reported they would like to go to the grocery store more often.</li> <li>● Individuals interviewed reported that they can have visitors at any time (pre-COVID).</li> <li>● Individual rooms have microwaves and mini refrigerators. They are able to keep food in their rooms.</li> <li>● Both individuals interviewed reported they are not required to keep any set schedules.</li> <li>● One individual interviewed reported they can close and lock both their apartment and bathroom doors and that staff do not enter their private living space without permission.</li> <li>● Individuals interviewed reported they had no restrictions in place.</li> </ul> <p><b>Summary of interviews (2022):</b></p>
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	<ul style="list-style-type: none"> <li>● One resident reported they did not get out as much as they desired because “they did not feel capable.”</li> <li>● One resident reported they were never given a key to their room.</li> <li>● One resident interviewed said they had never been invited to a resident council meeting.</li> <li>● One resident reported they had assigned seating.</li> </ul>
<b>Staff Summary:</b>	<p><b>Summary of Interviews (2021):</b></p> <ul style="list-style-type: none"> <li>● Manager reports there are no restrictions on any residents at the setting</li> </ul> <p><b>Summary of interviews (2022):</b></p> <ul style="list-style-type: none"> <li>● Staff reported they go out into the community 3-4 times monthly. Popular outings are movies, WalMart, and restaurants.</li> <li>● Staff confirmed the doors to the dining room were always open so snacks were available at all times.</li> <li>● Staff confirmed they have been trained in areas regarding individualized choice, community integration, and autonomy.</li> <li>● Staff confirmed they only use keys to access resident rooms under agreed upon circumstances or in emergencies.</li> </ul>

<b>Ongoing Remediation Activities</b>	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
<b>Continued Remediation Activities</b>	The provider has identified areas of remediation and the State will conduct an additional visit to verify their compliance with the Settings Rule.
<b>Ongoing Monitoring Activities</b>	<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"> <li>● Conducting individual served experience surveys</li> <li>● Addressing settings compliance during the annual person centered service planning process</li> <li>● Ongoing provider training and certification</li> <li>● Monitoring through critical incident reporting</li> <li>● Case Management/Support Coordinator visit monitoring</li> <li>● HCBS Waiver Reviews/Audits</li> </ul>

## Summary of Stakeholder Workgroup Comments Received and State Response:

<b>Stakeholder Workgroup Review:</b> January 3, 2023 - January 18, 2023	
<b>General Comments Received</b>	
<b>Comment:</b>	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.
<b>Response:</b>	

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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. 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.

**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.

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**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.

**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.

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**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:**

No comments received

**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**

**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 has overcome the effect of isolating individuals from the broader community and is in compliance with the HCBS Settings Rule.**

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