

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:	Foundation for Independence	Site ID	1816
Site Address:	8925 South 2700 West, West Jordan, UT 84088		
Website:	ffiutah.org		
# of Individuals Served at this location regardless of funding:	12	# of Medicaid Individuals Served at this location:	13
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 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 			

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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:	9/30/2019 (in-person), 12/28/22 (Virtual, Scheduled)
Description of Setting:	
Foundations for Independence is a Day Supports Program located in West Jordan, Utah. The setting is located in a small strip mall and is in proximity to community resources such as a grocery store, gas station, restaurants, and walking trails.	
Current Standing of Setting:	
<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: Remediation plan has been completed and the validation visit is scheduled for December 28, 2022.	

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 type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	Onsite Visit Summary: 9/30/2019 Individuals are able to come and go as they please throughout their day. Four clients are presently working at a competitive integrated employment (CIE). The setting is an advocate for employment and has a pathway towards CIE, but they do not provide any direct job coaching. Individuals are able to bring their own money/wallets/purses and are in control of their own funds. The setting utilized Paratransit to go out into the community frequently. There is a formal plan in place for individuals to give input towards community activities. Individuals

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	<p>served reported they go out in the community to places such as bowling, arcade, goat farm, and savers. The setting does not facilitate the process for individuals to pursue volunteerism as an option. They have volunteers come into the facility which is reverse integration. It was unclear if individuals were getting out in the community as much as they desire.</p> <p>Remediation Plan Summary:</p> <p>Staff will assist clients in finding opportunities to volunteer in the community. Clients will hold an activities meeting once a month with staff support. Options will be offered at the meeting for volunteering and community access. Consumers can look up events via computer each month before and during the meeting. A calendar will be established each month with choices made by the clients for continuity and transportation arrangements. Natural resources will be used as needed for volunteering options established by the clients.</p> <p>Clients will coordinate monthly meetings to research activities and staff will support them as needed with creating recreation calendars. Clients will hold an activities meeting once a month and suggest the activities they would like to participate in. Options will be discussed at the meeting for volunteering and community access. Consumers will be presented and can look up events via computer each month before and during the meeting. A calendar will be established each month with choices made by the client for continuity and transportation arrangements. More difficult activities will be discussed with input from residential providers and natural resources being used (Family, friends, church etc.) as a resource. All meetings and calendars will be documented for auditing purposes and kept onsite.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance</p> <ul style="list-style-type: none"> ● Foundation State Self Assessment ● 2020 Relief Staff On Site Training Guide ● Client Survey ● HCBS checklist
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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 (9/30/2019):</p> <p>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>Individuals are aware of other provider options, know their support coordinators, and are open to speaking with them about any changes.</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

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Summary:	<p>Onsite Visit Summary(9/30/2019): Staff utilize PCSPs to explain options and choices to individuals and inform program activities. Staff is adaptive to individuals' differing communication needs. Staff seemed knowledgeable regarding individuals' interests and goals. There is a formal plan in place for individuals to give input towards community activities.</p> <p>Remediation Plan Summary: Staff training on positive interventions and supports, behavior interventions and documentation are trained upon hire and documented in the staff handbook and employee file. Individuals can request Human Rights Committee review as needed/desired. Yearly training and ongoing evaluation will occur with the PCSP plan, and with the Human Rights Committee according to needs. Staff will be trained accordingly and signed documentation kept in the employee files."</p> <p>Policy/Document Review: The following were reviewed for compliance</p> <ul style="list-style-type: none"> ● Guide to Privacy and Security of Electronic Health Information ● 2020 Relief Staff On Site Training Guide ● Door lock photos
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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 and the State will conduct their final validation to ensure compliance through a validation visit in December 2022.</p> <p>Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will also be reviewed through ongoing monitoring activities.</p>

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (9/30/2019):</p> <ul style="list-style-type: none"> ● Individuals state they use Flex ● Individual states they make their own schedules ● One individual reported they have their own business ● Individuals reported they have the freedom of letting staff know if they do not want to do something ● They go to bowling, arcade, goat farm, savers out in the community
Staff Summary:	<p>Summary of interviews (9/30/2019):</p> <ul style="list-style-type: none"> ● Staff states they create calendars ● Staff states they explain formal community options ● Staff states the accommodate everyone in the community ● Staff report they receive ongoing training for HCBS settings rule

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

Summary of Stakeholder Workgroup Comments Received and State Response:

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

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

Comment:

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

Response:

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

Comment:

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

Response:

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

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Comment:

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

Response:

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

Comment:

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

Response:

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

Comment:

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

Response:

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

Summary of Public Comments Received and State Response:

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

Setting Specific Comments:

Comment:

One commenter stated Foundations for Independents 1816, is a day support services program located in West Jordan, Utah. It provides services to 13 waiver participants. The materials provided by the State in the evidentiary packet do not demonstrate that the identified setting currently demonstrates the qualities of HCBS. For

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stakeholders to provide effective feedback, the state needs to present stakeholders with final validations of compliance with the rule rather than un-validated remediation plans. Not doing so does not provide appropriate notice to community partners of the steps the state has taken to ensure that settings are fully in compliance with the settings rule.

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. As indicated on the heightened scrutiny package, a validation visit was conducted in December (12/15/22) to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined compliant after the validation visit.

Comment:

The same commenter had additional feedback stating the DLC has visited site 1816 on multiple occasions. Each time individuals were milling about the front door, there was medical equipment in the facility, other individuals were watching television alone, and the doors were locked from the outside. The day program had the appearance of a medical facility. One individual was observed to be left alone in a computer room and was playing games on their computer because they were bored and unengaged.

Response:

As indicated on the heightened scrutiny package, a validation visit was conducted in December (12/15/22) to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined compliant after the validation visit. State staff have confirmed that doors are not locked from the outside. The only equipment (adaptive equipment) in the facility is a hooyer lift utilized to transfer individuals for personal care.

Comment:

The same commenter had additional feedback stating The evidentiary package lacks specificity regarding compliance with the rule. While the state did assess community integration and found that individuals had options for integration the state didn't evaluate if these opportunities reflected individual choice and or the frequency of the activities. The packet also does not detail the activities provided at the setting itself and how these reflect the choices of the individuals. The remediation plan presented lacks specificity regarding community integration and onsite activities. Parts missing from the remediation plan seem to be as follows: how frequently will individuals be going into the community and for what activities, how large will the groups be (small enough to facilitate community integration), what types of activities are happening in the day program itself and what changes need to be made to facilitate consumer choice?

Response:

This setting was closed for a long period of time due to COVID-19. Prior to opening back up, the State provided technical assistance and the setting committed to open with a new person-centered philosophy. As indicated on the heightened scrutiny package, a validation visit was conducted in December (12/15/22) to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. Individuals have a voice and now run the activities that occur in the program as well as in the community. Each individual has their own individualized activities calendar in addition to the setting calendar. There is a formal process to create calendars on a monthly basis. Then the calendars are reviewed again weekly and on a daily basis. The setting was determined compliant after the validation visit.

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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.