

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:	Work Activity Center	Site ID	1821
Site Address:	1275 West 2320 South Salt Lake City, Utah 84119		
Website:	https://www.workactivitycenter.org/		
# of Individuals Served at this location regardless of funding:	30	# of Medicaid Individuals Served at this location:	29
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: <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 community services consistent with their person centered service plan 			

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	<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"> • 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:	9/26/22 (Virtual)
Description of Setting:	
<p>The Work Activity Center (WAC) is a Day Supports Program located in Salt Lake City. The agency operates three programs: Day Services (focus on daily living, recreational and educational skills), Workshop (focusing on paid employment through contract work) Employment (focusing on paid community employment) from the setting. The setting is located in an area of the community that is not within walking distance of community resources but is within a short driving distance of many community resources.</p> <p>WAC 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.</p>	
Current Standing of Setting:	
<input checked="" type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above <input type="checkbox"/> Approved Remediation Plan: the setting has an approved remediation plan demonstrating how it will come into compliance. The approved timeline for compliance is:	

Evidence the Setting is Fully Compliant or Will Be Fully Compliant

Prong 1: The setting is in a publicly or privately operated facility that provides inpatient institutional treatment; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable
Prong 2: The setting is in a building on the grounds of, or immediately adjacent to, a public institution; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable
Prong 3 A: The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Transformation Plan Summary: The following activities will be implemented for Settings Compliance: Opportunities to seek employment</p>

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- Eliminate barriers to employment. Offer benefits counseling services to all participants.
- Ensure SE staff are knowledgeable of ABLE accounts and can provide info to potential job seekers/families.
- Encourage EMPLOYMENT FIRST implementation by having a SE director meet with participants on who is interested in integrated community employment.
- Identify training resources, all staff to be credentialed obtain ACRE & Customized Employment training & other appropriate skills. Document all training in each staff's personnel file.
- Develop new job expectations that ensure required skills & attributes to work more independently in the community.

Engage in the community

- Identify community-based opportunities and employment services. Engage all board members, staff, participants and families in identifying and documenting community opportunities.
- Assign a lead staff person to be responsible for Community Mapping for the agency to ID community opportunities and employment that meet the choices of participants and train staff.
- Identify opportunities for each participant in their residential neighborhood.
- Conduct training in use of (PPP) profiles with key agency staff. Utilize PCP forms and Positive Personal Profile PPP for pilot programs and then all individuals. PCSP preparation, working with the individual to update the positive personal profile.
- Examine current training to ensure Settings requirements are met for compliance.
- Initiate a community pilot – After participant profiles have been developed, a group of no more than 4 volunteer participants that are compatible with like interests and skills. Choose community activities & develop a schedule of their part day community activities that they chose. Group activities should be chosen from:
 - Pre-employment/ Career Exploration.
 - Volunteer Opportunities/ Community Service.
 - Community Based Activities/Recreation/Hobbies.
- Determine community meeting locations/options after community groups are established. Sites should provide integration opportunities, shelter, water and restroom facilities. Document these sites with contact info, addresses, hrs. of operation and resources available.
- Create community-based activities for no more than 4 individuals to 1 staff (or as indicated by profile and funding).
- Ensure access to adequate # & appropriately sized vehicles. Evaluate public/private transportation options. Match transportation options to the needs of each team, e.g., public transportation for those that can be travel trained.
- Ensure that aspects of the Service Plan Goal and / or the Individualized Service Plan identify integrated community life engagement based on need and preference.

Onsite Visit Summary (9/26/22)

While many activities are offered at the center, they do go out in the community. Individuals are asked about interests and invited to contribute to the monthly calendar of activities. Therap is used to track data on individual responses and reactions to community outings - including tracking non-verbal communication to show whether or not an individual enjoyed the activity. The Positive Personal Profile was adopted about a year ago and they use this tool for part of person-centered planning. It is recorded in monthly summaries.

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	<p>Pre-Covid a community map was created that looked at transportation routes and community businesses for each individual. At that time, a group of individuals would meet in the community and spend their day out instead of coming to the center. WAC plans to get back to that type of model as the Public Health Emergency/Covid concerns die down.</p> <p>An employee has been hired as the Director of Community Strategic Partnerships. The Director of Community Strategic Partnerships does EPR training 3 times a week at another setting and 2 days at this setting; this includes putting together activities for individuals to participate in. Any questions or interest shown in employment are directed to her. She has been able to increase success in finding competitive integrated employment for some individuals.</p> <p>Staff and individuals interviewed indicated that individuals can come and go as they wish. Individuals interviewed indicated that they are able to tell staff about the activities that they want to go out to. Staff said the goal is to take groups out into the community every day.</p>
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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:	Onsite Visit Summary (9/26/22) Individuals choose this facility. The setting does not restrict access to any non-disability settings and facilitates access when requested.

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>Transformation Plan Summary:</p> <p>The following activities will be implemented for Settings Compliance:</p> <p>Engage in the community</p> <ul style="list-style-type: none"> ● Ensure that aspects of the Service Plan Goal and / or the Individualized Service Plan identify integrated community life engagement based on need and preference. <p>Human Rights Committee</p> <p>If a rights modification is determined necessary because of an assessed and justified need, the creation and development of a service plan will address the following requirements:</p> <ul style="list-style-type: none"> ● A specific and individualized assessed need will be identified, with a positive interventions, supports, and least intrusive methods will be well documented in the person-centered service plan ● The creation of specific Individualized Support Plans ● A clear description of the condition that is directly proportionate to the specific assessed need. ● Description of the proposed intervention ● Positive interventions and supports that have been used/ are being used to address the need ● Less intrusive methods that have been used. are being used to address the need

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	<ul style="list-style-type: none"> ● Method of collection data to measure the ongoing effectiveness of the intervention ● Description of how the intervention will be paired with additional supports to prevent harm for the individual ● The frequency of which the intervention will be reviewed ● Measurable criteria that will inform the continued use or any necessary changes to the proposed intervention <p>Onsite Visit Summary (9/26/22)</p> <p>Individuals we spoke to all said they have a choice of activities. Many activities are provided at the Center but they do go out in the community. Some individuals report they were participating in an art show in the community that day.</p> <p>Individuals are asked about interests and invited to contribute to the monthly calendar of activities. Therap is used to track data on individual responses and reactions to community outings - including tracking non-verbal communication to show whether or not an individual enjoyed the activity.</p> <p>Staff report they write up a rough draft of a schedule and individuals are given the opportunity to give ideas on what to put on the calendar.</p> <p>To help individuals who may not be interested in going into the community, staff report posting pictures of their community outings and talk about them with the group.</p> <p>Staff and individuals interviewed indicated that individuals can come and go as they wish, can choose when to eat and eat at any time, and there are no blanket restrictions in place. Multiple staff stated that no person receiving services at Work Activity Center has a rights restriction. All Human Rights Plans and Rights restrictions have been updated to meet settings requirements.</p>
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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 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>

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of Interviews (2022):</p> <ul style="list-style-type: none"> ● Individuals reported going to the Art Show in the community later that day. It is also a competition and many individuals entered pieces. ● Individuals reported helping to choose the activities they participate in. ● Individuals reported having friends in the community. ● One individual reported being supported to connect virtually with her family. ● Individuals reported talking about jobs in the community. ● Individuals mentioned attending classes like cooking in the community.
Staff Summary:	<p>Summary of Interviews (2022):</p>

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	<ul style="list-style-type: none"> ● Staff reported meeting with individuals to find out what activities they want to participate in. Staff sometimes offers suggestions or provides a rough draft of a schedule but individuals can choose what they want to do. ● When individuals show an interest in employment, staff refer them to the Director of Community Strategic Partnership. ● Staff reported that clients do not have to leave the building for an activity if they don't want to. ● Staff report outings are usually in small groups of 2-3 individuals. They travel by van or public transportation. ● Staff report helping individuals work on their goals while out in the community. Staff is trained on the goals and interests of each individual so they can support them better. ● Staff reported that if an activity is requested that is not on the schedule, they try to make it happen.
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Ongoing Remediation Activities	
Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	<input checked="" type="checkbox"/> N/A for currently compliant
Ongoing Monitoring Activities	<p>The State will use the following tools to ensure settings continue compliance with the Settings Rule criteria:</p> <ul style="list-style-type: none"> ● Conducting individual served experience surveys ● Addressing settings compliance during the annual person centered service planning process ● Ongoing provider training and certification ● Monitoring through critical incident reporting ● Case Management/Support Coordinator visit monitoring ● HCBS Waiver Reviews/Audits

Summary of Stakeholder Workgroup Comments Received and State Response:

Public Comment Period: December 12, 2022 to January 13, 2023
Setting Specific Comments:
<p>Comment:</p> <p>One commenter stated that Work Activity Center is a day supports and employment program located at South Salt Lake, Utah. It provides services to DSPD 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. The package does not address if EPR is fully implemented in this setting. The package does not address if individuals enrolled in employment services spend a minimum of 20% of their time in the community. The package does not address what type of integrated employment opportunities participants engage in.</p>
<p>Response:</p>

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Employment Preparation Services (EPR) is fully implemented in this setting. As part of the initial rollout of the EPR service the Setting Collaboration team met with each EPR contracted provider to address their specific and unique questions. Work Activity Center met with all their participants at the time for informed choice discussions regarding the employment options. WAC stated many individuals declined to continue sheltered or subminimum wage work. WAC met with our team to discuss a few individualized requests that required a variety of support options and services. Given this information, and responses from the validation visit, we were confident at the time of compliance. Ongoing monitoring for settings will allow us to address any further issues.

Comment:

The same commenter had additional feedback stating the package does not address how often participants do activities outside of the facility. During the DLC's last onsite visit the facility was providing activities such as a gym, art, positioning therapy, and video games. The package states the facility continues to provide many activities that are still provided onsite. This is not compliant with the rule. These activities can all be provided in the community.

Response:

The settings rule requires that individuals are accessing their community to the extent that they desire. There are individuals that choose to participate in activities that are provided inside of the facility. This is their choice to make. During the validation visit participants were able to articulate activities in the community they chose.

Comment:

The same commenter had additional feedback stating 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.

Response:

The State agrees that participating in the USU transformation program is not a substitute for compliance with the HCBS Settings rule. Participating in the USU transformation program was a tool that was optional for settings to use a pathway towards compliance. As indicated on the heightened scrutiny package, a validation visit was conducted in December (12/2/22) to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined compliant at the validation visit.

General Comments Received:

Comment:

The materials provided by the State in the newly-released evidentiary packets raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a 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.

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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 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

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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.

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.

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Summary of Public Comments Received and State Response:

Public Comment Period: December 12, 2022 to January 13, 2023

General Comments Received:

Comment:

The Disability Law Center (DLC) appreciates the opportunity to provide comments on the HCBS Settings Rule Heightened Scrutiny process as both a member of the settings stakeholder committee and through the public comment process. As the Protection and Advocacy agency for people with disabilities for the State of Utah, the Disability Law Center (“DLC”) is uniquely suited to provide assistance and input during this process. Based on our own observations as the P&A as well as our evaluation of the state’s assessments of settings, the state did not engage in a sufficient assessment process or provide adequate support to bring settings into compliance with the rule prior to the February 2023 deadline. We are concerned that HCBS waiver dollars will continue to be spent on segregated, institutional settings despite the state’s obligations under the HCBS settings rule, Title II of the ADA and *Olmstead*. This heightened scrutiny evidentiary package demonstrates these ongoing concerns as detailed below.

Response:

While the State does acknowledge that activities for remediation extended into March 2023, it does not believe strategies deviated from its Statewide Transition Plan, or that inappropriate methods were used in validating compliance. The State also acknowledges that Settings compliance is not a one time activity and the usage of ongoing monitoring will aid to reinforce core tenants of the Rule as well as the development and dissemination of best practices. The State encourages the submission of providers who are believed to be non-compliant with requirements of the Settings Rule, including the elements/criteria which are not sufficiently meeting expectations.

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: December 14, 2022- December 29, 2022

Only one member of the Stakeholder Workgroup Responded. Their specific comments are noted above.

Utah’s Recommendation

Recommendation: Compliant

The State has determined the setting has overcome the effect of isolating individuals from the broader community and is in compliance with the HCBS Settings Rule.