

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:	Danville Services of Utah, LLC	Site ID:	268
Site Address:	12645 South 1155 West Riverton Utah 84065		
Website:	https://www.danvilleservices.com/locations/utah/		
# of Individuals Served at this location regardless of funding:	8	# of Medicaid Individuals Served at this location:	8
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 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	
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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	<p>community services consistent with their person centered service plan</p> <p><input type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting</p> <p><input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include:</p> <ul style="list-style-type: none"> ● The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place ● The setting does not ensure an individual’s rights of privacy, dignity, and respect
Onsite Visit(s) Conducted:	9/27/19 (in-person), 5/11/22 (virtual)
Description of Setting:	
<p>Danville Services of Utah is a residential facility in Riverton Utah. The facility is divided between two homes on the same property, a men’s only and a female only home. Currently, at this location, all individuals served are female.</p> <p>The facility is located next to a golf course and community swimming pool; however, it is isolated from the broader community due to dirt road access. There are no community resources within walking distance, but there are several community resources within a short driving distance.</p>	
Current Standing of Setting:	
<p><input type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above</p> <p><input checked="" type="checkbox"/> Approved Remediation Plan: the setting has an approved remediation plan demonstrating how it will come into compliance. The approved timeline for compliance is: Remediation plan will be completed in December 2022, Validation Visit is scheduled for January, 2023</p>	

Evidence the Setting is Fully Compliant or Will Be Fully Compliant

Prong 1: The setting is in a publicly or privately operated facility that provides inpatient institutional treatment; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

Prong 2: The setting is in a building on the grounds of, or immediately adjacent to, a public institution; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

Prong 3 A: The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	
Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary (9/2019):</p> <p>During the site visit it was determined the setting had the effect of isolating individuals receiving Medicaid HCBS from the broader community and the setting did not facilitate the</p>

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	<p>opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services.</p> <p>Remediation Plan Summary:</p> <p>The setting will increase the variety of experiences, including new experiences based on input from each person reflecting their preferences. Weekly planning meetings are already in place, and local events are discussed to see who is interested in participating.</p> <p>The setting will explore opportunities to volunteer in the community to foster new relationships and lead to competitive employment if the client desires.</p> <p>In addition to utilizing provider vehicles for community access, the setting will explore public and private transportation options and provide training based on each person’s interest and level of needed support.</p> <p>The setting will disseminate additional information regarding HCBS settings rule to individuals and family members, discuss cultural and systemic changes to improve community integration. Information has been sent home to community and residential clients.</p> <p>The setting will provide training for all employees regarding HCBS settings rule.</p> <p>Onsite Visit Summary (5/2022)</p> <p>The setting is working on grant for activity person and shuttle services proposal so can have dedicated service to help with personal errands/desires to add more community integration back in. The setting needs to have to have wheelchair accessible vans due to individuals with mobility issues. The setting is working to implement a weekly planning meeting with individuals including activities at home, in community, menu planning, etc so people have things to pick from and have options to try. Staff said that they have difficulty scheduling around medical appointments because of the availability of the van and the unavailability of UTA due to their location. Individuals still do not have access to the greater community to the same degree as individuals not receiving HCBS services.</p> <p>Remediation Plan Summary:</p> <p>The setting will leave one company vehicle from the day service locations at the setting location after day program time and on the weekends so staff has access to them and individuals are able to access the community at a greater frequency. Additional vehicles are also available at the day program locations (close by) if needed for use. Since the majority of individuals attend a day program, this solves their additional transportation needs. The setting will train their staff and has updated their forms to promote individuals the ability to schedule community integration activities at a greater frequency.</p> <p>Policy/Documents:</p> <ul style="list-style-type: none"> ● Weekly Calendar ● Client Rights Policy ● Client Involvement Policy ● Salt Lake County Transportation Map ● Weekly Planning Form
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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
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Summary:	<p>Onsite Visit Summary (9/2019): Individuals choose this facility to stay in their community. The setting does not restrict access to any non-disability settings and facilitates access when requested.</p>
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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:	<p><input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant</p>
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Summary:	<p>Onsite Visit Summary (9/2019): Individuals are able to move about the setting independently. There was no observed personal information posted in the setting. Individuals were able to eat when and where they wanted. The setting does not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities. Staff presents community activities available; individuals are not in control of their schedules The setting does not ensure individual privacy. There are two toilets in the main bathroom in both houses with no separation. Staff reported several individuals can be in the bathroom at the same time (using toilet, bathtub, shower, sinks). There are no locks on the bathroom doors and the second bathroom does not have a door, only a curtain. When staff are cleaning rooms; they unlock all the rooms and leave them unlocked until the chores are completed.</p> <p>Remediation Plan Summary: The setting is working to implement a weekly planning meeting with individuals including activities at home, in community, menu planning, etc so people have things to pick from and have options to try. They have created a form for staff to follow to promote community integration activities. The setting will remove one of the toilets in the bathroom and will address the privacy issues with staff. Locks and doors will be added to the bathrooms.</p> <p>Onsite Visit Summary (5/2022): A lock was added to the bathroom door, but staff were unable to open the door in case of an emergency. The second bathroom still only had a curtain and needed a custom door built because of the size. Staff now only unlock a single room at a time when cleaning. Multiple individuals still use the restroom at the same time; this was done for staff convenience. Individuals are still unable to control their schedules to the level they desire due to the setting not having enough transportation to overcome their segregating location.</p> <p>Remediation Plan Summary: They will be installing a custom door on the one bathroom door and will get a new lock for the second bathroom door. Note: A desk review has been completed to validate staff have the ability to now unlock the bathroom door in the case of an emergency. The setting will train their staff and has updated their forms to promote individuals the ability to schedule community integration activities at a greater frequency. Staff will be trained on individuals' right to privacy.</p> <p>Policy/Documents:</p> <ul style="list-style-type: none"> ● Weekly Calendar
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	<ul style="list-style-type: none"> ● Client Rights Policy ● Client Involvement Policy ● Weekly Planning Form
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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 2019: Note: No individuals were interviewed. Only 2 individuals were home at the time of the visit and both refused to be interviewed.</p> <p>Summary of interviews 2022:</p> <ul style="list-style-type: none"> ● Staff mentioned COVID-19 had made community activities a challenge. ● It was determined in staff interviews that there are concerns with bathroom and room privacy. Staff stated the doors are not locked but that they knock before entering. ● Staff expressed that there are many options for meals and snacks. ● Staff said there are a variety of community integration opportunities that individuals participate in, including visits to the aquarium.
Staff Summary:	<p>Summary of interviews 2019:</p> <ul style="list-style-type: none"> ● Staff reported they provide personal care in private, except for when in the bathroom ● Staff reports that there is one individual that chooses to eat at a different time than everyone else ● Staff reports they give options for activities and individuals can choose from the activities <p>Summary of interviews 2022:</p> <ul style="list-style-type: none"> ● Individuals expressed that there are many options for meals and snacks. ● One individual expressed that they would like to have the option to eat outside of the setting more often. ● Individuals mentioned there are concerns with bathroom locks and that they “yell” for staff when they are done or need assistance.

Ongoing Remediation Activities
Current Standing: Currently Compliant Approved Remediation Plan

Continued Remediation Activities	The setting is finalizing its remediation activities in prong 3A and 3C. the State will conduct another validation visit to ensure they are compliant in the areas indicated.
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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
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Summary of Stakeholder Workgroup Comments Received and State Response:

Public Comment Period: December 12, 2022 to January 13, 2023
<p>Setting Specific Comments:</p> <p>Comment:</p> <p>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 <i>Olmstead</i>. This heightened scrutiny evidentiary package demonstrates these ongoing concerns as detailed below.</p> <p>Response:</p> <p>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.</p> <p style="text-align: center;">General Comments Received:</p> <p>Comment:</p> <p>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.</p> <p>Response:</p> <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</p>

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completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process.

Comment:

In many instances, the packages state that the setting is compliant based on a remediation plan and indicate that a validation visit will be completed in the future. Many of the reviews state that individuals are not getting into the community to the degree they would wish and that there are still institution-like restrictions on individuals in the settings. The state needs to give the results of final validations to the work group and other stakeholders before it can submit the setting to CMS for heightened scrutiny.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of 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 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

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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.

Summary of Public Comments Received and State Response:

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

Setting Specific Comments:

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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

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.