

# 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>	LINC (Life Skills and Individual Needs Center)	<b>Site ID:</b>	893
<b>Site Address:</b>	862 S Main #8, Brigham City, UT 84302		
<b>Website:</b>	<a href="https://lifeskillslinc.wordpress.com/">https://lifeskillslinc.wordpress.com/</a>		
<b># of Individuals Served at this location regardless of funding:</b>	23	<b># of Medicaid Individuals Served at this location:</b>	23
<b>Waiver(s) Served:</b>		<b>HCBS Provider Type:</b>	
<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> <a href="https://medicaid.utah.gov/ltc/">https://medicaid.utah.gov/ltc/</a>		<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	
<b>Heightened Scrutiny Prong:</b>			
<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"> <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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<p style="text-align: center;">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"> <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>	2/16/2022 (Virtual) , 11/18/22 (virtual)
<b>Description of Setting:</b>	
<p>LINC is a day program located in an area of Brigham City near several stores (Bundy’s Flooring America, Taco Time, Brigham Hearing Zone), several eatery restaurants (Arby's, Burger &amp; Scoops) and local elementary school across the street.</p> <p>LINC 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>	
<b>Current Standing of Setting:</b>	
<p><input checked="" type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above</p> <p><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: 11/18/22</p>	

## 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 type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable
<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>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Transformation Plan:</b></p> <p>New Mission Statement-To have agency policy statements and representation of community engagement and employment complying to setting rule.</p>

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Meet / educate potential employers-Initiate Community Mapping to identify possible job opportunities for current and future individuals. Update Employment Brochure and Services Provided Brochure, Presentations-Develop new agency brochures and program descriptions  
Have current information on what LINC offers including employment.  
Develop Employment or Life-Skill Services Presentation-Develop Customized Employment opportunities and skill development for potential employment  
Make Employment Board, high-lighting clients who have obtained employment-Promote client interest in community activities and employment  
Community Mapping-To have a current active list of community activities and employment opportunities. – Employment / Activities / Volunteer  
Developing a relationship with VR-Future agency goals will be employment, develop a relationship with VR for growth and opportunities.  
Provide VR services-build employment support funding for clients. Volunteer Groups-Getting individuals into community, learning community, possible job opportunities.  
Move current center-based day learning activities to community sites with small participant groups, e.g., libraries, recreation centers, malls, coffee shops, fast food restaurants, grocery stores, civic clubs etc. -To have participants engaged in comparable activities in the community rather than at the facility.  
Transition to smaller vehicles etc to accommodate smaller community groups-Ensure travel means and cost are appropriate for smaller groups. Investigate other transportation options-Create other transportation options for this rural area, e.g., parents and families, uber, lift, taxi, and other community resources.

## **Onsite Visit Summary (2/16/2022 Virtual):**

The setting is located in an area that is close to other community resources (gas stations, parks, library, etc.). Leadership, staff, and individuals report going out into the community: park, bowling, laundry, shopping, fine-art center. Staff and Leadership report the setting has 2 transport vans and 3 minivans ( 1 with wheelchair lift). Leadership reports use of a “person focused” worksheet, personal profile preference will be added. Staff and leadership in the interviews said we coach or teach them individually, focus on their goals. Leadership reports they have implemented “push for small groups, push on employment” to demonstrate settings compliance. Leadership and staff indicate small groups allow the person to have more individual learning opportunities and have seen change in independence level. Due to the pandemic LINC moved to smaller groups to go out into the community based on individual interest. Volunteer groups will shift more into the community: plan more time at the Community garden, deliver cakes to kids in foster care, and go back to Family support centers. Individuals in the interview said they are able to choose activities they are interested in and important to them.

## **Remediation Plan Summary:**

They will provide us with evidence of their approach to employment through a policy or a written process. They will provide evidence that individuals are participating in virtual activities. They will provide documentation that provider branding has been removed from vans, clothing and other items that would be considered segregation when out in the community.

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	<p>Future agency goals will be employment, developing a relationship with VR for growth and opportunities. Provide employment opportunities for individuals with disabilities. Provide VR services. Person Centered Planning Forms: Each client will be assessed for their interests and skills etc. for community inclusion and employment needs and wants. New forms completed. Volunteer Groups: Getting individuals into community, learning community, possible job opportunities. Move current center-based day learning activities to community sites with small participant groups, e.g. libraries, recreation centers, malls, coffee shops, fast food restaurants, grocery stores, civic clubs etc. Transition to smaller vehicles etc to accommodate smaller community groups. Investigate other transportation options. Create other transportation options for this rural area, e.g., parents and families, uber, lift, taxi, and other community resources.</p> <p><b>Onsite Visit Summary 11/18/22 (virtual):</b> During the visit we confirmed that individuals are able to access the community and participate in a variety of activities. There are 11 individuals who currently have jobs and several others who are working through vocational rehab. Activities in the community are typically in groups of 4-5 and individuals said they had choice in which activities they participate in.</p> <p><b>Policy/Document Review:</b> The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Staff Training</li> <li>● Provider Policy on person first Language</li> <li>● Human Rights restrictions</li> </ul>
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<b>Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.</b>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<b>Onsite Visit Summary (2/16/2022 Virtual):</b> 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.

<b>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>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<b>Transformation Plan:</b> Develop Elevator Speech-Develop staff training to engage the community with proper language to talk to employers, clients etc.to increase community opportunities. Staff Training, Therap, Codes, documenting Etc.-So staff can become more independent at their job tasks and expectations.

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Person Centered Planning Forms-Each client will be assessed for their interests and skills etc. for community inclusion and employment needs and wants.

Create Scheduling Sheets-Create Scheduling sheets for both clients and staff. This way client's know where and what they are doing every week. Staff will know who they are responsible for and where they need to be for an entire week.

Acre Training Certification to provide Vocational Rehabilitation Services and Job Coach Certifications-All staff will know expectations and techniques for client competitive community employment and community opportunities.

Explore staff on-line training opportunities-Staff will know current expectations and policy, keep everyone up-to-date on LINC purpose and expectations.

Develop or revise job descriptions, recruitment practices, interview process and orientation and training for community-based staff to include responsibilities of facilitating community support; finding opportunities for program participants that focus on adult daily routines, commitments, relationships, social skill development; and supporting job skill exploration and development.-To recruit employees who are invested in getting participants out in the community doing activities and work they choose

## **Onsite Visit Summary (2/16/2022 Virtual):**

Rules indicated by individuals "Don't take things from other people.", "Be respectful, be kind to others". Staff frequently referred to clients or a client as "little troop" and 'little guy'.

During the onsite visit it was determined there were concerns with the following: Staff did report an individual is not allowed to take pictures (note: unsure of details of human rights restriction). All reported by staff that some individuals because of their disability are not able to go on hikes. Staff and leadership note that they ask individuals for input on activities at the monthly meeting and individual input forms. . Individuals provide input on their activity interest by filling out a form and encourage family to add their input as well.

Individual reports are comfortable asking staff to add an activity they want to do on the calendar, Individuals indicate they can do activities that are important to them.

## **Remediation Plan Summary:**

Staff will be trained on age appropriate and person-first language. They provider will provide documentation of all rights restrictions. Staff will be trained on supporting individuals in participating in the activities they express interest in.

## **Onsite Visit Summary 11/18/22 (virtual):**

During the visit staff talked about being trained in person-first language. Staff said they work with individuals to make sure they are given the supports they need to participate in the activities they desire. Individuals talked about how they are able to go on all the activities that they want to. Individuals talked about how they feel respected by staff. Individuals said they don't have any rights restrictions. One individual has agreed to have their bag checked before going home because sometimes they take things that aren't theirs.

## **Policy/Document Review:**

The following were reviewed for compliance:

- Staff Training
- Provider Policy on person first Language

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	<ul style="list-style-type: none"> <li>● Human Rights restrictions</li> </ul>
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<b>Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.</b>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	Overall, the setting has remediated the majority of the institutional characteristics that required it to go through heightened scrutiny. It has a remediation plan to remediate the remaining items to bring them into compliance.

## Input from Individuals Served and Staff

<b>Individuals Served Summary:</b>	<p><b>Summary of Interviews: (2/2022)</b></p> <ul style="list-style-type: none"> <li>● Individuals enjoy working, doing activities in the community like bowling, shopping etc.</li> <li>● Individuals communicate with staff their likes and dislikes.</li> </ul> <p><b>Summary of Interviews: (11/2022)</b></p> <ul style="list-style-type: none"> <li>● Individuals reported being able to access the community for a variety of activities.</li> <li>● An individual reported helping with chores around the facility. This was seen as helping out, not required or a job.</li> <li>● Individuals stated that they are treated with respect.</li> <li>● Individuals reported being able to go on all activities they choose.</li> <li>● No rights restrictions were reported by individuals.</li> </ul>
<b>Staff Summary:</b>	<p><b>Summary of Interviews: (2/16/2022):</b></p> <ul style="list-style-type: none"> <li>● Staff get trained through the orientation process, annually and whenever is needed.</li> <li>● Staff gather individuals' input throughout the week in order to create a schedule that is accommodating to their interest.</li> </ul> <p><b>Summary of Interviews: (11/2022)</b></p> <ul style="list-style-type: none"> <li>● Staff and individuals reported that going on activities is all a matter of individual choice. No one is forced to participate in anything.</li> <li>● Staff reported that group size is typically 4-5 individuals when they go out in the community but varies depending on the day/activity and interest.</li> <li>● Staff reported being trained on “person first” language after being told what “person first” meant. Staff look at each individual as a person and everything they do is person-centered.</li> <li>● Staff reported that all individuals are able to participate in all activities regardless of their disability. They will find a way to make it work for everyone.</li> <li>● Staff mentioned one individual who is known to take things that don’t belong to them. Staff will ask permission to look through their belongings before the individual leaves to ensure that nothing goes home with them that is not theirs. The individual has agreed to this procedure.</li> </ul>

<b>Ongoing Remediation Activities</b>	
Current Standing:	<input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan

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<b>Continued Remediation Activities</b>	N/A
<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: January 3, 2023 - January 18, 2023</b>
<b><i>General Comments Received</i></b>
<p><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&amp;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> <p><b>Response:</b> 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> <p><b>Comment:</b> 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> <p><b>Response:</b> 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.</p>

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**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.

**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:**



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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:**

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

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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**

**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.**