

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:	Legacy House of Ogden	Site ID:	113
Site Address:	5526 S Adams Ave, Ogden, UT 84405		
Website:	https://legacyogden.com/		
# of Individuals Served at this location regardless of funding:	70	# of Medicaid Individuals Served at this location:	24
Waiver(s) Served:		HCBS Provider Type:	
<input type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input type="checkbox"/> Community Supports <input type="checkbox"/> Community Transition <input checked="" type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> 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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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 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:	10/25/2019 (In Person)
Description of Setting:	
Setting is an assisted living and memory care facility located on a busy road with access to public transportation . It is near stores out in the community.	
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>Onsite Visit Summary (10/25/2019):</p> <p>The setting does have a resident counsel to give input towards the monthly activities calendar. Residents are able to come and go from the setting independently. However, the <i>Memory Care</i> unit is a locked area; there is documentation in place for individuals in memory care level of care requiring restricted exterior doors. The NCW waiver transportation services (medical and non-medical) are utilized for individuals.</p> <p>The setting does not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services. There are limited active measures</p>

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	<p>taking place to facilitate activities outside of the setting the Administrator did report there was opportunities to go into the community once weekly. Although, this does include community drives; the van ride does not facilitate any community integration thus does not demonstrate compliance towards integration. The Administrator also reported community outings typically consist of shopping trips and community events.</p> <p>The setting did not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities. There were limited active measures taking place to facilitate activities. The setting did not have a process for individuals to give input and control their schedule and activities. The resident council did not include all the residents; residents were able to make suggestions but the resident council did not have to consider them.</p> <p>Remediation Plan Summary:</p> <p>Locks will be placed on Medicaid bathroom doors; staff will knock and receive permission before entering a residents room. Residents will be given access to snacks and food in their apartments 24/7. A dietician will come each month and review resident diets. There will be a suggestion box right as you walk into the activity/dining area. The suggestion box is a way for residents to provide feedback who are not comfortable speaking up at the resident council meeting. The setting holds a monthly resident council meeting where they solicit feedback from residents regarding activities. Their Activities Director also goes room to room once a month to solicit activity ideas from their residents. This is how they ensure each resident is accessing the community to the level that they desire. Individuals are able to access the community via public transportation, Medicaid transportation, or the setting transportation. There is a UTA bus stop directly across the street from the setting. Individuals are allowed to come and go from the facility as they choose and are encouraged to go into the community with their natural support. This has brought this setting to be compliant and was done by a desk review with the State.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Resident Council meeting notes_Legacy House of Ogden ● Letter to residents Legacy House of Ogden
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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 (10/25/2019):</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>

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
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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:	Onsite Visit Summary (10/25/19): There is no personal information posted. It was observed, in person, that staff communicate with respect. Personal care services are performed with an individual's privacy in mind. Individuals reported staff knock prior to entering their living space. Residents are able to have their private phones, computers, personal devices, etc.

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:	Remediation items from the 2019 visit were validated by a desk review with the State and did not require an additional visit.

Input from Individuals Served and Staff

Individuals Served Summary:	Summary of interviews (19) : <ul style="list-style-type: none"> ● Individuals interviewed reported they can sit anywhere in the dining room ● One individual reported there are always multiple choices for meals; the dining room is restaurant style and they order off of a menu ● One individual reported they are able to participate in meal planning through the resident council ● Individuals reported they worked with their case manager to choose this setting ● The setting may not optimize autonomy and independence in making life choices ● The setting does not have a process in place for all individuals to participate in meal planning ● One individual reported she does not feel that opinions are heard by the resident council ● Residents are able to decorate their rooms as they choose ● Single occupancy rooms only (except for couples, by choice) ● Individuals reported they could have visitors at any time ● No restrictions on visitors in place ● One individual interviewed reported that she does not get out into the community as much as they would like to because there are not too many options
	Staff Summary: <p>Summary of interviews (2019) :</p> <ul style="list-style-type: none"> ● Staff are knowledgeable about individuals and their needs and wants. ● Training on individual rights and experiences has occurred within the last year.

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

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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:

Stakeholder Workgroup Review: January 3, 2023 - January 18, 2023
<i>General Comments Received</i>
<p>Comment: 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> <p>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.</p> <p>Comment: In many instances, the packages state that the setting is compliant based on a remediation plan and indicate that a validation visit will be completed in the future. Many of the reviews state that individuals are not getting into the community to the degree they would wish and that there are still institution-like restrictions on individuals in the settings. It is difficult for stakeholders to provide feedback on whether a setting has the characteristics of an HCBS setting if it is still in the process of remediating. The remediation plans seem to lack the detail necessary to assist a setting with becoming compliant and the short time frame until the final compliance deadline leads us to believe that these sites will not remediate in time.</p> <p>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.</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:

Comment:

One commenter stated Legacy House of Ogden 113, is an assisted living facility in Ogden, Utah. The materials provided by the State in the evidentiary packet do not demonstrate that the identified setting currently demonstrates the qualities of HCBS. The validation packet states the facility is currently in compliance. However, there has only been one site visit that took place in 2019. The site visit showed that individuals did not have adequate opportunities for community integration. The only outings described were scenic van rides and shopping. The remediation plan did not detail how the setting would address the lack of integration. The validation packet does not include any information to show the facility increased opportunities for community

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integration for residents and does not provide adequate information to demonstrate the facility meets the requirements of the rule.

Response:

The State agrees the information presented in was not clear. The information has been added to the heightened scrutiny document above under prong 3 A.

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

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.