

# 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>	Transitions, Inc.		1545
<b>Site Address:</b>	29 E Center St Blanding, Utah 84511		
<b>Website:</b>	N/A		
<b># of Individuals Served at this location regardless of funding:</b>	12	<b># of Medicaid Individuals Served at this location:</b>	12
<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>			

# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

community services consistent with their person centered service plan <input type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting <input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include: <ul style="list-style-type: none"> <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>	Because of the severe impact from COVID on the provider and the surrounding community, the provider has applied for an extension through the Corrective Action Plan (CAP) process. A visit will be conducted once a timeline has been determined.
<b>Description of Setting:</b>	
<p>The setting is a day service program located in Blanding, Utah. The building where Day Support Services are conducted is located in the middle of the community on main street.</p> <p>Transition Inc. 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. As this was a very intensive and optional process, they did not go through the additional review onsite visit with the State in 2019.</p>	
<b>Current Standing of Setting:</b>	
<input type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above  <input checked="" type="checkbox"/> Approved Remediation Plan: the setting has an approved remediation plan demonstrating how it will come into compliance. The approved timeline for compliance is: The provider has applied for an extension through the CAP process. Once the State has reviewed that application a timeline will be determined.	

## 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 type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<b>Transformation Plan Summary:</b>

# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<p>The building where Day Support Services are conducted is located in the middle of the community on Main Street. Individuals are included in making weekly schedules that include their individual interests. Individuals go out into the community for activities that include: social skills, job observation, volunteering, money skills, personal hygiene skills, etc.</p> <p>Transitions is seeking to gain VR certification. Until then, individuals will be referred to the local VR office for possible referral to other providers of employment services. One staff has completed ACRE training and others are being scheduled. The setting hopes to have trained staff ready to go when VR certification is achieved.</p> <p>Community mapping has been completed and locations where volunteering can take place have been identified. A pilot community integration program was scheduled for 9/20, Staff have discussed with individuals what their opportunities are to volunteer in the community as a part of that program. Individuals will be involved in creating the schedules.</p> <p>Individuals bring money for meals when eating out. They make choices about what they purchase within the bounds of the funds available. They also use personal resources to pay for fees for activities they want to be involved in. Activities are taken from the individual's personal plan and from the PPPs that have been done. The PPPs involve an interview with the individual. Structured schedules will be developed by customers to include interests. Schedules will include activities with non-disabled individuals. Individual schedules will include routine visits to activity sites to facilitate relationship development. Staff will focus on providing training and support to assist individuals to gain skills within a community based setting. If someone volunteers at a food bank, for example, staff will train on food shelving, packing, distributing, etc.</p> <p>No public transportation is available in the area. The Day Support Provider is responsible to provide transportation into the community if it is too far to walk. Individuals are supported to gain safe travel skills in the community when walking.</p> <p><b>Policy/Document Review:</b></p> <ul style="list-style-type: none"> <li>● Community Participation Service Manual</li> <li>● Positive Personal Profile</li> <li>● Reintegration Plan</li> </ul>
--	--

<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>	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. The day program is the only option available in the surrounding area.

**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.**

# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

<b>Compliance:</b>	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Transformation Plan Summary:</b> The setting developed and implemented a multi-faceted approach to providing information and educating to the general public, businesses, civic organizations, families and staff regarding integrated community inclusion for adults with disabilities and for future consumers.</p> <ul style="list-style-type: none"> <li>● Individuals have input on schedules and can decide on what activities they want to participate in. If a customer declines to take part in an activity they are given the opportunity to take part at a later date.</li> <li>● Positive Personal Profile interviews are conducted, so that individuals can contribute ideas to scheduling and activities.</li> <li>● Services are individualized and staff receive training on confidentiality, legal rights of people with disabilities and abuse, neglect, and exploitation prevention.</li> </ul> <p><b>Policy/Document Review:</b></p> <ul style="list-style-type: none"> <li>● Community Participation Service Manual</li> <li>● Positive Personal Profile</li> <li>● Reintegration Plan</li> <li>● Staff Training</li> </ul>

<b>Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.</b>	
<b>Compliance:</b>	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	Transition Inc 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. The provider has applied for an extension through the CAP process and the State will work with them to validate their transformation plan.

## Input from Individuals Served and Staff

<b>Individuals Served Summary:</b>	No individuals interviewed.
<b>Staff Summary:</b>	No staff interviewed.

<b>Ongoing Remediation Activities</b>	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
<b>Continued Remediation Activities</b>	The provider has applied for an extension through the CAP process and the State will work with them to validate their transformation plan and their CAP.

# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

<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:</b> January 3, 2023 - January 18, 2023
<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> <p><b>Comment:</b> 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</p>

# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

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:**

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

# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

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 reported that the setting is doing great! Transitions provides ways to work, get out to the library, to classroom settings, to lunch, and go bowling. In addition, they have musicians, crafts people, and councilors come in. They have friendship dogs come in. Since it is a setting of mixed abilities, the Transitions works very hard at providing a way for some to work and yet protect the more medically fragile from COVID and other colds and flus. There are several clients who stay at home when those diseases are going around. It is also a setting of mixed parent and guardian wishes. Transitions seem to work their way through them without difficulty. This site should be lauded for a job well done!

**Response:**

Thank you for your positive feedback on the setting.

# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

**Comment:**

One commenter reported the following. I am the mother and legal guardian of a client at Transitions. I request the HCBS Settings Rule requiring providers to expose clients to the broader community be suspended during the winter months of this ongoing pandemic. They are a vulnerable population and deserve protection. COVID may be less of a threat for young and healthy individuals but not for our group at Transitions. COVID-19 continues to kill over 500 people a day in the United States and has claimed over a million to date. It is simple common sense to minimize exposure by holding tight till the weather warms and they can enjoy outside community outings. Care providers at Transitions work responsibly and diligently every day to keep everybody safe and have done a beautiful and commendable job of it, until recently, when many were infected with the COVID-19 virus and their families, which is directed attributable to these community based exposure regulations! I believe the care providers and the families of the clients are in the best position to assess the risk/benefit of the community outings and not, and I repeat, not, across the board Federal regulations! I am an engaged and active parent and completely support fun, educational, and enriching activities, both inside and outside of the Transitions facility. Look at our track record, from concerts, to special proms, edge of the Cedars museum programs, lunches out at restaurants, lectures at the college, balloon festival outings, and arts and crafts markets, the list goes on! Transitions needs to be honored for its efforts in providing a loving, compassionate, and healthy environment for our loved ones all these years. We need to cautiously emerge from the pandemic restrictions! I conclude: I expect and welcome oversight, through inspections and training, to ensure safety and well being and I understand Federal and State funding must be regulated and documented. What I urge you to consider: Do not throw the baby out with the bathwater. Do not make these regulations so convoluted and time consuming that providers have no time or energy left to do the job of caregiving of those that need it most. And please do not disregard the ongoing health risks of this pandemic to us at Transitions in Blanding, Utah.

**Response:**

The State appreciates the feedback and encourages providers to work with the individual's planning team to seek the level of community integration the individual prefers. The Settings Rule encourages individuals to participate in differing types of life experiences by ensuring options are available to them when this desire is expressed. It is not intended to force individuals to engage in activities which make the individual served uncomfortable if that is not their preference and to ensure individualized rights restrictions are in place when required.

**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



# Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

ongoing monitoring will aid to reinforce core tenants of the Rule as well as the development and dissemination of best practices. The State encourages the submission of providers who are believed to be non-compliant with requirements of the Settings Rule, including the elements/criteria which are not sufficiently meeting expectations.

## Summary of Stakeholder Workgroup Recommendation:

**Stakeholder Workgroup Review:** January 3, 2023 - January 18, 2023

We only got a response from one workgroup member. Their comments are noted above.

## Utah's Recommendation

**Recommendation: Compliant**

**At the time the heightened scrutiny packet was submitted for public comment, the State had not completed the final validation visit. The State has since completed the final validation visit and determined the setting has overcome the effect of isolating individuals from the broader community and is in compliance with the HCBS Settings Rule.**