

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	Site ID:	263
Site Address:	189 E 350 S Clearfield 84015		
Website:	https://www.danvilleservices.com/locations/utah/		
# of Individuals Served at this location regardless of funding:	19	# of Medicaid Individuals Served at this location:	18
Waiver(s) Served:	HCBS Provider Type:		
<input checked="" type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input checked="" type="checkbox"/> Community Supports <input checked="" type="checkbox"/> Community Transition <input type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> https://medicaid.utah.gov/ltc/	<input checked="" type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living <input checked="" 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:			
<input checked="" type="checkbox"/> A. Individuals have limited, if any, opportunities for interaction in and with the broader community and /or the setting is physically located separate and apart from the broader community and does not facilitate individual opportunity to access the broader community and participate in community services consistent with their person centered service plan			

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<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:	9/27/19 (onsite)
Description of Setting:	
The setting is a day support and employment program located in Clearfield in a residential community, close to community resources such as restaurants, parks, stores, etc. The setting is a day support program with a focus on employment.	
Current Standing of Setting:	
<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: Remediation plan will be completed in December 2022, Validation Visit is also scheduled for December, 2022.	

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 onsite visit, it was determined that the setting did not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services. The state suggested better planning in regard to activities to make them more meaningful to individuals to ensure integration into the greater community and a better effort of facilitating activities outside of the setting. Staff reported they went out into the community a maximum once or twice weekly. Some examples of activities individuals reported they</p>
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Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<p>participated in were to look at trains, shop for toys, go out to eat, shopping, movies, go for walks, going to parks, go to the library.</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>Documents/Policy for Review:</p> <ul style="list-style-type: none"> ● Weekly calendar ● Training Documentation
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Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	Onsite Visit Summary (9/2019): 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.

Prong 3 C: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices. The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint. The setting ensures the individual has the freedom and support to control his/her own schedule and activities.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	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. No observed or reported restrictions. Both staff and Individuals reported individuals chose what activities they participated in. The setting had a formal process for individuals to give input towards their schedules. Individuals are able to spend their money how they want when they are in the community and the individuals reported staff treat them with dignity and respect. Individuals are able to move between groups depending on what activities they want to participate in and each group chooses their own activities.

Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	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. Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will also be reviewed through ongoing monitoring activities.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Individuals interviewed stated they were able to choose which activities they participate in and that they control their own money. ● Individuals mentioned they had the option to choose the provider and interact with those of their choosing. ● Individuals are able to eat snacks of their choosing. ● There is a schedule of activities but individuals can choose not to participate.
Staff Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Staff stated they do not talk about individuals in private and that they show them respect. ● Staff mentioned that individuals are able to choose their own schedule and participate in weekly planning. ● Staff stated they have received HCBS settings training and are familiar with expectations.

Ongoing Remediation Activities	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	The provider has identified areas of remediation and the State will conduct additional visits to determine compliance.
Ongoing Monitoring Activities	<p>The State will use the following tools to ensure settings continue compliance with the Settings Rule criteria:</p> <ul style="list-style-type: none"> ● Conducting individual served experience surveys ● Addressing settings compliance during the annual person centered service planning process ● Ongoing provider training and certification ● Monitoring through critical incident reporting ● Case Management/Support Coordinator visit monitoring ● HCBS Waiver Reviews/Audits

Summary of Stakeholder Workgroup Comments Received and State Response:

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

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Setting Specific Comments:

Comment:

One commenter stated Danville Services of Utah is a day support and employment program located in Clearfield Utah. It provides services to 18 waiver participants. The materials provided by the State in the evidentiary packet do not demonstrate that the identified setting currently demonstrates the qualities of HCBS. For stakeholders to provide effective feedback, the state needs to present stakeholders with final validation of compliance with the rule rather than vague unvalidated remediation plans. The packet is rife with references to the validation visit, but there is no information present to confirm that the visit has occurred, nor any specificity on what the state of the remediation plan was at the time of the visit. Without that information, there is no way to provide adequate feedback, nor to demonstrate compliance. Also, the onsite visit occurred in 2019 prior to the pandemic. Given the degree of change that so many providers experienced in their operating models from 2020-2022, without a validation review, the remediation plan is likely to be out of date.

Response:

The State agrees the information presented on the 2019 onsite visit was not clear. The information has been added to the heightened scrutiny document above under prong 3 A and 3 C. The State also agrees that much has changed since the start of the pandemic which is why, as indicated on the heightened scrutiny package, a validation visit was conducted in December (12/13/22) and again in January (1/27/23) to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined compliant at the validation visit.

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.

General Comments Received:

Comment:

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

The materials provided by the State in the newly-released evidentiary packets raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a final desk review and/or virtual review instead of an in-person visit. We believe that this is insufficient to confirm that a setting does not isolate individuals or have the indices of an institution.

Response:

The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process.

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:

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

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 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

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

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:

Comment:

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Response:

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Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

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:

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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.