

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Settings that Demonstrated Compliance by July 1, 2021

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 had initially been identified as requiring to go through the heightened scrutiny process as part of the compliance process. They were able to demonstrate compliance with the settings criteria by July 1, 2021, so they are not required to go through the entire heightened scrutiny process, but they are required to go out for public comment.

Additional information on Heightened Scrutiny can be found here: [HCBS Settings Rule: Heightened Scrutiny](#)

Setting Information

Site Name:	Ability and Choice Services, Inc.	Site ID:	342
Site Address:	3855 South 500 West, Suite E, Salt Lake City, UT		
Website:	https://www.abilitychoice.org/		
# of Individuals Served at this location regardless of funding:	33	# of Medicaid Individuals Served at this location:	33
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"/> Supported Employment <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:			

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	<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 <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"> • 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:	9/24/19 (in person), 3/10/21 (virtual), 6/24/21 (virtual)
Description of Setting:	
This is a day support setting located in an area that is accessible to other businesses in the community. There is a Maverick across the street as well as other restaurants and businesses within close proximity. The County Animal Shelter is nearby. This is primarily a business area with office space or warehouse type setups for the local businesses. The setting no longer does any contract paid work anymore as part of their services.	
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:	Onsite Visit Summary (9/2019):

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The setting is located in an area that facilitates integration with the greater community with transportation. There is a Maverick within walking distance for individuals that are independent. There were a variety of activities offered and individuals seemed to want to participate in the offered activities. Individuals were a part of the planning process. Individuals served are able to come and go as they please. There was ample transportation utilized to get individuals into the community. Individuals regularly volunteer at different volunteer sites. During the first onsite visit, there were some concerns identified that the setting needed better planning in regards to activities to make them more meaningful to individuals to ensure integration into the greater community.

Remediation Plan Summary:

The setting implemented a process to ensure activities were meaningful and individualized. Each individual who attends the Day Program Hub has goals that are collaboratively assessed by themselves and their support team during the PCSP process. After we receive the PCSP documents from the Support Coordinator, programming goals are written to match what was designated by the individual and their team. Each goal has specific instructions, tailored to the individual being served, on how to support them as they are learning skills in the community or at the day program hub. Staff are required to review these and sign off that they understand the expectations prior to working with the individual. Staff are expected to engage each person's goals throughout each activity regardless of who else may be in attendance. The focus is on individualized progress in all settings.

Onsite Visit Summary (3/2021):

Job sampling was conducted before COVID-19 restrictions were put into place. Leadership reported at this time, only necessary trips are taken into the community and they are limiting trips to within 15 minutes to limit the time spent in the vans. Virtual experiences had not been explored and individuals expressed they wanted to be in the community to a greater degree. The setting was provided with technical assistance on how to expand their community integration activities during the COVID-19 pandemic.

Remediation Plan Summary:

The setting provided training regarding employment, community access, self determination, the settings rule, and anti discrimination and harassment.

Onsite Visit Summary (6/2021):

The setting primarily uses company vehicles to transport individuals into the greater community beyond the local community that facilitates integration with the greater community. The setting facilitates community integration activities regularly for individuals and has a formal process for individuals to create their schedules and determine what they participate in each day. Individuals are able to choose who they participate in activities with. Community interaction and integration is encouraged by staff. Services are individualized when in the community. Competitive Integrative Employment is promoted and encouraged by staff.

Policy/Document Review:

The following were reviewed for compliance:

- ACS Policy and Procedure Manual
 - 102.0 Mission Statement

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	<ul style="list-style-type: none"> ○ 203.0 Participant Bill of Rights ○ 204.0 Person Centered Services Planning ○ 401.0 Day Training Mission Statement ○ 407.0 Activities ● Staff Training Logs <ul style="list-style-type: none"> ○ YouTube Trainings <ul style="list-style-type: none"> ■ Settings Rule ■ Anti-Discrimination and Harassment
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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 (9/2019): 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> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● ACS Policy and Procedure Manual <ul style="list-style-type: none"> ○ 204.0 Person Centered Services Planning

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:	<p>Onsite Visit Summary (9/2019): Individuals were able to move throughout the setting. There was no observed personal information posted in the setting. Individuals were able to eat when they wanted and were able to eat out as well. Staff adjusted activities to individualized desires. Schedules were not regimented and individuals were given the option whether or not to participate. There were four different rooms at any given time with different activities occurring that individuals could move between. Staff are trained and empowered on how to offer choice and plan activities along with handling emergencies in the community and utilizing resources in the community.</p> <p>Onsite Visit Summary (3/2021): There was a concern identified during the onsite visit that the setting had become overly restrictive during the COVID-19 pandemic. Restrictions were placed across the board and individuals were not given the opportunities to make any individualized decisions about the risks they were willing or unwilling to manage in regards to accessing the community. Staff reported that individuals are divided into groups based on their "functioning levels" and</p>

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	<p>“capabilities” and it was reported that individuals are placed in these groups by the setting and they are not able to move between the groups. There were additional concerns reported by individuals served that they did not get to choose their activities and that staff scheduled their activities for them. It was further reported they no longer were able to go to Maverick to make their own purchases and now staff does this for them.</p> <p>Remediation Plan Summary: The setting provided training regarding employment, community access, self determination, individuals’ rights to access and manage their own funds, the settings rule, and anti discrimination and harassment. The State provided technical assistance on how to establish groups in a person-centered manner and move away from a segregating practice. The setting provided remediation of a new process based on individuals preferences and needs and gave individuals the ability to request to move groups.</p> <p>Onsite Visit Summary (6/2021): The setting provided access to the community on a daily basis in a way that was meaningful to the individuals served in the setting. Individuals reported they were learning how to use public transportation if that was something they were interested in and were in control of their personal funds and encouraged to interact with community members and make their own purchases when in the community. Individuals also reported they felt heard in the formal schedule making process and there are now activities they are interested in participating in on the calendar. Groups were no longer based on functioning level, but were person-centered and individuals were able to participate in activities both at the setting and in the community with those that they chose to.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● PCSP Training ● YouTube Trainings <ul style="list-style-type: none"> ○ Settings Rule ○ Anti-Discrimination and Harassment ● Staff Training Logs ● Rec Fund Options Form ● ACS Employee Handbook <ul style="list-style-type: none"> ○ 902.0 Orientation Training
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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:	<p>Overall, all segregating and institutional concerns were addressed through the remediation process and the State was able to validate that the areas were remediated through the validation visit process.</p> <p>Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will be reviewed through ongoing monitoring activities.</p>

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Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (9/2019): Individuals reported they did go out into the community. Individuals reported they are able to choose what activities they participate in. Multiple individuals reported they do not interact with others while in the community. One individual reported they do not like some of the other people in their group.</p> <p>Summary of interviews (3/2021): Individuals reported they do not usually go out of the building because of COVID. Individuals reported they wished they could go out into the community more but they were told they could not because of COVID. One individual reported they used to go to Maverick, but they are now allowed to anymore. If they want something, staff will go and buy it for them. They reported this makes them “sad.” Individuals reported that staff make the calendar and determine what they do. One individual interviewed reported they get to go on walks around the program building.</p> <p>Summary of interviews (6/2021): Individuals reported they go out into the community to places of their choice. Individuals reported they get to make their own purchases when in the community. One individual reported they are able to change groups if they want to for different activities. Individuals did not report any concerns with rules or restrictions.</p>
Staff Summary:	<p>Summary of interviews (9/2019): Staff reported they receive training on keeping individual’s information private. Staff reported they receive training on using person-first language and using respectful communication. Staff reported individuals are able to decide what activities they participate in. Staff reported they have been trained on the HCBS Settings Rule.</p> <p>Summary of interviews (3/2021): Staff reported they are not going out into the community right now because of COVID-19. Staff reported they are going to Maverick for individuals and making their purchases for them. Staff reported that the groups are decided based on the level of needs. One staff member reported that “those with the most severe disabilities and need constant attention are put in the same group.” One staff member reported that a group home or parent would have to give permission for an individual to request to eat at an earlier or different time.</p> <p>Summary of interviews (6/2021): Staff reported individuals are able to join other groups if they want to join their activities. Staff reported outings are centered around what individuals are interested in learning about as well as job sampling. Staff reported program vehicles are utilized for the majority of transportation into the community but public transportation is used as well.</p>

Ongoing Remediation Activities

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Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
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: October 24 to November 28, 2022
No comments received

Summary of Public Comments Received and State Response:

Public Comment Period: October 24 to November 28, 2022
<p>Comment:</p> <p>One commenter stated that at the March 2021 site visits, the State observed the settings had become overly restrictive in response to the COVID-19 pandemic. The State found that these concerns were remediated by June of 2021 after a virtual visit. We had concerns that the State has not conducted in person meetings with clients and staff since 2021. Our state has experienced multiple COVID-19 surges since this time and it's unclear if the noted restrictions have either been lifted or put back into place. We would urge the state to complete an in person assessment to ensure compliance with the rule.</p> <p>Response:</p> <p>The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process.</p>

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: October 24 to November 28, 2022
The Stakeholder Workgroup recommended that the heightened scrutiny packet is ready to be submitted to CMS (100% of those that responded).

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Utah's Recommendation

Date of Recommendation: 1/12/23

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.