

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Setting Information

Site Name:	EnableUtah	Site ID:	676
Site Address:	535 W. Stockman Way, Suite A, Ogden, UT 84401		
Website:	https://www.enableutah.org/		
# of Individuals Served at this location regardless of funding:	113	# of Medicaid Individuals Served at this location:	88
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 type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> https://medicaid.utah.gov/lc/		<input checked="" type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living	
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: Setting has the effect of isolating individuals from the broader community <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 community services consistent with their person centered service plan <input checked="" 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:	12/10/2021 (Virtual onsite visit) Note: The Department of Health also conducted a visit to tour one of the previous service locations and conduct a pre-assessment of the proposed new Day Support Program at this setting location. 4/29/21 (Virtual interviews) 5/4/21 (Virtual visit)		
Description of Setting:			
The setting is a day support and employment program located in an area approximately ½ mile from downtown Ogden, close to community resources such as restaurants, parks, stores, etc. This setting is considered a new setting and thus is required to be Settings Compliant upon providing services to HCBS Waiver individuals.			

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EnableUtah started providing services at this setting on March 2, 2020. The program shut down shortly after due to the COVID-19 pandemic and the State was unable to complete the process to determine compliance at that time. At this time, the setting is providing services to a limited number of individuals. The State conducted a virtual onsite visit on December 10, 2021 to complete the compliance process.

The provider designed and built the setting specifically for this purpose. Leadership designed the building to look like any other place of work in the area. The facility is bright, inviting, and did not stick out as a service provider facility for people with disabilities. The upstairs is primarily for administrative purposes. Downstairs includes a Community Resource Room and a lending library that is open for the community to use. There are also small meeting rooms, a first aid room, a changing room, the main day program space, lunch room, and warehouse area. The warehouse area includes a production room, a clean room, a secured shredding area, and training floor.

Where the setting is located is part of a larger vision that the City of Ogden has for the development of the west side of Ogden. Future plans include creating more green space in the old rail yards, museums, and a walking trail that will connect the Ogden Business Exchange development area (where this setting is located) to downtown Ogden. The west side of Ogden will be transformed by the City with a new, robust, and expanded community center. Currently there are a few immediately surrounding businesses (bike business, restaurant and distillery, research warehouse).

Although the immediate area the setting is in is still under development, the surrounding area of Downtown Ogden provides community resources within close proximity.

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: Met Remediation Plan demonstrating will be compliant 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: Met Remediation Plan demonstrating will be compliant 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: Met Remediation Plan demonstrating will be compliant

Summary: **Onsite Visit Summary:**
The setting is located in an area that facilitates integration with the greater community. Public transportation including UTA bus stops and a train station within short walking distance is currently available and there are additional steps that are in the works to provide more public transportation options with the continued growth of the area. For those that require or want it, training on how to access public transportation is provided on a rolling schedule. In addition to

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the surrounding businesses, there is a bike path close that has a dog park which individuals access frequently. The setting has several company vehicles, including small passenger buses, minivans, and sedans, to provide for community access as well. Community activities are offered daily for individuals to choose from. Individuals can access the community on a daily basis if they choose to do so. Staff are trained to promote skill building and progress on individualized goals when in the community.

Some examples of activities include eating out at restaurants of their choice, shopping at various stores, library visits, volunteer work, job exploration activities, museum visits, community classes (such as Paul Mitchell), etc.

The setting does not restrict how, where, or when anyone chooses to spend their money.

The setting has a current process in place to promote competitive integrated employment (CIE). They have an assessment process, skill building in house and in the community, connect to Pathways or Vocational Rehabilitation, then work on getting jobs in the community.

There were some identified concerns surrounding employment. Direct Support Professional staff do not communicate individual needs and preferences to the other teams at the setting (especially in regards to employment desires and interests). There is no current process to pass on this type of information and ensure that information learned by one team can be passed on to another team so that competitive integrated employment can be pursued by those that desire it. There does not seem to be a choice for individuals on which work tasks or skills they are working on. Individuals are assigned to which work they do daily and it can change daily depending on what contracts are available to work on. Individuals are not given prior notice to what they are assigned to. If they do not want to work on the assigned task for the day, they must give a 24 hour notice to make a change. There does not seem to be a thorough understanding of the new Employment Preparation Services (EPR) code and how to transition into the code for Enable's pre-vocational services. Note: At the time of the visit, guidance on how to transition to EPR had not yet been available to the setting. Guidance was made available in March of 2021.

Remediation Plan Summary:

Effective immediately after receiving the State's feedback, the setting implemented a new system to communicate with all direct support professional staff and teams. Within this new system an email distribution list has been created where any employee can email all of the direct support professionals' individual needs and preferences that they become aware of. The individual's case manager will then notate this information in the individual's file in Therap, which will send out a notification that additional information has been added to their file. Therap records when each member of the support team reviews this newly added information. Additionally, each team is conducting a weekly team meeting to discuss those individuals that they serve, with a monthly meeting of all teams involved meeting to further discuss and follow-up on all served by the setting.

Staff validation interviews completed on 4/29/21 confirmed this process has been implemented.

Effective immediately after receiving the State's feedback, the setting has instituted a change to this procedure, whereby all contracts that are scheduled to be worked within the week will be listed next to the job board. Additionally, assignments will be made by lunch time the preceding day, with the requirement that any changes that an individual wishes to make about the next days' work, be made known to a production supervisor prior to going home for the day and

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those changes will be readily granted. If requests are being continually made that are not in the best interest of the individual, their plan goals, and the advancement that is necessary to gain community-based employment, a meeting with the individual's support team will be called to discuss these concerns.

Staff validation interviews completed on 4/29/21 confirmed this process has been implemented. Individuals interviewed were not consistent in reporting their ability to choose the contract they worked on. Individuals did confirm they communicate with staff on their work preferences.

A validation visit was conducted on 5/4/21 to observe this process. Observation confirmed that staff allowed each individual scheduled to work the next day to pick which contract they wanted to work on. Prior to individuals coming up to the board, staff randomly picked individual's names out of a container to determine the order in which individuals would pick. Then staff called up each individual, showed them which contracts were available to work on the following day, and asked them which they would like to work on. Staff placed their name under the contract they chose. Each contract listed the number of slots available for each contract. Once a contract is filled, staff writes "closed" under that contract and then no longer lists that contract as an option for the remaining individuals.

All direct care staff and managers attended a meeting with DSPD regarding the new EPR code requirements and they have a plan to ensure that the transition of all individuals, who it is applicable to, to the EPR code will occur within the given timelines of DSPD. EnableUtah already has ACRE certified or Job Coach certified staff. Only those staff members that hold an ACRE certification will be assigned to work with individuals that are being provided services under the EPR code. Individuals served by Enable are provided the opportunities to spend time engaged in community activities, such as job tours, learning how to navigate public transportation, etc. Individuals are being taught general employment skills.

EnableUtah understands that the EPR services code is available for 24 consecutive months and the goal of Enable is to strive to find CIE for these individuals within the 24 month time limit. As EPR is a new service code, DSPD will continue to work with providers, including Enable to ensure there is a clear understanding and shift to a more integrated pre-vocational service model. EPR supports the further transformation of pre-vocational services in Utah. Settings Rule compliance for settings established before August 1, 2020, when EPR was established as an available service, is not reliant on meeting the EPR criteria.

Individuals interviewed 4/29/21 confirmed they are able to access the community and pursue employment in the community if they desire. They reported they are involved in the monthly planning process to determine which activities are added to the calendar and they choose which activities they participate in. One individual specifically reported they are able to leave and go to lunch and activities with a friend when they want to. They reported they just need to let staff know they are leaving the building.

Policy/Document Review:

The following were reviewed for compliance:

- Community Based Training Form
- Sample Monthly Activity Schedule
- EPR Code Transition Plan

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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: The setting does not restrict access to non-disability settings. The setting allows more flexibility now that the work program and the day program are located at the same location. This allows more individualized schedules between the two programs. Individuals are able to control how much time they spend in the community versus how much time they are spending on work activities within the setting. Individuals are now able to spend partial days focused on work activities and community integration versus having to choose one or the other as it was set up previously. There is a formal process for individuals to choose their activities and individualize their schedules. There have been great efforts to provide choices and options to individuals toward their community integration activities (especially during the COVID-19 pandemic). Prior to any admission, a tour of the facility is provided to the individual and their family or guardian. At this tour, all of the setting's offerings as well as limitations are discussed, so the individuals can make an informed choice on whether or not to attend the program. Once admitted, individuals can complete a Change of Program Request (with support if needed) form which initiates a conversation with the individual and their support team.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Change of Program Request Form

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: Individuals are able to move throughout the setting. There are secure work areas (like shredding) that require a key card to access. This is a requirement of the work that is completed in that area. There are outdoor areas (large grass areas), indoor classrooms, program space, changing rooms, bathrooms, break/lunch room, and designated work areas. There was no personal information posted in the setting. There were no concerns with restrictions or modifications observed or reported at the setting. Individuals are able to eat when they want and are able to choose to eat out as well. Activity schedules were posted and individuals were able to choose each day what they would like to participate in.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Client Handbook

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

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Summary:	<p>Overall, all identified concerns were addressed immediately on the setting’s submitted remediation plan. In addition, leadership has a plan in place to train all of their staff on Association of Community Rehabilitation Educators (ACRE) so they can continue to better support integration towards competitive integrated employment. There are current staff that have already gone through the training. ACRE is a national membership organization for trainers and educators in the field of employment for people with disabilities.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Home and Community Based Test and Retest Results for staff
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Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (12/10/21):</p> <ul style="list-style-type: none"> ● Individuals reported they were able to control their spending money. ● Individuals who worked at the setting reported they did not choose which tasks or skills they worked on as discussed, this was addressed in 3A above. ● Individuals reported they were able to choose the activities they participate in (other than work activities). ● One individual reported they got to go out into the community as much as they wanted to. ● Another individual reported they get to do community activities as much as they want to, other than a trip or cruise to the Bahamas. They explained that staff talk to them about the schedule and what they want to do. ● One individual reported they did not like the work program and was moving to Salt Lake City and would attend a different program of their choice. ● There were no concerns reported about restrictions or modifications. ● Overall, individuals reported they liked coming to the program. <p>Summary of interviews (4/29/21):</p> <ul style="list-style-type: none"> ● Individuals reported they communicated with staff their work preferences ● One individual confirmed they can change jobs if they do not want to work that job ● Another individual reported they did not like shredding and they fall asleep when they have that job. They reported when they were assigned that job, they were not able to change. ● Another individual reported they don’t like working on trays and they are able to tell staff and then they can do shredding. ● One individual reported they were able to leave when they wanted to go out with a friend (typically lunch and an activity). ● Individuals reported they were involved in the monthly activity planning process and they were able to choose which activities they participate in.
Staff Summary:	<p>Summary of interviews (12/10/21):</p> <ul style="list-style-type: none"> ● Staff expressed there has been a significant change towards services being more community focused since moving into this setting. ● The staff interviewed identified there was no clear path of communication within the different teams (especially regarding employment desires and needs) as discussed in 3A above. <p>Summary of interviews (4/29/21):</p>

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	<ul style="list-style-type: none"> ● Staff interviewed were able to confirm the process to communicate an individual's desire to pursue competitive integrated employment ● Staff interviewed confirmed the process used for individuals to choose daily what contract they want to work on the following day ● Staff reported that individuals have the opportunity to access the community daily if they choose to do so. There are multiple community options daily to choose from.
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Summary of Stakeholder Workgroup Comments Received and State Response:

Stakeholder Workgroup Review: March 3, 2021
No comments received

Summary of Public Comments Received and State Response:

Public Comment Period: March 5 to April 6, 2021
<u>General Heightened Scrutiny Process Comments</u>
<p>Comment: One commenter wishes to remind the State of its compliance obligations through the Heightened Scrutiny process. Once a setting is put through the Heightened Scrutiny process, this means the State has determined the setting has the qualities of a home and community-based setting and not of an institution. If a setting is approved through this process, it cannot have any significant changes to the setting, its services, or programming unless it again goes through the Heightened Scrutiny Process. The materials recently provided by the State raise concerns about whether the identified facilities <i>currently</i> demonstrate the qualities of HCBS.</p> <p>Response: Settings must demonstrate compliance or demonstrate a plan in which they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process. In the most recent guidance provided by CMS, CMS requested “that information on settings located in the same building as a public or private institution or on the grounds of or adjacent to a public institution be submitted for heightened scrutiny no later than March 31, 2021.” In previous guidance, CMS indicates that “States may submit to CMS [for heightened scrutiny] those isolating settings that have not completed remediation before July 1, 2020 [now 2021] if a state determines that an isolating setting can implement remediation before the expiration of the transition period [now March 17, 2023], and also determines that the isolating setting can achieve compliance with the settings criteria. Isolating settings that have not completed necessary remediation by July 1, 2020 [now 2021] should be submitted to CMS by the state for a heightened scrutiny review within 120 days (be the end of October 2020 [now 2021]).”</p> <p>Comment: One commenter recommended the State conduct follow up visits and interviews with participants to ensure their experience in the setting reflects the requirements of the rule.</p> <p>Response: The State agrees that consumer experience is integral to demonstrate settings compliance and has completed follow up interviews with both participants and staff. This information has been added to the heightened scrutiny documents for each setting that requires remediation.</p>

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Comment:

One Commenter acknowledged that the State contacted HCBS participants by mail to provide public feedback during this process. They requested, since consumer feedback is vital to the heightened scrutiny process, that the State increase its efforts to gather public comments from consumers.

Response:

The State agrees that consumer feedback is an important part of the heightened scrutiny process and will continue its efforts to gather public comments from consumers. In addition to consumer experience interviews conducted and contacting consumers via mail, case coordinators will also be utilized to obtain feedback from those they serve in their settings.

Setting Specific Comments

Comment:

One commenter expressed concern that as a new setting, the provider has submitted a plan to implement the EPR employment code and will have an additional 6 months to implement this plan, but has not yet been able to demonstrate that it will be able to facilitate meaningful vocational training and integrated opportunities for the many consumers it serves at this site.

Response:

Utah implemented the new Employment Preparation Service (EPR) as of August 1, 2020. The intent of the service code was to designate a separate service code for pre-vocational services. It was also to ensure the opportunity for competitive integrated employment through integrated work training for individuals, staff with employment training, and to designate a time limit on the service. DSPD heard from stakeholders many questions about this new service and how to effectively implement it. Guidance was developed, reviewed by stakeholders, and then published in March 2021. All providers were given a six month transition period to adapt their programs to meet either a day service or EPR service description distinctively. The transition period is also intended to give adequate time for people being served to make an informed choice about which service they would like to receive moving forward. Questions about EPR and questions about Settings compliance are separate, this response includes information about EPR, but settings compliance is not determined through utilization of the EPR service. Previous to the EPR service code being in place, all settings providing pre-vocational or vocational services were reviewed for the same indicators of community inclusion and opportunity for employment as all day service settings. This included EnableUtah. EnableUtah already has ACRE certified or Job Coach certified staff. Staff have been adequately trained on communicating interests and preferences for employment when people being supported express them to staff for job development. Individuals served by Enable are provided regular opportunities to spend time engaged in community activities, such as job tours, volunteer opportunities, learning how to navigate public transportation, etc. Individuals interested in employment are being taught general employment skills beyond those developed by trying out different contract work. Settings Rule compliance for settings established before August 1, 2020, when EPR was established as an available service, is not reliant on meeting the EPR criteria. As EPR is a new service code, DSPD will continue to work with providers, including Enable to ensure there is a clear understanding and shift to a more integrated pre-vocational service model.

Comment:

One commenter stated that it is unclear from the State's heightened scrutiny package that they have observed the site or how individuals access the community since the relocation to the new site. The review should assess the current level of access individuals receiving services are able to access the community, not what it is hoped will be built around the site in the future. They requested that the State provide evidence that it has reviewed

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actual operations and that individuals are accessing the community in a way and with a frequency desired by consumers.

Response:

The heightened scrutiny evidentiary packet document has been revised to include more detailed information on how the State determined current compliance. In addition, the State interviewed both staff and individuals served at the setting and added additional information based on those additional interviews.

Comment:

One commenter asked for clarification if individuals are required to be supervised when they leave the facility (rather than based on an assessed need in the person centered plan).

Response:

Individuals are able to come and go from the building unless they have individualized restrictions based on health and safety concerns in place. If individuals receiving services are leaving the building, they are asked to notify their supervisor and sign out if it is outside of their typical routine.

Comment:

One commenter asked for the State to provide more details about the types and frequency of activities that individuals are accessing in the community as well as individuals were given information about a variety of activities outside of the facility, including disability non-specific ones.

Response:

The activities schedule is posted in the lunchroom so individuals served always have access to it. The activity schedule consists of a variety of activities both at the facility as well as in the community. Individuals are able to access the community on a daily basis, if they choose to. The heightened scrutiny evidentiary packet document has been revised to include more detailed information on types and frequency of activities.

Comment:

One commenter urged the State to provide more detailed evidence that it is not only staff and background-checked individuals that are permitted to access the site, and that there is an open-door policy permitting people to come and go and receive visitors as they please in the setting.

Response:

Visitors to EnableUtah are asked to sign in and out with the receptionist in the main lobby. Visitors visiting work areas must meet safety requirements (such as no open toed shoes). There are no requirements for visitors to have a background check. If individuals receiving services are leaving the building, they are asked to notify their supervisor and sign out if it is outside of their typical routine.

Comment:

One commenter noted that they were disappointed that during the transition process EnableUtah in fact combined its operations so as to congregate more individuals at a site providing both day services and sheltered work.

Response:

The State has found that the combined setting allows more flexibility now that the work program and the day program are located at the same location. This allows more individualized schedules between the two programs. Individuals are able to control how much time they spend in the community versus how much time they are spending within the setting and whether that time is spent on work or other meaningful day activities. Individuals

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are now able to spend partial days focused on work activities and community integration versus having to choose one or the other as it was set up previously. The heightened scrutiny evidentiary packet document has been revised to include more detailed information on the effects of the combined setting.

Comment:

One commenter stated that the State needs to assess whether the site is geographically isolating as it is now, not as they would hope for it to be as West Ogden develops.

Response:

The heightened scrutiny evidentiary packet document has been revised to include more detailed information on settings compliance in regards to the setting location.

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: June 10 to June 24, 2021

The Stakeholder Workgroup recommended that the heightened scrutiny packet is ready to be submitted to CMS (100% of those that responded).

Utah's Recommendation

Date of Recommendation: 7/6/21

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.