

# 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

<b>Site Name:</b>	PHEASANT HOLLOW VALLEY MNTL	<b>Site ID:</b>	139
<b>Site Address:</b>	4125 S 900 E # DD SLC UT 84124		
<b>Website:</b>	<a href="https://valleycares.com/treatments/pheasant-hollow/">https://valleycares.com/treatments/pheasant-hollow/</a>		
<b># of Individuals Served at this location regardless of funding:</b>	23	<b># of Medicaid Individuals Served at this location:</b>	23
<b>Waiver(s) Served:</b>		<b>HCBS Provider Type:</b>	
<input type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input type="checkbox"/> Community Supports <input type="checkbox"/> Community Transition <input checked="" type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> <a href="https://medicaid.utah.gov/ltc/">https://medicaid.utah.gov/ltc/</a>		<input type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input checked="" type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living <input type="checkbox"/> Employment Preparation Services	
<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:			

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	<input 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"> <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>	1/5/18 (in-person), 5/4/21 (virtual)
<b>Description of Setting:</b>	
The setting is an independent living residential program located in a residential Salt Lake City neighborhood, with access close to community resources such as restaurants, parks, stores, etc. The setting is a rehabilitation program for people with physical disabilities; many of whom their disabilities are due to alcohol abuse. Each individual has their own personal full functioning apartment within the apartment building.	
<b>Current Standing of Setting:</b>	
<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

<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>Onsite Visit Summary (2018):</b>

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	<p>The setting is an independent living facility and each resident resides in their own full apartment within an apartment building. The setting does not restrict access to non-disability settings. Individuals are able to come and go from the setting as they please. Individuals are able to control how much time they spend in the community versus how much time they are spending on activities within the setting. The setting is taking individuals into the community a minimum of twice weekly and provides UTA training so individuals can access their community independently. The setting assists individuals to access their NCW transportation benefits as well if individuals want to access the community at a greater frequency.</p>
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<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>	<p><b>Onsite Visit Summary (2018):</b> Residents choose which setting they want to reside at. Individuals choose this facility to stay in their community and have support for their substance abuse behaviors. The setting does not restrict access to any non-disability settings and facilitates access when requested.</p>

<b>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.</b>	
<b>Compliance:</b>	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Onsite Visit Summary (2018):</b> The setting is an independent living facility and each resident resides in their own full apartment within an apartment building. Individuals are able to cook their own meals in their apartments, order in, or eat out whenever they choose. They also have the choice to eat in the setting's dining room where they can sit wherever they want and can request an alternative meal if they do not want what is being served. Residents are able to have visitors at any time. The setting does not have a process in place for individuals to participate in meal planning. The setting is geared towards individuals with a dual diagnosis who have physical disabilities due to alcohol abuse. Many of the current community activities revolve around doctors appointments and wellness activities. The setting requires better planning in regards to activities to make them more meaningful to individuals to ensure integration into the greater community. The setting does not have approved rights restrictions in place for individuals around alcohol restrictions; there is a blanket alcohol restriction in place for the setting.</p> <p><b>Remediation Plan Summary :</b> The setting has implemented a formal process for individuals to understand resident behaviors. A binder has been placed in a secure cabinet in the staff office which contains the Independent Living Plans and Health and Safety Agreements (Behavior Plans) for those who have them. Staff</p>

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	<p>are being trained as they come in for shifts to make sure that all staff are aware of the binder and the information it contains.</p> <p>The setting has implemented a corrective action regarding restrictions on allowing engagement in legal activities (ex. voting when 18 or older, consuming alcohol when 21 or older) in a manner consistent with individuals in similar and/or the same setting who are not receiving Medicaid funded services and supports. The restriction on alcohol has been removed from the Program Manual. The setting can also confirm that individuals are assessed for alcohol abuse upon admission and this restriction is documented in their Behavioral Plan. However, those without this restriction will not have this documentation in their Behavioral Plan, if any.</p> <p>Pheasant Hollow is a fully integrated building. Everyone receives exercise support, meals and medication management in the same common areas. This will be the case whether the individual is receiving Medicaid HCBS or not.</p> <p><b>Validation Visit Summary (5/4/21):</b></p> <p>As an independent living facility, individuals are in control of their schedules. They are able to come and go as they want. They do not have to sign out with staff or let staff know. Every Monday residents give input towards the community schedule. Residents reported that staff always asked for their input on what activities they wanted to do. One resident reported that they do what they want, when they want. They choose not to participate with the setting activities, because they can do their own thing.</p> <p>The Chef sent out a survey to all residents to get input on the menu. The dining room also has a suggestion box for residents to give input as well. The Chef is also open to taking suggestions directly and the residents reported their input has been heard and changes have been implemented based on their feedback. The blanket rights restrictions for alcohol have been removed for the setting. The rights restrictions are now individualized and documented. Alcohol is allowed on the property in residents apartments. Individuals who receive assistance with exercise support, do so on an individualized basis and this is determined by their goals. Individuals who require assistance with medication management, do so on an individualized basis, on an individualized schedule.</p> <p><b>Policy/Document Review:</b></p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Training Log</li> <li>● Provider Manual</li> <li>● Annual Training Requirements</li> <li>● Master ILP</li> </ul>
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<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>	Overall, all identified concerns were addressed and completed on the setting's submitted remediation plan. In addition to the other training mentioned above, the setting did an overall

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	<p>HCBS training for all staff to ensure all areas of HCBS were understood and implemented on a daily basis. Staff are trained on each individual's behavior plans.</p> <p>As indicated below, this setting will be reviewed through ongoing monitoring activities.</p>
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## Input from Individuals Served and Staff

<b>Individuals Served Summary:</b>	<p><b>Summary of interviews (10/24/19):</b></p> <ul style="list-style-type: none"> <li>● Individuals reported there is no assigned seating.</li> <li>● Individuals interviewed reported they are able to make their own schedule and decide what activities they participated in and who they participated in the activities with.</li> <li>● Individuals reported they have access to food at any time and are able to eat where they want to.</li> <li>● Individuals reported they are able to come and go independently and have privacy in their homes.</li> </ul> <p><b>Summary of interviews (5/4/21):</b></p> <ul style="list-style-type: none"> <li>● Individuals expressed the option to participate in activities outside of the building.</li> <li>● Individuals reported they were able to make their own schedule.</li> <li>● Individuals reported they were able to make their own food choices and help create the menu. One individual expressed that they are able to make sandwiches if they do not like the menu options.</li> <li>● Individuals expressed that staff talk with them in a respectful manner.</li> <li>● Restrictions surrounding COVID-19 were mentioned (mask, social distancing and ect.)</li> </ul>
<b>Staff Summary:</b>	<p><b>Summary of interviews (10/24/19):</b></p> <ul style="list-style-type: none"> <li>● Leadership staff confirmed individuals can go into the community as often as they want. The program has planned community outings twice a week. Individuals can choose to participate in whatever activities are of interest to them.</li> <li>● Staff encourage families and friends to visit the setting at any time.</li> <li>● Staff confirmed the setting helps with transportation via UTA and other forms of transport to facilitate community integration.</li> <li>● Leadership staff confirmed the participation in the HCBS Settings training provided by the DOH.</li> <li>● Staff confirmed the privacy and dignity of residents by knocking on doors, communicating and coordinating activities.</li> <li>● Staff mentioned their goal is to help individuals live as independently as possible.</li> <li>● Staff said individuals have choices about their daily plans including meals and community activities.</li> </ul> <p><b>Summary of interviews (5/4/21):</b></p> <ul style="list-style-type: none"> <li>● Staff interviewed confirmed that individuals are able to control their own daily schedules.</li> <li>● Staff confirmed they are trained on specific needs, supports, and preferences of the individuals I serve.</li> </ul>

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	<ul style="list-style-type: none"> <li>Staff confirmed the participation in the HCBS Settings training provided by the DOH. One staff member mentioned that had not yet had the training due to a conflict at the time of the training.</li> </ul>
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Ongoing Remediation Activities	
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"> <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> October 24 to November 28, 2022
<b>No comments received</b>

## Summary of Public Comments Received and State Response:

<b>Public Comment Period:</b> October 24 to November 28, 2022
<p><b>Comment:</b></p> <p>One commenter stated that the State documented that the setting is a “fully integrated building” where “everyone receives exercise support, meals and medication management in the same common areas” as unproblematic because “this would be the case whether the individual is receiving Medicaid or not.” The residential setting houses 23 individuals, appears to be highly institutional (see attached picture from google maps), and has the hallmark qualities of an institution including congregate meals, medication dispensing and supported exercise of all residents in a common area of the setting. Furthermore, it seems that the State did not recognize that the 23-bed facility having congregate/regimented medication administration, meals and exercise are fundamental characteristics of an institution.</p> <p><b>Response:</b></p> <p>The State agrees the documentation demonstrating compliance was not clear. This information has been added to the heightened scrutiny document above under prong 3 A and 3 C.</p>

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**Comment:**

The commenter had an additional concern that the State conducted a desk review of policies and documents as well as a virtual visit on 5/4/2021. We have concerns that the State did not conduct in person meetings with clients and staff as well as an observation of the program to observe how problems identified in the earlier visit were resolved.

**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.

**Comment:**

The commenter had an additional concern that the State initially identified the limits on alcohol abuse as problematic and created a remediation plan that required individual modification of this rule based on an assessed need and documented in the care plan, but then went on to state in the summary of the virtual validation visit that these restrictions are ok “because of the nature of the rehabilitation program offered. This is agreed with the residents upon admission.”

**Response:**

The State agrees the documentation demonstrating compliance was not clear. This information has been added to the heightened scrutiny document above under prong 3 C. The blanket rights restrictions for alcohol have been removed for the setting. The rights restrictions are now individualized and documented. Alcohol is allowed on the property in residents apartments.

**Comment:**

The commenter had an additional concern that this setting should not be permitted to bill as a New Choices Waiver HCBS provider as it appears to primarily support mental health and substance use disorder needs (the New Choices Waiver requires that a participant's primary condition not be attributable to a mental health condition the State's own assessment identifies it as a program providing substance use rehabilitation (a residential program which would be more restrictive than permitted for an HCBS-funded setting), and Valley Behavioral Health itself identifies Pheasant Hollow on its website as a “Mental Health Supportive Housing Program”. Given these fundamental incompatibilities with HCBS Medicaid requirements, we urge the state to disenroll the setting as an HCBS provider.

**Response:**

The State does not agree with the commenter's statement. While we agree that the New Choices Waiver does not serve individuals whose primary need is attributable to mental illness, co-occurring conditions are permissible as outlined in the State Implementation Plan.

**Comment:**

One commenter stated the following: “I am shocked, honestly, that Pheasant Hollow is on 'this' list. Why? We currently have several NCW [New Choices Waiver] clients residing in this facility and have for several years. I was impressed on the first day I met w/ Mary Beth, the Adm/Director, that our clients paid less towards room and board fees so that they could afford being active in the community. In fact, being active members in the community was paramount to residing at PH [Pheasant Hollow]. Our clients with TBI [Traumatic Brain Injury]

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participated in classes at SLCC [Salt Lake Community College] and PH actively assisted in this endeavor whereas other clients participated in 12-step meetings splashed across the SL Valley and PH assists, too. The other unique characteristic about PH is that they coordinate and arrange for weekend activities and outings -- per client requests. Again, I am outright shocked that PH is on this list because of ALL the NCW communities, this is the only one that I have never had an issue w/ the facility not only honoring a client's request to engage in a particular activity but who also often moved mountains to make it happen."

**Response:**

Thank you for your positive feedback on the setting.

## 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).**

## 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.**