



**Utah HCBS Heightened Scrutiny - Public Comment Summary**  
**Summary of Public Comments from March 5, 2021 – April 6, 2021**

A brief summary of public comments and the State’s response to the comments follow.

The following comments were received regarding the general Heightened Scrutiny Process:

***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 *currently* demonstrate the qualities of HCBS.

***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]).”

***Comment:***

One commenter stated they are concerned that the State has failed to include new settings that were opened after 2014 for heightened scrutiny. Under the settings rule, any facility that was opened after 2014 should have already demonstrated compliance in order to be licensed as an HCBS setting.

***Response:***

Currently, the state requires newly enrolling providers to go through the New Settings Compliance process which includes completion of a self-assessment; review of policies and evidence of compliance; HCBS Settings Rule training and completion of a quiz; leadership interviews; and consumer interviews. Prior to implementing the robust New Settings Compliance process implemented in February 2020, the state implemented an intermediate process that required newly enrolling providers to attest to compliance with the specific home and community based characteristics outlined in the Settings Rule through signing an attestation form as part of their enrollment. These providers will be subject to on-

going compliance monitoring activities. As part of its self-assessment process, all existing providers were required to complete either the residential or non-residential assessment (or both). During its implementation of the Statewide Transition Plan the state believes it has balanced appropriate oversight with preventing access to care issues for individuals enrolled in the waiver programs.

***Comment:***

One commenter stated they had specific concerns about the program Bear-O Care day program that should have been treated as a new setting. They reported that this setting posted personal participant information, provided very limited outings and cited visits to a local funeral home as a community activity, and staff demonstrated resistance to opportunities for community-based employment.

***Response:***

Bear O Care has not been treated as a new setting, but they have gone through the setting compliance process with established settings as they were an established provider when the Provider Self-Assessments were implemented. They are currently in the process of establishing their remediation plan with the State.

***Comment:***

One commenter had an additional concern about a new setting, the Columbus Community Center Hub of Opportunity that opened last year. This setting demonstrated several institutional characteristics including: (1) its location in an industrial area of Salt Lake with little community services and activities, (2) the setting is co-located within walking distance of the Columbus Community Center non-residential program, and (3) the setting includes multiple services on site including a “NextWork Academy” which is specifically designed for individuals with autism and includes 16 dedicated apartments for participants in the program.

***Response:***

The Hub of Opportunity went through the New Setting Compliance Process and was determined to be compliant. Leadership interview was conducted May 2020 prior to HCB services being provided in the setting. Columbus provides HCBS to 12 clients across 10 apartments. No Medicaid paid day or employment services are provided from this location, just residential services support.

All individuals receiving HCBS live in apartments that are dispersed throughout the apartment buildings with all other non-HCBS residents. HCBS residents have a choice of providers, Columbus is just one of the providers serving individuals in the building. Anyone that wants to lease an apartment from this location goes through the Housing Authority of the County of Salt Lake as the leasing agent to apply for an apartment. Columbus is not part of the decision making process determining who leases the apartments. The location of the facility is close to public transportation (TRAX, Bus) and is close to other community resources (parks, restaurants, shops, etc.).

HCBS individuals were interviewed in September 2020 regarding their experience with residential services provided by Columbus. Feedback included that individuals were able to plan their own schedules, access public transportation to get to desired locations, plan their own meals, access food when they wanted, their apartments were furnished and decorated to their own tastes, staff knocked and waited for permission to enter, staff provided assistance with goals and needed supports, and they

are not required to participate in any activities. Outside of COVID related restrictions on desired activities (due to State and County restrictions, not the providers) individuals were able to access the community how and when they desired. No restrictions were noted by individuals.

Direct Care staff interviews were conducted September 2020 and staff were trained on respecting client rights, privacy, and confidentiality. Staff were aware of individualized needs and how to tailor support to each individual. No restrictions were in place that have not gone through an approved rights restriction process.

The “Next Work Academy” does not provide Medicaid reimbursed HCBS.

***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.

***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.

***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 Managers/Support Coordinators will also be utilized to obtain feedback from those they serve in their settings.

**EnableUtah specific comments can be found on the [heightened scrutiny evidentiary package document](#) for this setting.**

**Mission at Community specific comments can be found on the [heightened scrutiny evidentiary package document](#) for this setting.**

***There were no comments received for St. Joseph Senior Apartments ([heightened scrutiny evidentiary package document](#)).***