

# 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

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| <b>Site Name:</b>  | Training in Life Choices, L.L.C.                | <b>Site ID:</b>   | 1534 |
| <b>Site Address:</b>   | 2432 West 1700 South Suite B2 & B3 Syracuse, UT |   |      |
| <b>Website:</b>  | N/A   |   |      |
| <b># of Individuals Served at this location regardless of funding:</b>   | 15  | <b># of Medicaid Individuals Served at this location:</b>   | 15   |
| <b>Waiver(s) Served:</b>   |   | <b>HCBS Provider Type:</b>  |      |
| <input type="checkbox"/> Acquired Brain injury<br><input type="checkbox"/> Aging Waiver<br><input checked="" type="checkbox"/> Community Supports<br><input type="checkbox"/> Community Transition<br><input type="checkbox"/> New Choices<br><i>Description of Waivers can be found here:</i><br><a href="https://medicaid.utah.gov/ltc/">https://medicaid.utah.gov/ltc/</a>  |   | <input checked="" type="checkbox"/> Day Support Services<br><input type="checkbox"/> Adult Day Care<br><input type="checkbox"/> Residential Facility<br><input type="checkbox"/> Supported Living<br><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<br><br><input type="checkbox"/> Prong 2: Setting is in a building on the grounds of, or immediately adjacent to, a public institution<br><br><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: <ul style="list-style-type: none"> <li><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</li> </ul> |   |   |      |

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|   | <input checked="" type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting<br><br><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>   | <b>August 27, 2019, January 6, 2023 (Virtual, Scheduled)</b>  |
| <b>Description of Setting:</b>  |   |
| Training in Life Choices is a Day Support Program located in Syracuse. This location is surrounded by restaurants, shopping centers and a funplex (Rush). Individuals at this location are encouraged and taught how to use public transportation.  |   |
| <b>Current Standing of Setting:</b>   |   |
| <input type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above<br><br><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: January 6, 2023 |   |

## Evidence the Setting is Fully Compliant or Will Be Fully Compliant

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| <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 |

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| <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 |

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| <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 |

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| <b>Summary:</b> | <p><b>Onsite Visit Summary (August 27, 2019):</b><br/> There are various community activities that are posted on a monthly calendar. There is a park within walking distance. Individuals go out in the community twice a week in two groups depending on the weather. Everyone gets to participate. Staff are the ones that put together the monthly activity schedule. It was unclear if individuals were able to participate in community activities that they desired or if they only had a choice of what was provided. There didn’t seem to be a process for helping individuals find competitive integrated employment.</p> <p><b>Remediation Plan Summary:</b></p> |
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|  | <p>Day Training Manager has been tasked with finding and planning new opportunities and activities both for group and individual activities. The weekly participant list of options can give the manager an individual's personal plans and wants to work towards but can also work on group activities to present to the monthly planning meeting. Additionally, will receive weekly suggestions along with their input that will be documented on their personal schedules. Their selections will be made with some assistance and that schedule will be reviewed for proper safety, personal choice, and staff ratios so that the person will be able to participate in their chosen options. Any options that cannot be immediately accommodated will be placed on future planning so that a plan and process can be in place to accomplish the desired activity. Our staff will contact specific businesses or groups and set up activities that help us build relationships with those community members. We have set up a relationship with the animal shelter for our animal lovers to go and volunteer for an afternoon helping and playing with the animals. We have had a police officer come in to visit the center and meet all the clients and establish good relations with our law enforcement. This will continue to be our first goal for this community access day program. As each individual discovers their interests and finds comfortable and meaningful relationships with community connections, this can become an ongoing activity for the individual. We are constantly reaching out and building our network within the community so that we can find and schedule activities outside of our setting that will help our clients experience as much as they can in a safe setting that allows them to thrive within the community. The goal is to individualize each person's schedules to meet their interests and desire for connectivity in the community.</p> <p><b>Policy/Document Review:</b><br/>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Weekly Calendar</li> <li>● Competitive Integrated Employment Plan</li> </ul> |
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**Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.**

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| <b>Compliance:</b> | <input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant |
| <b>Summary:</b>    | <b>Onsite Visit Summary (August 27, 2019):</b><br>The site is chosen by individuals.                              |

**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.**

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| <b>Compliance:</b> | <input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant  |
| <b>Summary:</b>    | <b>Onsite Visit Summary (August 27, 2019):</b><br>Staff are trained not to talk about individual's private information around others. It is unclear if individuals are able to participate in planning activities, or if they have choice in which activities they participate in. It is unclear how individuals are able to give feedback or share what activities they would like to participate in. |

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|  | <p><b>Remediation Plan Summary:</b><br/>           Staff and Clients will meet weekly to plan for the next week. This calendar can be changed at any time during the day or week. The Calendar is more of a guideline to get all the daily activities, goals and needs done in one day.<br/>           A monthly calendar of activities will be offered the prior month. This monthly activity calendar will be sent home to be reviewed with family, friends or staff to make selections. These selections will be added to their weekly plan.<br/>           The group will meet to pick which two options are added to each day of the week for group outings and vote on them being added or not to the next month's calendar. All participants will assist with a list of activities to be used for the next month's calendar. Those activities can be chosen to be placed on the weekly individual calendar or another option listed on their personal planning sheets may be chosen. Group outings are optional and other activities can be added to their future planning or personal weekly schedule instead.</p> <p><b>Policy/Document Review:</b><br/>           The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Individual daily schedules.</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>   | The provider has identified areas of remediation that will be validated by the State.                             |

## Input from Individuals Served and Staff

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| <b>Individuals Served Summary:</b> | <p>See attached questions asked of individuals served interviewed</p> <p><b>Summary of interviews (2019):</b></p> <ul style="list-style-type: none"> <li>● An individual said they went bowling, hang out with friends and did go-karts.</li> <li>● An individual said they can spend their own money when shopping.</li> </ul>   |
| <b>Staff Summary:</b>              | <p>See attached questions asked of individuals served interviewed</p> <p><b>Summary of interviews (2019):</b></p> <ul style="list-style-type: none"> <li>● Staff said they always try to put activities on the calendar for everyone.</li> <li>● Staff said they are trained not to talk about individual's private information around others.</li> <li>● A staff member wasn't sure what the Settings Rule was.</li> </ul> |

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| <b>Ongoing Remediation Activities</b>  |   |
| Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan |   |
| <b>Continued Remediation Activities</b>  | The provider has identified areas of remediation and the State will conduct a visit to confirm. |

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| <b>Ongoing Monitoring Activities</b> | <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> |
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## Summary of Stakeholder Workgroup Comments Received and State Response:

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| <b>Stakeholder Workgroup Review:</b> January 3, 2023 - January 18, 2023  |
| <b><i>General Comments Received</i></b>  |
| <p><b>Comment:</b><br/>The materials provided by the State in the newly-released evidentiary packets (“batch 5”) raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a virtual review instead of an in-person visit. In our experience as the P&amp;A, it is difficult to accurately assess characteristics of an institution as well as to communicate effectively with waiver participants without an in-person visit.</p> <p><b>Response:</b><br/>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> <p><b>Comment:</b><br/>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. It is difficult for stakeholders to provide feedback on whether a setting has the characteristics of an HCBS setting if it is still in the process of remediating. The remediation plans seem to lack the detail necessary to assist a setting with becoming compliant and the short time frame until the final compliance deadline leads us to believe that these sites will not remediate in time.</p> <p><b>Response:</b><br/>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.</p> <p><b>Comment:</b><br/>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</p> |

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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:**

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

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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 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:** January 2, 2023 to February 3, 2023

**Setting Specific Comments:**

**Comment:**

One commenter stated Training in Life Choices, site 1534, is a day support services program located at 2432 West 1700 South Suite B2 & B3 Syracuse, UT. It provides services to 15 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 validations of compliance with the rule rather than un-validated remediation plans. Not doing so does not provide appropriate notice to community partners of the steps the state has taken to ensure that settings are fully in compliance with the settings rule.

**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

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them through the heightened scrutiny process. As indicated on the heightened scrutiny package, a validation visit was conducted on 1/6/23 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. During the visit, individuals in services and staff were interviewed. Training in Life Choices was compliant with characteristics 2-6. For characteristics 1, it was determined that staff develop a monthly events calendar that is based on the interest of the individuals served. Updates to the calendar occur weekly when there is a new interest shared by the individual. The activities are picked based on feedback and interest from the individuals.

***Comment:***

The same commenter had additional feedback stating we have concerns that the last assessment and the planned assessment of the setting after the public comment deadline will not be completed in person. In our experience as the P&A, it is difficult to accurately assess characteristics of an institution as well as to communicate effectively with waiver participants without an in-person visit.

***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:***

The same commenter had additional feedback stating the evidentiary package lacks specificity regarding compliance with the rule. While the state did assess community integration and found that individuals were not doing activities in the community of their choice and with the frequency they desire the state doesn't evaluate what activities individuals are participating in at the setting and whether that is the choice of the individuals.

***Response:***

As indicated on the heightened scrutiny package, a validation visit was conducted 1/6/23 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. During the validation visit it was determined staff develop a monthly events calendar that is based on the interest of the individuals served. Updates to the calendar occur weekly when there is a new interest shared by the individual. The activities are picked based on feedback and interest from the individuals.

***General Comments Received:***

***Comment:***

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 March 17, 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.



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**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.

## Summary of Stakeholder Workgroup Recommendation:

**Stakeholder Workgroup Review:** January 3, 2023 - January 18, 2023

We only got a response from one workgroup member. Their 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.**