

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

Site Name:	Columbus Foundation Inc.	Site ID:	753
Site Address:	Removed for privacy of residents		
Website:	https://www.columbusseves.org/		
# of Individuals Served at this location regardless of funding:	6	# of Medicaid Individuals Served at this location:	6
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 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	
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: <ul style="list-style-type: none"> <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 			

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does not facilitate individual opportunity to access the broader community and participate in community services consistent with their person centered service plan

- B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting
- C. The setting has qualities that are institutional in nature. These can include:
- 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: 11/30/2022 (Virtual)

Description of Setting:

The setting is a residential setting in a residential area that contains stores, restaurants and a skate park. Columbus Foundation Inc 753 chose to apply for and participate in the USU technical assistance program. They engaged with industry experts through USU to identify what areas they needed to focus on to come into compliance with the settings rule and established a transformation plan for their setting. As this was a very intensive and optional process, they did not go through the additional review onsite visit with the State in 2019.

Current Standing of Setting:

- Currently Compliant: the setting has overcome the qualities identified above
- Approved Remediation Plan: the setting has an approved remediation plan demonstrating how it will come into compliance. The approved timeline for compliance is: A visit was conducted on 11/30/2022 and the remaining items will be validated by 1/31/23

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

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Summary:	<p>Transformation Plan:</p> <p>Columbus Foundation decided to Develop a Core Planning Team (CPT) including participants and their Parents/Guardians, the CEO, COO, other Exec Team Members as required, key board members, direct service staff, relevant Client Service Managers & Department Directors, to assist in designing and implementing this plan. The setting will have Client Service Managers hold Circle of Support Meetings with participants and support teams. These meetings may be in conjunction with the PCSP. Columbus and USU decided to use a Positive Personal Profile Form to guide who is contacted, reach out to relevant local community groups (churches, community centers, nonprofits, etc) to gauge interest and educate them about Columbus' new community focus. Using the Positive Personal Profile and Work Strategy Assessment will present opportunities for employment if the participant and their support team identify that as one of their preferences/goals. Using all gathered information, the Support Coordinator will decide if CIE is right for the individual or if Community Activities is the correct route and create a team of funded clients that have similar goals under each code (EPR, DSG, SEI, SED). Upon successfully sending out a pilot group, Columbus will begin to transition all participants into the community setting which will consist of repeating the above mentioned steps for each group. The Board & leadership will remain involved by regular monthly updates about the progress of implementation of the Settings Rule.</p> <p>Onsite Visit Summary 11/30/22</p> <p>From the visit it was unclear if individuals were getting out into the community as much as they desire. There is a weekly outing to go to dinner that the residents seem to enjoy but most evenings are spent in the residence with activities there. Staff will create a plan to increase opportunities for community integration for individuals at this site. While there were clear and consistent community activities that individuals enjoyed, people seemed unsure if the provider had enough staff to take them into the community more.</p> <p>Remediation Plan Summary:</p> <p>The provider will submit a detailed plan for ensuring individuals are getting out into the community as much as they desire and that staff have been trained on taking individuals feedback on interests and activities.</p>
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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:	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.

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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Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Transformation Plan: Columbus Foundation decided to Develop a Core Planning Team (CPT) including participants and their Parents/Guardians, the CEO, COO, other Exec Team Members as required, key board members, direct service staff, relevant Client Service Managers & Department Directors, to assist in designing and implementing this plan. The setting will have Client Service Managers hold Circle of Support Meetings with participants and support teams. These meetings may be in conjunction with the PCSP. Columbus and USU decided to use a Positive Personal Profile Form to guide who is contacted, reach out to relevant local community groups (churches, community centers, nonprofits, etc) to gauge interest and educate them about Columbus' new community focus. Using the Positive Personal Profile and Work Strategy Assessment will present opportunities for employment if the participant and their support team identify that as one of their preferences/goals. Upon successfully sending out a pilot group, Columbus will begin to transition all participants into the community setting which will consist of repeating the above mentioned steps for each group. The Board & leadership will remain involved by regular monthly updates about the progress of implementation of the Settings Rule.</p> <p>Onsite Visit Summary 11/30/22 Overall, this site does a good job of allowing individual choice to all residents. Individuals have control over their schedule and what they choose to do with their free time. Staff treat individuals with dignity and respect. Individuals who have rights restrictions are aware of them and agree with them.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Columbus Community Center Policies sign offs

Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.	
Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	The provider has identified areas of remediation and the State will conduct additional validation visits to determine final compliance.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Individuals stated they enjoyed the weekly dining out option. Some mentioned activities such as going to a concert or attending a Christmas event but most talked about watching movies and playing games at the residence. One individual stated they like going for walks or rides in the van. ● None of the individuals wants to pursue employment at this time. There is a process in place to support them if they should change their mind.
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	<ul style="list-style-type: none"> Individuals stated that they are free to make their own choices on what they want to do with their time. Individuals who have restrictions understand the restrictions and agree with them.
Staff Summary:	<p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> Staff mentioned a lot of activities that are done in-home but the dining out once a week was the only regularly planned outing for the group. Staff mentioned opportunities for attending activities at a local church around holidays. Staff and Leadership spoke about and to individuals with respect.

Ongoing Remediation Activities	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	The provider has identified areas of remediation and the State will conduct additional validation visits.
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: January 3, 2023 - January 18, 2023	
General Comments Received	
Comment:	<p>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&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>
Response:	<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>

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Comment:

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.

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.

Comment:

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 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

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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 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:

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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:

One commenter stated Columbus Site 753, is a residential program located at an unknown location. It provides services to 75 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. The site review evidentiary packet is identical to what was cited for the non-residential Columbus setting, site 1286. The staff and consumer feedback were the same for both sites rather than individualized to whether each setting overcomes the institutional presumption.

Response:

The State is unsure what package the commenter was referring to. Columbus Site 753, is a residential program that provides services to 6 waiver individuals as documented on the package. The package is individualized to the validation visit that was completed on 11/30/22 at the residential location. The address of the residential location was not posted publicly to keep the privacy of the residents that live in the home in the residential area they are located in. The home is not labeled in any way to indicate in any way that services are being provided there, preserving a home and community based environment.

Comment:

The same commenter had additional feedback stating 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 them through the heightened scrutiny process.

Comment:

The same commenter had additional feedback stating we have concerns that the most recent assessments of the setting and the planned assessment of the setting after public comment was not/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:

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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. The state should gather more information regarding how individuals are accessing the community and whether or not individuals are accessing the community in the way and to the extent desired. The review summary states that there is a regular once a week meal outing, but is unclear how often individuals are out in the community and whether or not their preferences are being met.

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. As indicated on the heightened scrutiny package, all remaining concerns were validated prior to January 31, 2023 to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined to be compliant. Weekly meetings are held with individuals to plan meaningful community-based activities that are based on the choices of individuals. The activities planned from these meetings are documented on activity calendars and turned into management on a monthly basis and turned into management on a monthly basis to assure activities are being implemented as planned. Staff provide individuals with possible community-based activities through a variety of formats that include but are not limited to verbal descriptions, pictures, magazines, or newspapers. Movies, concerts, sporting events, seasonal events, art events, festivals, spiritual events, adult education/training events, gyms, bowling, or volunteering opportunities are some community options available. Staff are encouraged to reach out to natural supports in the community to facilitate community activities.

Comment:

The same commenter had additional feedback stating The review says that the setting is highly controlled, that there are rigid schedules, and that there are multiple restrictive practices in place. The review also states that the setting does not ensure dignity, privacy and respect. The evidentiary package doesn't give any detail as to what is happening in the setting as to these issues, which makes it difficult to demonstrate that appropriate steps have been taken to remedy these institutional qualities.

Response:

The comment above refers to information for the heightened scrutiny package on site site 1286 and is not relevant for this site.

General Comments Received:

Comment:

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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.

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.