

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

Site Name:	Chrysalis Utah	Site ID:	816
Site Address:	6991 S High Tech Drive, Midvale, UT		
Website:	https://www.chrysalis.care/		
# of Individuals Served at this location regardless of funding:	37	# of Medicaid Individuals Served at this location:	37
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 checked="" type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input 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:			

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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"> • 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:	8/29/19 (in-person)
Description of Setting:	
The setting is a day support program in an area that is located in an industrial area that is semi close to other businesses in the area. There are multiple restaurants and community businesses within 0.5-2 miles from the setting. Public transportation is available within 0.5 miles of the setting.	
Current Standing of Setting:	
<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

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:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> 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:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> 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:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	Onsite Visit Summary (8/2019): Groups typically are able to access the community 3-4 times a week. The setting has a formal process for individuals to explore and pursue a competitive integrative employment (CIE), if

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	<p>they choose to. Individuals are able to control their spending money when they are in the community. The setting is located in an industrial area that does facilitate independent access to the community. One staff member reported she currently does not have a van for her group and because of that does not go into the community very much. Individuals typically do not access public transportation.</p> <p>Remediation Plan Summary: The setting implemented a public transportation training program so individuals could more easily independently access their community when setting transportation was not available. The setting van that had been unavailable during the visit was fixed and once again available for use for staff.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Chrysalis HCBS Policies <ul style="list-style-type: none"> ○ 5-2 Annual Meetings and Person Centered Supports ○ 5-19 Schedules ○ 2-2 Direct Care Employee Training Requirements (Utah) ● Transportation Training Log
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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 has an admission process that assesses individuals' needs and preferences and regularly reassesses to ensure services are provided in a person-centered manner.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Person Orientation Packet <ul style="list-style-type: none"> ○ New Staff Training Checklist ○ Person Orientation 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 (8/2019): There is a formal process for individuals to give input into their schedules and choose their activities. Activities and calendars are built from individual input. Individuals are able to bring their own lunches or eat out when they desire. They are able to eat both their snacks or lunch</p>

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	<p>when they want. During the onsite visit, there were some concerns identified that the setting is overly restrictive. Restrictions are placed on individuals prior to using less intrusive methods first; individuals must earn things such as “free time.” There was also no process in place for individuals to circumvent restrictions that did not apply to them (food restrictions that resulted in a locked refrigerator).</p> <p>There is also an enclave (moving crew) that does not work with or integrate with anyone other than those with disabilities.</p> <p>One individual reported that they were required to go out into the community and follow what was on the calendar.</p> <p>Remediation Plan Summary:</p> <p>The setting submitted a sample of human rights restrictions for review. The State provided technical assistance on how to revise the restrictions to meet the requirement of the HCBS settings rule and the setting resubmitted the revised rights restrictions meeting the setting rule criteria. Along with the revised restrictions, the provider submitted a plan of correction on how to move forward with training their staff and revising their rights restriction process for the remainder of their settings to come into HCBS settings rule compliance in this area. Staff was retrained on expectations regarding individual control of their schedules and their right to refuse to participate. The enclave was discontinued so it is no longer a concern.</p> <p>Rights Restriction Validation Summary:</p> <p>The State did a desk review of the resubmitted rights restrictions. The State reviewed the rights restrictions to ensure they met the 8 criteria of the settings rule regulations, including individual served informed consent. The setting was able to demonstrate compliance for the individuals served in the setting.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Chrysalis HCBS Policies <ul style="list-style-type: none"> ○ 5-2 Annual Meetings and Person Centered Supports ○ 5-3 Human Rights (Utah) ○ 5-17 Positive Behavioral Supports ○ 5-19 Schedules ○ 2-2 Direct Care Employee Training Requirements (Utah) ● Person Orientation Packet <ul style="list-style-type: none"> ○ New Staff Training Checklist ○ Person Orientation Form ● New Employee Orientation of Policy, Procedures, and Chrysalis Culture Competency Test ● Revised Rights Restrictions Documentation for multiple individuals served
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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 segregating and institutional concerns were addressed through the remediation process and the State was able to validate that the areas were remediated through the desk review validation process.</p> <p>Staff are trained on HCBS requirements both upon hire and ongoing. The State will continue to work with the Provider, and its additional settings to ensure its rights restriction process has been implemented across all of its settings. As indicated below, this setting will be reviewed through ongoing monitoring activities.</p>
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Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <p>Individuals reported they are able to participate in activities that are important to them in the community.</p> <p>Individuals report they are given the opportunity to control their spending money.</p> <p>Individuals report they can eat when they want to</p> <p>One individual reported they were required to to out in the community and participate in the activities</p>
Staff Summary:	<p>Summary of interviews (2019):</p> <p>Staff reported they have received training on keeping individuals' information private.</p> <p>Staff reported that individuals are never forced to participate in anything they do not want to.</p> <p>Staff reported that they have been trained on the settings rule requirements.</p>

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"> ● 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: October 24 to November 28, 2022
No comments received

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Summary of Public Comments Received and State Response:

Public Comment Period: October 24 to November 28, 2022

Comment: At each of the sites [Chrysalis sites 395, 399, 402, 816], the State noted that individuals had to “earn things such as free time.” This language connotes the provider was utilizing a levels system that applied to all consumers. A provider utilizing a levels system cannot be compliant with the settings rule as the regulations require individuals to have the maximum freedoms possible. The State has not conducted follow up site visits since 2019 and only conducted a desk review of rights restrictions as part of its remediation process. To ensure individuals are not subjected to broad, programmatic restrictions the State should conduct another site visit and speak with individuals about their experience in the setting before a determination is made that the setting has overcome the institutional presumption. We would urge the state to complete an in person assessment to ensure compliance with the rule.

Response:

The State determined final compliance through the desk review process. The desk review determined Chrysalis was using a person-centered approach for these specific settings in regards to rights restrictions and met the settings requirements. The State will continue to monitor their status through the ongoing monitoring process.

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.