

Utah HCBS Settings Self-Assessment Report for Medicaid 1915(c) Home and Community Based Waiver Programs

Federal Home and Community Based Services (HCBS) Settings Rule

Prepared by the Division of Medicaid and Health Financing

May 2019



INTRODUCTION

Background

On March 17, 2014 the Centers for Medicare and Medicaid Services (CMS) implemented new federal HCBS regulations that provided clarification concerning the required characteristics of service settings. To determine compliance with the new regulations, states must review and evaluate all HCBS residential and non-residential service settings. These rules apply to all Utah Medicaid HCBS waiver programs.

The final rule establishes an outcome-oriented definition of HCBS settings that focuses on the nature and quality of individuals' experiences. The rule reflects CMS' intent to ensure that individuals receiving services and supports through Medicaid HCBS programs have full access to the benefits of community living and receive services in the most integrated setting possible. Information on the final rule can be found at <http://health.utah.gov/lrc/hcbstransition/>. The final rule defines the following:

Settings That are Not Home and Community-Based:

For 1915(c) home and community-based waivers, settings that are not home and community-based are defined as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility (ICF) for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

Settings that are Presumed to have the Qualities of an Institution:

For 1915(c) home and community-based waivers, section 441.301(c)(5)(v) specifies that the following settings are presumed to have the qualities of an institution:

- Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,
- Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.

- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

In accordance with the regulations, Utah Medicaid created an HCBS Setting Transition Plan (the Plan). One of the initial action items in the Plan requires the State to perform a preliminary categorization of providers as those presumed to be Compliant, Not Yet Compliant, or Not Compliant with the setting requirements. A related action item in the Plan requires all settings initially categorized as Not Yet Compliant or Not Compliant to complete and submit to the State, the Provider Self-Assessment Tool.

After the provider self-assessment process has been completed, the Plan identifies additional action items. One action item requires the State to confirm the validity of the provider self-assessment process by performing onsite reviews of a statistically valid sample (this sample was of sufficient size to ensure statistical validity of the information provided in the self assessment, a stratified random sample of settings for validation reviews where sample size required a 5% margin of error, 95% confidence level, and 50% response distribution using the following settings categories: Adult Day Care, Day Support Services, Residential Services, Supported Living, and Supported Employment) of settings subject to the provider self-assessment process. Another action item requires the State to review results and identify potential areas of non-compliance. Based on provider self-assessment findings, desk reviews, onsite reviews, technical assistance, and stakeholder feedback; the State, providers, and stakeholders will collaborate to develop Provider Remediation Plans. Providers are given the opportunity to remediate issues and come into compliance within timeframes established by the State. Providers who fail to complete a Provider Remediation Plan, or those determined through the heightened scrutiny process to have institutional like qualities that cannot be remediated, will no longer be able receive reimbursement for Medicaid HCBS services.

Survey Methodology

The State identified the universe of current residential and non-residential providers, and their corresponding sites of service for each of its eight 1915 (c) HCBS waivers. Utah does not provide long-term services and supports through HCBS programs under 1915 (i) or 1915 (k) Medicaid authorities, and therefore did not consider any additional provider sites of service for purposes of this review.

Per CMS guidance, the State presumed the enrollee’s private home or the relative’s home in which an enrollee resides, meet the requirements of HCB settings. In accordance with this guidance, the following services which are provided in the participant’s own home, were not assessed for Settings compliance using the self-assessment tools developed by the State: Home Health, Home Delivered Meals, In-Home Therapy, and Personal Care. Per CMS guidance, respite settings did not require assessment for compliance with Settings requirements. The State will monitor compliance with the Rule in private home settings as a part of ongoing monitoring and compliance. See this section of the State Transition Plan for additional detail on the State’s approach.

Additionally, the State identified services as “presumed to be fully compliant” when the services were not related to settings and were direct services to the waiver participant. The following services were not reviewed against Settings requirements as they do not provide a setting for the participant as a part of service delivery: Financial Management Services, Medical Equipment Supply, Home and Vehicle Modifications, Support Coordination/Case Management, Transportation, and Emergency Response Services.

All other HCBS settings identified in the Utah Medicaid 1915 (c) HCBS Waiver programs were determined to be either “not yet compliant” or “not compliant,” and were assessed for full compliance with the Settings requirements using the self-assessment tools developed by the State. All settings that group two or more people together for the purpose of receiving Medicaid funded HCBS fell into this category and required a self-assessment. See the Preliminary Compliance Report for additional detail on the initial evaluation of Utah HCBS settings.

Self-Assessment Tool Development

The State created residential and non-residential provider self-assessment tools which include questions to identify any sites that may be presumed to have institutional like qualities. All indicators were adapted from the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings*, as provided by CMS.

The self-assessment tools included the following characteristics with associated indicators to evaluate compliance:

- **Characteristic 1:** 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.
- **Characteristic 2:** The setting is selected by the individual from among setting options, including nondisability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.
- **Characteristic 3:** The setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint.
- **Characteristic 4:** The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- **Characteristic 5:** The setting facilitates individual choice regarding services and supports, and who provides them.
- **Characteristic 6:** The setting enforces the Home and Community-Based Settings Regulation requirements.

The residential self-assessment tool included the following additional characteristics with associated indicators to evaluate compliance:

- **Characteristic 7:** The individual has a lease or other legally enforceable agreement providing similar protections.
- **Characteristic 8:** The setting ensures the individual has privacy in their sleeping or living unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.
- **Characteristic 9:** The setting ensures the individual has the freedom and support to control his/her own schedule and activities, and have access to food at any time.
- **Characteristic 10:** The individual can have visitors of his/her choosing at any time.
- **Characteristic 11:** The setting is physically accessible to the individual.
- **Characteristic 12:** The setting ensures that any modification of the HCBS Settings qualities and conditions is supported by a specific assessed need and justified in the person-centered service plan.

Evidence and analysis was required to demonstrate compliance or non-compliance with each indicator as specified in the tool. Evaluation of compliance required consideration of both the setting itself and each individual served.

The self-assessment tools were released on November 23, 2015 for a 30 day public comment period. Public comment was addressed and incorporated following this release. Additionally, feedback from the Settings Transition Workgroup was incorporated into the draft version of the tools.

The State further collaborated with the workgroup to determine review criteria for the evaluation of self-assessments. Acceptable evidence for compliance included citation of the provider's policies and procedures, participant handbook, staff training curriculum and materials, training schedules, and/or letters of support from persons served.

Self-Assessment Process

The State sent an informational letter to residential and non-residential providers that described HCBS Setting requirements and transition plan assessment steps including State review and provider self-assessment. The letter described providers' ability to remediate issues to come into compliance within deadlines, and provided contact information to obtain technical assistance throughout the process.

The Department disseminated the tools to all residential and non-residential providers preliminarily categorized by the State as "not yet compliant" or "not compliant." Providers were given 60 days to complete the tool and submit the results to the State for review.

State employees were trained on the Settings requirements and CMS' guidance for *Settings that Isolate* (<https://www.medicaid.gov/medicaidchip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>). Any setting determined through the application of this guidance in the self-assessment review process, to have the effect of isolating individuals, is subject to the State's in-depth review and/or heightened scrutiny review process.

State employees reviewed and documented results from 1,857 provider self-assessments. The State made contact to providers via phone and email to clarify residential and non-residential provider responses as needed.

Those providers who were required to participate in the self-assessment process and failed to complete the tool within the required time frame were contacted via phone and email to encourage completion of the tool. Where necessary, the State placed a hold on all Medicaid payments for those providers who still did not complete a self-assessment despite State efforts to contact them. All payment holds were removed once the required self-assessments were received and documented by the State. Throughout the process, all (100%) of required provider settings submitted a self-assessment to the State for review.

The provider self-assessment allowed providers to reflect on their current level of compliance as well as take note of areas of potential non-compliance, and raised awareness among providers serving Medicaid HCBS participants about the Settings Rule. Self-assessment and remediation plan processes have initiated dialogue between the State and the provider community, and have facilitated the State's provision of targeted technical assistance as providers continue to move toward full compliance with the Rule. The State's efforts to validate self-assessment results are described in a later portion of this report.

Provider self-assessment results as presented in this report have been made available for a 30 day public comment period.

The following five types of residential settings and eight types of non-residential settings were reviewed through the self-assessment process:

Residential (1,455 settings):

1. Adult Residential Services provided under the New Choices Waiver (NCW)

Adult Residential Services provided under the NCW include supportive services provided in an approved community-based adult residential setting. Supportive services are expected to meet scheduled and unpredictable participant needs and to

provide supervision, safety and security in conjunction with residing in a homelike, non-institutional setting.

Adult Residential Services may be provided in licensed assisted living or community residential facilities and independent living facilities. Services can include homemaking, chore services, 24-hour onsite response capability, daily status checks (or more frequently as deemed appropriate in the comprehensive needs assessment), attendant care, memory care services, behavioral health services, meal preparation, medication assistance/oversight, social/recreational programming, and nursing/skilled therapy services that are incidental rather than integral to the provision of Adult Residential Services

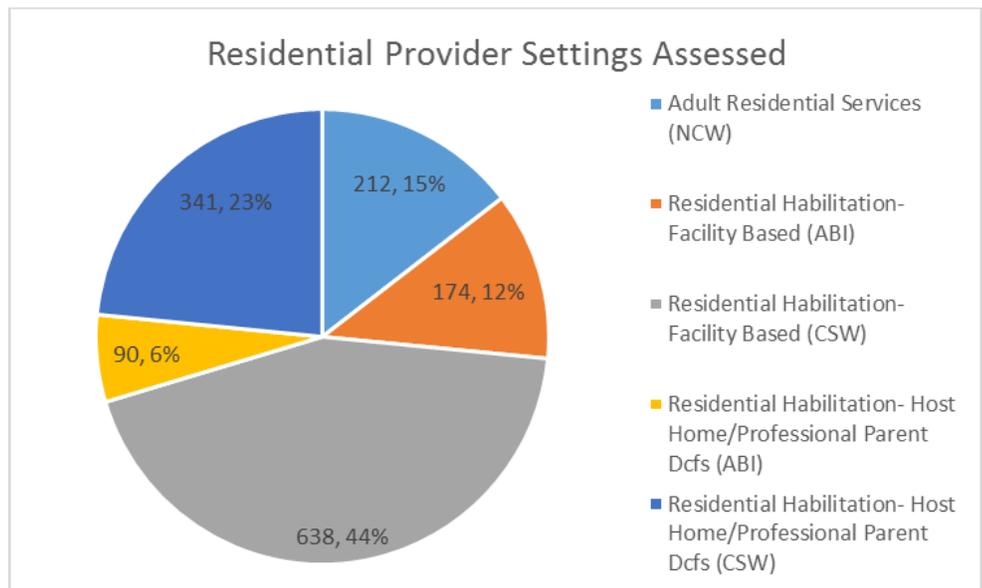
All Adult Residential Services no matter the setting include 24 hour on-site response capability or other alternative emergency response arrangements determined appropriate to meet scheduled or unpredictable participant needs and to provide supervision, safety and security in conjunction with residing in a homelike, non-institutional setting.

2. Residential Habilitation- Facility Based provided under the Acquired Brain Injury (ABI) Waiver

Facility Based Residential Habilitation services provided under the ABI waiver include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living in the community. Facility Based Residential Habilitation services may be provided in licensed group homes with four or more residents, unlicensed group homes with three or fewer residents, or individual supervised apartments or home settings with three or fewer residents. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated setting appropriate to his/her needs. Residential Habilitation also includes personal care and protective oversight and supervision.

3. Residential Habilitation- Facility Based provided under the Community Supports Waiver (CSW)

Facility Based Residential Habilitation services provided under the CSW include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living as independently and productively as possible in the community. Facility Based Residential Habilitation services may be provided in licensed group homes with four or more residents, unlicensed group homes with three or fewer residents, or individual supervised apartments or home settings with three or fewer residents. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated



setting appropriate to his/her needs. Residential habilitation also includes personal care and protective oversight and supervision.

4. Residential Habilitation- Host Home/Professional Parent provided under the Community Supports Waiver (CSW)

Host Home/Professional Parent Residential Habilitation services provided under the CSW include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living as independently and productively as possible in the community. Host Home/Professional Parent Residential Habilitation services may be provided in professional parent homes where two or fewer individuals under the age of 22 reside in a private residence with supervision, or host homes where two or fewer individuals 18 or older reside in a private residence with supervision. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated setting appropriate to his/her needs. Residential habilitation also includes personal care and protective oversight and supervision. This service is available to individuals in the custody of the State of Utah: Department of Human Services, Division of Child and Family Services. For individuals in the custody of the Division of Child and Family Services, the costs of basic and routine support and supervision are not covered as waiver services. Compensation for this routine support and supervision are covered by other funding sources associated with the Division of Child and Family Services.

5. Residential Habilitation- Host Home/Professional Parent provided under the Acquired Brain Injury (ABI) Waiver

Host Home/Professional Parent Residential Habilitation services provided under the ABI waiver include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living as independently and productively as possible in the community. Host Home/Professional Parent Residential Habilitation services may be provided in professional parent homes where two or fewer individuals under the age of 22 reside in a private residence with supervision, or host homes where two or fewer individuals 18 or older reside in a private residence with supervision. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated setting appropriate to his/her needs. Residential habilitation also includes personal care and protective oversight and supervision. This service is available to individuals in the custody of the State of Utah: Department of Human Services, Division of Child and Family Services. For individuals in the custody of the Division of Child and Family Services, the costs of basic and routine support and supervision are not covered as waiver services. Compensation for this routine support and supervision are covered by other funding sources associated with the Division of Child and Family Services.

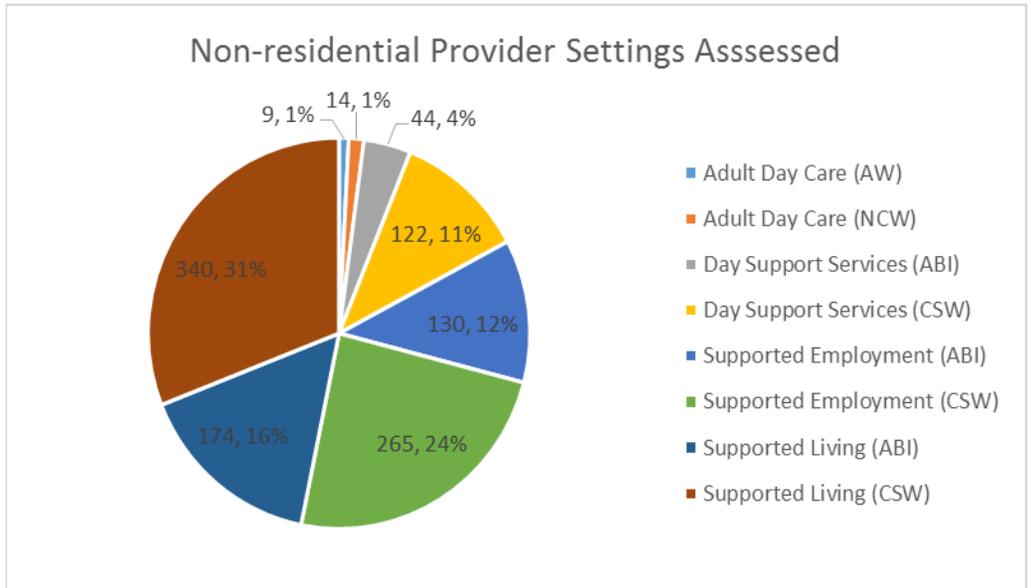
Non-Residential (1098 settings):

1. Adult Day Care provided under the Aging Waiver (AW)

Adult Day Care services provided under the AW serve the purpose of providing a supervised setting during which health and social services are provided on an intermittent basis. Adult Day Care services are provided in licensed day care settings where three or more individuals 18 years of age and over receive continuous care and supervision generally for at least four but less than 24 hours a day. Services include a variety of health, social, recreational, and related support services in a protective setting to meet the needs of functionally impaired adults.

2. Adult Day Care provided under the New Choices Waiver (NCW)

Adult Day Care services provided under the AW serve the purpose of providing a supervised setting during which health and social services are provided on an intermittent basis. Adult Day Care services are provided in licensed day care settings where



three or more individuals 18 years of age and over receive continuous care and supervision for at least four but less than 24 hours a day. Services include a variety of health, social, recreational, and related support services in a protective setting to meet the needs of functionally impaired adults.

3. Day Support Services provided under the Acquired Brain Injury (ABI) Waiver

Day Support Services provided under the ABI waiver assist with acquisition, retention, and improvement in self-help, socialization and adaptive skills. Services typically take place in a non-residential setting, separate from the home or facility in which the individual resides. Day Support Services can be provided in licensed site-based day support settings where four or more individuals attend, or in non-site based day support settings in the community. Additionally, services can be provided in senior support settings designed for individuals who have needs that closely resemble those of older persons, and desire a lifestyle consistent with that of the community’s population of similar age or circumstances. Day Support Services facilitate independence, promote community inclusion, and prevent isolation for individuals in services.

4. Day Support Services provided under the Community Supports Waiver (CSW)

Day Support Services provided under the CSW assist with acquisition, retention, and improvement in self-help, socialization and adaptive skills. Services typically take place in a non-residential setting, separate from the home or facility in which the individual resides. Day Support Services can be provided in licensed site-based day support settings where four or more individuals attend, or in non-site based day support settings in the community. Additionally, services can be provided in senior support settings designed for individuals who have needs that closely resemble those of older persons, and desire a lifestyle consistent with that of the community’s population of similar age or circumstances. Day Support Services facilitate independence, promote community inclusion, and prevent isolation for individuals in services.

5. Supported Employment provided under the Acquired Brain Injury (ABI) Waiver

Supported Employment services provided under the ABI waiver support individuals, based on individual need, to obtain, maintain, or advance in competitive employment in integrated work settings. Supported Employment services can be provided to an individual who is employed either full or part-time and occurs in a work setting where the individual works with individuals without disabilities (not including staff or contracted co-workers

paid to support the individual). Supported Employment services can be provided by a coworker to provide additional support under the direction of a job coach as a natural extension of the workday, in an enclave/mobile work crew setting where a small group is trained and supervised by a job coach amongst employees without disabilities, or in a customized employment setting where individuals desiring to create and implement their own business enterprises receive targeted training, instruction and coaching to achieve their goals. Supported Employment services assist individuals to achieve competitive employment, compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Services can include work-related behavior management and crisis intervention, job coaching, assistance with skills related to paid employment including communication, problem solving and safety; participant-directed attendant care, time management, transportation between work or between activities related to employment, on-site vocational assessment after employment, and employer consultation. Individuals receiving Supported Employment services are supported and employed consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice as indicated in the individual's support plan.

6. Supported Employment provided under the Community Supports Waiver (CSW)

Supported Employment services provided under the CSW support individuals, based on individual need, to obtain, maintain, or advance in competitive employment in integrated work settings. Supported Employment services can be provided to an individual who is employed either full or part-time and occurs in a work setting where the individual works with individuals without disabilities (not including staff or contracted co-workers paid to support the individual). Supported Employment services can be provided by a coworker to provide additional support under the direction of a job coach as a natural extension of the workday, in an enclave/mobile work crew setting where a small group is trained and supervised by a job coach amongst employees without disabilities, or in a customized employment setting where individuals desiring to create and implement their own business enterprises receive targeted training, instruction and coaching to achieve their goals. Supported Employment services assist individuals to achieve competitive employment, compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Services can include work-related behavior management and crisis intervention, job coaching, assistance with skills related to paid employment including communication, problem solving and safety; participant-directed attendant care, time management, transportation between work or between activities related to employment, on-site vocational assessment after employment, and employer consultation. Individuals receiving Supported Employment services are supported and employed consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice as indicated in the individual's support plan.

7. Supported Living provided under the Acquired Brain Injury (ABI) Waiver

Supported Living services provided under the ABI waiver offer individually tailored hourly support, supervision, training, and assistance for people to live as independently as possible in their own homes, family homes and apartments. Supported living services can be provided to individuals who live alone, with family, or with roommates. Services can include maintenance of individual health and safety, personal care services, homemaker, chore, attendant care, medication observation and recording, advocacy, communication, assistance with activities of daily living, instrumental activities of daily living, transportation to access community activities, shopping and attending doctor appointments, keeping track of money and bills and using the telephone; and indirect services such as socialization, self-help, and adaptive/compensatory skill development

necessary to reside successfully in the community. This service may also include behavioral plan implementation by direct care staff.

8. Supported Living provided under the Community Supports Waiver (CSW)

Supported Living services provided under the CSW offer individually tailored hourly support, supervision, training, and assistance for people to live as independently as possible in their own homes, family homes and apartments. Supported living services can be provided to individuals who live alone, with family, or with roommates. Services can include maintenance of individual health and safety, personal care services, homemaker, chore, attendant care, medication observation and recording, advocacy, communication, assistance with activities of daily living, instrumental activities of daily living, transportation to access community activities, shopping and attending doctor appointments, keeping track of money and bills and using the telephone; and indirect services such as socialization, self-help, and adaptive/compensatory skill development necessary to reside successfully in the community. This service may also include behavioral plan implementation by direct care staff.

Validation of Self-Assessment Results

The State validated 100% of the settings that were identified as requiring compliance with the Setting Rule.

- Desk Review: This validation process included the comparison of the provider self-assessment tool and evidence of compliance submitted by the provider.
- Technical Assistance: If State employees conducting technical assistance identified non-compliance with the settings rule, education was provided and follow up and resolution measures were completed on a site by site evaluation by the State.
- Consumer, guardian, and external stakeholder feedback: Feedback received via surveys, telephone, or the HCBSSettings@utah.gov email that is specific to a setting are entered into a database and all follow up and resolution measures are completed on a site by site evaluation by the State.
- Ongoing monitoring: Any HCBS setting pulled for monitoring will be monitored for HCBS Setting Rule compliance. Follow up and resolution measures for any noncompliance areas will be completed on a site by site evaluation by the State. Case management, licensing & certification, and quality management review processes will include HCBS Setting Rule compliance monitoring.
- Ongoing incident report monitoring: State staff review each submitted incident report for Settings Rule compliance. Follow up information including corrective action necessary on the part of the provider, is monitored by State staff. This information is collected and addressed on an ongoing basis but trends are monitored as well.
- On-site validation reviews: Residential and non-residential self-assessment results have been validated through on-site reviews. On-site reviews included observation along with interviews/surveys of participants and staff, and document and policy reviews. See additional information below.

On-site validation reviews: The State selected a statistically valid stratified random sample of settings for validation reviews where sample size required a 5% margin of error, 95% confidence level, and 50% response distribution using the following settings categories: Adult Day Care, Day Support Services, Residential Services, Supported Living, and Supported Employment. This sample was of sufficient size to ensure statistical validity of the information provided in the self-assessments.

The State leveraged the Division of Services for People with Disabilities (DSPD) Community Based Services Reviewers for validation of DSPD settings. DOH State employees performed validation visits and interviews for all other waiver programs. All validation reviewers are part of their respective Quality Assurance Teams and have experience in survey/data collection, auditing, and fieldwork. A training was provided to all validation reviewers including methods for direct observation, note-taking, and record review prior to conducting the site visits. Training also included a thorough review of both the residential and non-residential self-assessment tools and the validation survey tools.

The site visits followed a standard process including brief introduction with setting administrators/staff, setting observation, request for supporting documentation if it had not already been submitted, interviewed participants and direct support staff using questions included in the tool to further validate responses provided by the setting, and an exit summary with administrators/staff.

State employees conducting validation reviews required evidence to confirm all responses provided by the setting in the self-assessment tool. State employees conducting interviews made an effort to conduct a minimum of 5 participant and 5 direct support staff interviews at each setting. Interviews were voluntary and conducted away from other setting staff and participants to ensure a conflict free process. If individuals who were not chosen by State employees wanted to provide feedback, they were interviewed as well. Individuals also will have the option to fill out a survey located on our Settings website that ask the same questions as were asked in the validation interviews. Validation findings, including participant and staff interviews, requiring remediation were added to State findings and are incorporated into the Remediation Plan.

State Findings

A state finding was recorded for each indicator in a self-assessment which either indicated non-compliance with the HCBS Settings Rule, or required additional information to sufficiently demonstrate compliance. Findings were recorded when evidence and analysis was not present, evidence and analysis did not fully address the indicator, additional clarifying information was required to determine compliance or noncompliance, and for all indicators for which a Yes/No/NA response was not provided.

The State has presented each provider with assessment of their HCBS setting as determined through State review, provider self-assessment, desk review, and/or on-site validation visits.

The State findings informed providers of which Settings Rule characteristics and indicators will require remediation, and the reason the State has come to this decision. For settings which have identified modifications of the Settings Rule, evidence will be required to ensure that restrictions are specific to the individual and are supported by an assessed and documented need.

Following the receipt of findings from the State, the provider has 60 days to develop and submit a Remediation Plan in order to demonstrate how they will come into compliance. The State will provide guidance within 60 days of the receipt of the Remediation Plans that do not fully demonstrate how compliance will be achieved. Providers are given the opportunity to remediate issues and come into compliance within timeframes agreed upon by the provider and the State. The State is tracking all provider remediation plan approved compliance timelines, and will track when timelines have been met and setting status is changed to compliant. For provider remediation plan approved timelines that are greater than one year (12 months), the State will require a status update every 6 months.

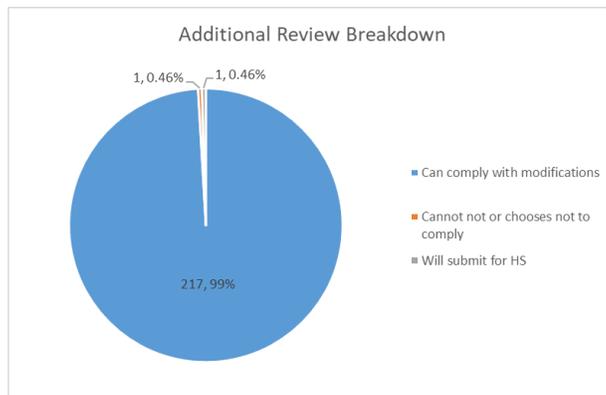
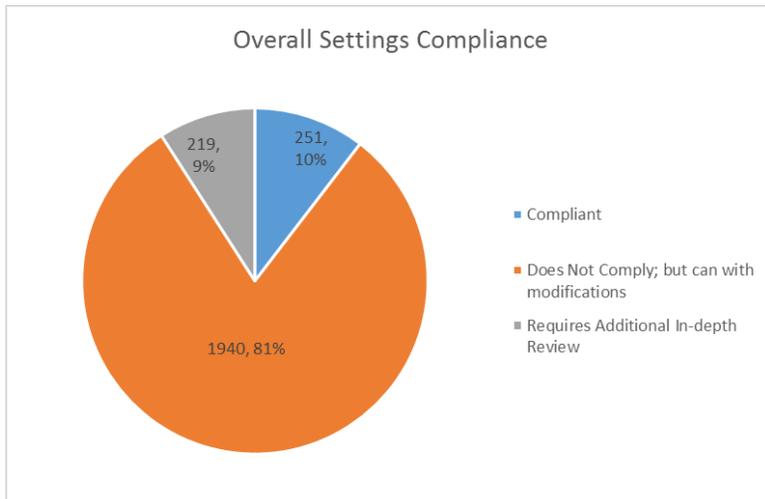
PROVIDER SELF-ASSESSMENT OUTCOMES

Compliance data includes results determined through State review of provider self-assessments, desk review, technical assistance, and on-site validation visits. There were settings that had submitted a self-assessment but were subsequently removed during the State review process. Removal of some settings occurred due to closure of the setting, closure of waiver contract, or settings were presumed to be compliant. Removed settings were not categorized and thus were not included in the compliance data.

Settings Compliance

Settings were documented in the following categories:

- **Compliant:** the setting was able to demonstrate compliance with all settings characteristics.
- **Does not comply; but can with modifications:** the setting had a minimum of one setting characteristic that was not evaluated as compliant. Each of these settings were deemed able to become compliant with modifications.
- **Requires additional in-depth review:** the setting was identified as needing an additional in-depth review to determine if the setting falls into one of the following categories as indicated in the Additional Review Breakdown chart: (1) Can comply with modifications, (2) Cannot or chooses not to comply, (3) Presumed to have the qualities of an institution for which the state will submit evidence for the application of heightened scrutiny.



There is one AW non-residential setting (Day Support) setting that potentially cannot or chooses not to comply with the settings rule. This setting currently is not providing services to any Medicaid Waiver HCBS individuals.

There is one NCW residential setting that is categorized as being located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (nursing home) that will be going through the heightened scrutiny process. This setting provides services to approximately 25 Medicaid Waiver HCBS individuals.

All (100%) of Day Support and Adult Day Care Services will be required to go through an additional in-depth review.

Characteristics Requiring Action to Come into Compliance:

Of the 1,857 provider settings reviewed, Tables 1 and 2 outline the number and percentage of settings requiring action in each of the following characteristics in order to come into compliance:

TABLE 1. Number and percentage of residential settings requiring action to come into compliance, by characteristic.

Residential: Settings Rule Characteristic and Description	Settings Requiring Action	
	No.	(%)
<i>Characteristic 1:</i> 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.	871	59.9
<i>Characteristic 2:</i> Setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and based on individual needs, preferences, and, for residential settings, resources available for room and board.	179	12.3
<i>Characteristic 3:</i> Setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint.	905	62.2
<i>Characteristic 4:</i> Setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	590	40.5
<i>Characteristic 5:</i> Setting facilitates individual choice regarding services and supports, and who provides them.	151	10.4
<i>Characteristic 6:</i> The individual has a lease or other legally enforceable agreement providing similar protections.	462	31.8
<i>Characteristic 7:</i> Setting ensures the individual has privacy in their sleeping or living unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.	699	48.0
<i>Characteristic 8:</i> Setting ensures the individual has the freedom and support to control his/her own schedule and activities, and have access to food at any time.	376	25.8
<i>Characteristic 9:</i> The individual can have visitors of his/her choosing at any time.	743	51.1
<i>Characteristic 10:</i> The setting is physically accessible to the individual.	440	30.2
<i>Characteristic 11:</i> Setting ensures any modification of the HCBS Settings qualities and conditions is supported by a specific assessed need and justified in the person-centered service plan.	371	25.5
<i>Characteristic 12:</i> Setting enforces the Home and Community Based Settings Regulation requirements.	131	9.0

*The characteristics of the Home and Community Based Settings Rule were defined using the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings*, as provided by CMS.

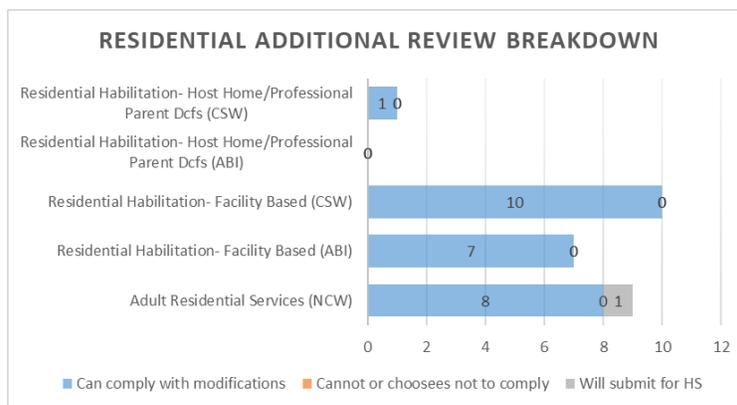
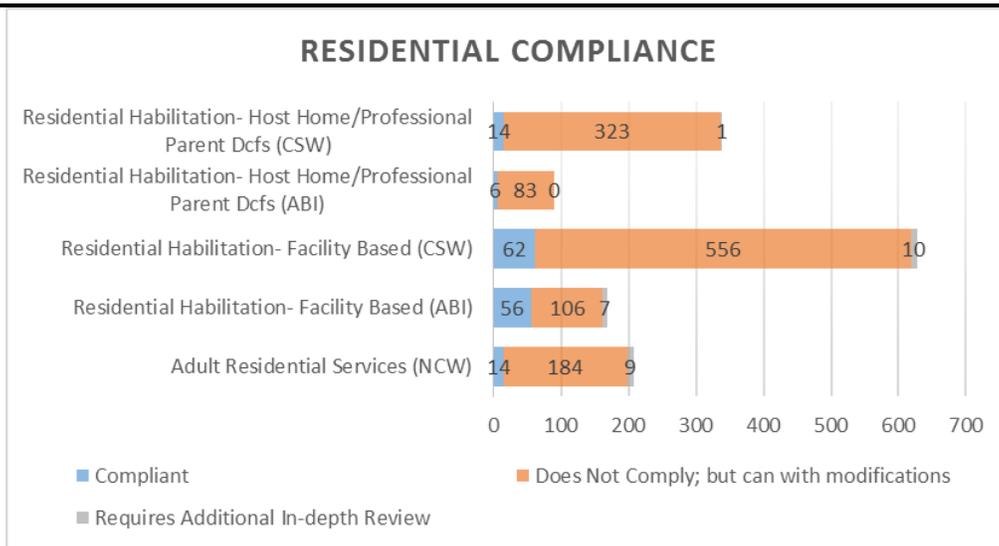
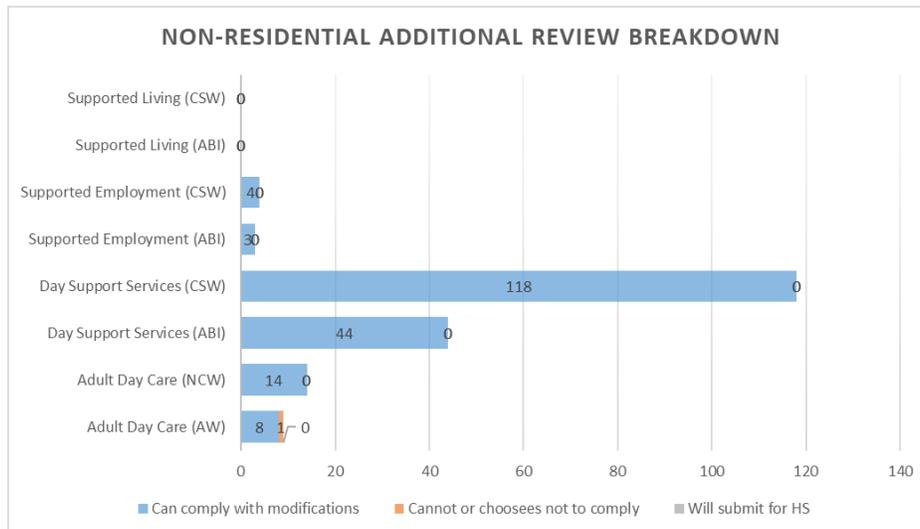
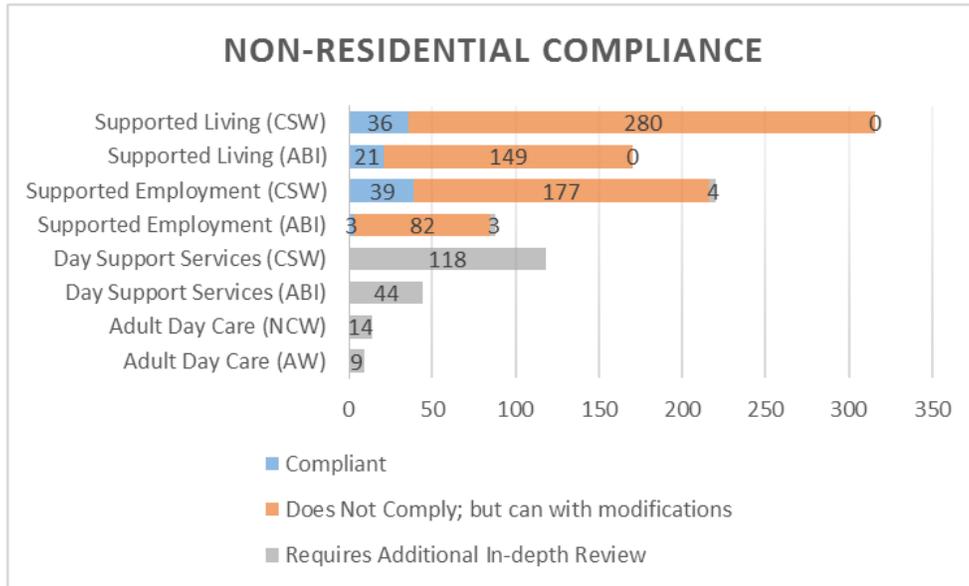


TABLE 2. Number and percentage of non-residential settings requiring action to come into compliance, by characteristic.

Non-Residential: Settings Rule Characteristic and Description	Settings Requiring Action	
	No.	(%)
<i>Characteristic 1:</i> 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.	614	55.9
<i>Characteristic 2:</i> Setting is selected by the individual from among setting options, including non-disability specific settings. The settings options are identified and documented in the person-centered plan and are based on the individual’s needs and preferences.	183	16.7
<i>Characteristic 3:</i> Setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint.	775	70.6
<i>Characteristic 4:</i> Setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	614	55.9
<i>Characteristic 5:</i> Setting facilitates individual choice regarding services and supports, and who provides them.	195	17.8

*The characteristics of the Home and Community Based Settings Rule were defined using the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings*, as provided by CMS.



Settings Identified as Requiring an Additional In-depth Review

Of the 1,857 provider settings reviewed, 166 (8.9%) were identified as having possibly one or more institutional qualities or characteristics that isolate. Settings categorized as needing an additional in-depth review were unable to be categorized based only on the self-assessment and validation review process.

Findings were recorded for non-compliance with indicators 1-4 on both the residential and non-residential self-assessment tools. Additionally, other settings which were determined to have the effect of isolating individuals receiving HCBS from the broader community were identified during self-assessment review, technical assistance provided, and validation visits by State workers trained in CMS guidance titled *Settings that Isolate*. The State welcomed

advocacy organizations input and incorporated their feedback when identifying settings that had a possible effect of isolating individuals from the broader community.

TABLE 3. Number and percentage of residential and non-residential settings identified as requiring additional in-depth review

Settings Rule Indicator and Description	Settings Requiring Additional Review	
	No.	(%)
<i>Indicator 1:</i> Is the setting in a public or privately-owned facility that provides inpatient treatment?	1	0.0
<i>Indicator 2:</i> Is the setting on the grounds of, or immediately adjacent to a public institution?	0	0
<i>Indicator 3:</i> Is the setting located in a gated/secured community for people with disabilities?	0	0
<i>Indicator 4:</i> Is the setting located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community?	3	0.2
<i>Other Settings that Isolate:</i> Settings that have the effect of isolating individuals receiving HCBS from the broader community.	161	8.7

*The indicators used to identify settings presumed to have institutional qualities or characteristics that isolate were defined using the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings* and *Settings that Isolate*, as provided by CMS.

The State will follow up to verify findings for indicators 1-4 as well as settings identified under other settings that isolate as a part of the *Required Additional In-depth Review* process.

- Those settings found to be in compliance with these indicators will be presumed *not* to be institutional.
- Following this additional review, those settings still presumed to be institutional in nature but found to meet the qualities for being home and community-based will complete the Heightened Scrutiny review process. CMS will evaluate information presented by the State and input from the public to determine whether or not the setting may be included in HCBS programs.
- Those settings still presumed to be institutional in nature and are not found to meet the qualities for being home and community-based will no longer be reimbursed for HCBS services.

All (100%) of the following service types have been identified under the other settings that isolate category:

- Adult Day Care (AW & NCW)
Adult Day Care services are provided in licensed day care settings where the setting is designed specifically for people with disabilities, and the individuals in the setting are primarily or exclusively people with disabilities. These designations may meet the criteria for having the effect of isolating individuals; the additional in-depth review process will determine how each setting will be categorized.
- Day Support Services (ABI & CSW)
Day Support Services can be provided in licensed site-based day support settings where four or more individuals attend, or in non-site based day support settings in the community. Additionally, services can be provided in senior support settings designed for individuals who have needs that closely resemble those of older persons, and desire a lifestyle consistent with that of the community’s population of similar age or circumstances. These settings are typically designed specifically for people with disabilities and the individuals in the the setting are primarily or exclusively people with disabilities. These designations may meet the criteria for having the effect

of isolating individuals; the additional in-depth review process will determine how each setting will be categorized.

During the coming months, we expect these lists of settings requiring additional review, compliance, partial compliance, and non-compliance to remain fluid. Settings will move from one list to the other, with the ultimate goal of moving all settings into a state of HCBS compliance. We recognize that not all of these settings may be able to make the necessary changes to become HCBS compliant, but we expect to engage in some level of remediation with all settings over the course of the next 12-18 months (January 2019-June 2020).

Additional In-depth Review Process:

In order to identify settings for which an additional in-depth review should be applied, the State incorporated questions regarding the presumption of institutional characteristics into the provider self-assessment tool. These indicators focus directly on the presumed characteristics of an institution as outlined in the Rule:

1. The setting is NOT located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (a NF, IMD, ICF/IID, hospital).
2. The setting is NOT located in a building on the grounds of, or immediately adjacent to, a public institution.
3. The setting is NOT located in a gated/secured 'community' for people with disabilities.
4. The setting is located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community.

A Self-Assessment and/or Validation response to any of the above indicators that denotes non-compliance will require that the State pull the setting for an additional in-depth review.

Additionally, any setting determined to have the effect of isolating individuals receiving HCBS from the broader community were identified by State employees trained on CMS' guidance for *Settings that Isolate* (<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>) during self-assessment review, technical assistance provided, and validation site visits will require the State pull the setting for an additional in-depth review. Stakeholder, including advocacy entities, feedback was utilized to add settings for an additional in-depth review.

The State considers properties in which there are multiple provider-owned or operated homes in a cluster as having the effect of isolating individuals and will include them in an additional in-depth review.

To assist providers in establishing documentation that they have the qualities of a home and community based setting, State staff will notify providers that they will be participating in an additional review process that may result in undergoing heightened scrutiny and will develop tools for on-site visits and the additional review process. The State anticipates to conduct the in-depth reviews May-October 2019.

For ABI or CSW Providers voluntarily participating in the Provider Transformation process, their in-depth review will be postponed (up to 6 months) to have the chance to complete their Provider Transformation Plan. The Provider Transformation Plan will be accepted by the State as their plan towards compliance with the settings rule.

The in-depth review process utilized by the State will require a comprehensive review of the setting which may include:

- A. A review of person-centered plans that include modifications or restrictions for individuals receiving services in the setting
- B. Interviews with service recipients and/or family members/participant representatives that generally:
 - a. include as many individuals as possible selected by the interviewers without influence by the provider or staff.

- b. include staff, specifically including direct support staff because they implement the program policies and procedures on a day-to-day basis, outside the presence of the supervisor or administrator.
- C. A secondary review of policies, training, incident reports, and other applicable service related documents
- D. Additional focused review of the setting's proposed Remediation Plan, including how each of the above is expected to be impacted as the plan is implemented.
- E. Settings may be asked for additional information to document the HCBS nature of the setting and how the setting is integrated into the greater community. This may include:
 - a. Descriptions of community interactions and how close a setting is to community activities and public transportation (or how transportation is provided for individuals)
 - b. Campus maps/diagrams
 - c. Descriptions of how a setting is connected with any related institutional facility including information about financing, shared administration or other staff, and shared resources such as transportation and eating facilities
- F. An on-site visit and assessment of the physical location and practices of the setting. The site visit will:
 - a. include a significant amount of time that is observational in nature. The purpose of this is to observe:
 - i. the individual's life experience and the presence or absence of the qualities of HCBS.
 - ii. the individual's access to the broader community including the availability of transportation and geographic proximity to other community resources, including shopping, entertainment, worship, etc.
 - iii. for evidence that settings have institutional characteristics, such as cameras; individuals schedules or other personal information posted, lack of uniqueness in room decor, indicators of seclusion or restraint such as quiet rooms with locks, restraint chairs, or posters of restraint techniques; regimented meal times and other daily activities; and barriers that inhibit community member involvement, such as fences or gates.

Based on the accumulation of these findings (presented with identifying information removed from the documentation), the Settings Transition Workgroup will make an initial determination on which settings fall into the following categories:

1. Those settings found to be in compliance with these indicators will be presumed *not* to be institutional.
2. Following this additional review, those settings still presumed to be institutional in nature but found to meet the qualities for being home and community-based will complete the Heightened Scrutiny review process.
3. Those settings still presumed to be institutional in nature and are not found to meet the qualities for being home and community-based will complete the Heightened Scrutiny review process.

Heightened Scrutiny Review Process

All settings still presumed to be institutional in nature (categories 2 & 3 above) will continue on to the Heightened Scrutiny process.

An Evidence Summary Packet including the following will summarize and include (as appropriate):

- A. Description of how a setting overcomes its presumed institutional qualities will focus on the qualities of the setting and how it is integrated in and supports full access of all individuals receiving HCBS into the greater community. This may include the following:
 - a. Description of the proximity and to and scope of interactions with community settings used by individuals not receiving Medicaid funded HCBS.
 - b. Provider qualifications for staff employed in the setting that indicate training or certification in HCBS, and that demonstrate the staff is trained specifically for HCBS support in a manner consistent with HCBS settings regulations.
 - c. Policy and/or procedures in place by the setting that indicate support for activities in the greater community according to the individual's preferences and interests, staff training materials that speak of the need to support individuals chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observations, cultural celebrations, employment, etc.)

- d. Description of the proximity to avenues of available public transportation or an explanation of how transportation is provided where public transportation is limited.
- e. The setting is integrated in the community to the extent that a person without disabilities in the same community would consider it a part of the their community and would not associate the setting with the provision of services to persons with disabilities.
- f. The individual(s) participates regularly in typical community life activities outside of the setting to the extent the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff; community activities should foster relationships with community members unaffiliated with the setting.
- g. Services to the individual, and activities in which the individual participates, are engaged with the broader community.
- h. Specifically for settings that are located on the grounds of or immediately adjacent to a public institution, documentation showing that the HCBS setting is not operationally interrelated with the institutional setting, such as:
 - i. Interconnectedness between the institution and the setting, including administrative or financial interconnectedness, in question does not exist or is minimal
 - ii. To the extent any institutional staff are assigned occasionally or on a limited basis to support or back up the HCBS staff, the institutional staff are cross trained to meet the same qualifications as the HCBS staff
 - iii. Participants in the setting in question do not have to rely primarily on transportation or services provided by the institutional setting, to the exclusion of other options.
- B. Summary of surveys and interviews of participants, staff, stakeholders, and public input that can be linked to the setting for which evidence of being submitted
- C. Diagrams, maps, pictures of the site and other demonstrable evidence (taking into consideration the individual's right to privacy)
- D. Remediation and/or Transition Plan (for providers continuing working towards compliance)
- E. Any additional information submitted by providers

By the end of 2019, the State will compile a list of providers that document compliance with the regulations for HCBS settings and a list of providers that document non-compliance. Public input will be incorporated into the State's review process. Public notice will list affected settings by name and location (as appropriate), identify the number of individuals served in each setting, include all justifications as to why the setting is home and community based (this will include any reviewer reports, interview summaries, etc.), and provide the public an opportunity to comment. A participant experience survey will be an additional way to provide input on settings.

Once public input is compiled and added to the Evidence Summary Packet, the Settings Transition Workgroup will determine if they think the evidence package overcomes or will overcome with the modifications outlined, the presumption of not being home and community based and if a setting does not overcome the presumption, why it does not. The determining factors for deciding if a setting is ready for CMS review include:

1. Consensus among Settings Transition Workgroup
2. Evidence of integration for all individuals in the setting
3. Evidence of individual choice and autonomy

The Settings Transition Workgroup may identify areas in the Evidence Summary Packet that should be strengthened or verified before submission to CMS. The setting and workgroup recommendation are reviewed by State staff and a recommendation will be made to leadership as to whether a setting is ready to be submitted to CMS or if additional outreach is required.

The State has decided to begin the staggered submission process with a small group of settings that represent a variety of types of providers, locations of settings, and participants served. A smaller first submission would be helpful in having an understanding of the submission and review process. The State expects to begin submitting heightened-scrutiny

evidentiary packets for settings to CMS by April 2020. CMS will evaluate information presented by the State and input from the public to determine whether or not they agree with the State's assessment.

For settings still presumed to be institutional in nature and are not found to meet the qualities for being home and community-based, (due to the extension of the HCBS deadline) the State will provide additional time for settings to submit a revised plan to come into compliance. Reassessment of these settings will be completed no later than December 2020.

Those determined not to be home and community based after heightened scrutiny is conducted by CMS, the State will proceed with dis-enrolling settings (providers) and transitioning beneficiaries affected. The State anticipates transitioning beneficiaries from non-compliant settings between June to December 2021.

The State will send a formal notification letter to the Operating Agency that outlines the specific reasons for settings that must be transitioned and the due process procedure and timeline available to the person and if applicable his/her guardian/representative no less than 45 days prior to the transition.

The Operating Agency will then send the current provider of service and the participant and/or representative/guardian a formal notification letter indicating the intent to transition the person supported no less than 30 days prior to the transition. The Operating Agency will be responsible to inform and transition individuals to compliant settings or to ensure participants understand that the receipt of continued services in these settings will not be funded by HCBS.

State assures that it will provide reasonable notice and due process to any participant that needs to transition to another setting. Through the person-centered planning process the Support Coordinator or Case Manager will ensure that the participant is provided information about alternative settings that comply with HCBS settings requirements and allow them to make an informed choice of an alternative setting. The Support Coordinator or Case Manager will ensure that all critical services are in place in advance of a participant's transition and will monitor the transition to ensure successful placement and continuity of services.

While Support Coordinators and Case Managers will provide information on options and encourage participants to transition to a setting that complies with the HCBS settings requirements, some participants may choose to remain in their current setting and either disenroll from the waiver program or continue to receive services without HCBS funding.

COMPLIANCE ACTION AND RECOMMENDATIONS

The State will continue to work with settings and providers to come into compliance. Throughout this process, the State will continue to emphasize that reverse integration activities are not sufficient to meet the true intent and spirit of the HCBS Settings Rule.

Stakeholder Work Groups:

The purpose of the stakeholder work group meetings was to engage stakeholders in a workgroup format to provide feedback as the State works to respond to Provider Remediation Plans. Stakeholders were composed of providers, advocacy groups, consumers, community members, case coordinators, and State staff. During the workgroup meetings the Settings Rule and CMS guidance was reviewed, self-assessment indicators that require clarification were discussed, and feedback from stakeholders was solicited.

The following stakeholder work groups were held:

- April 3, 2018- Non-residential integration

- April 10, 2018- Modifications and restrictions
- April 17, 2018- Residential integration
- May 1, 2018- Heightened Scrutiny

Direction was provided by the workgroup and is being utilized to respond to Provider Remediation Plans, provide technical assistance to providers, and to use in brainstorming sessions with stakeholder focus groups as follows:

Community Integration:

Individuals not receiving Medicaid HCBS, as referenced in the Settings Rule, refers to both other individuals in the service setting and the greater community. “Community” as referenced in the rule refers to the greater community and not solely a community of one’s peers, and that integration also means more than integration with peers who also receive services. Note that visits by community members have value, but cannot replace community access for individuals receiving HCBS services; this is called reverse integration.

All settings, including those in rural communities and those in low density suburban areas, should provide adequate transportation opportunities to meet beneficiaries’ desires for meaningful community engagement and participation in typical community activities.

We support individual choice and agree that individuals may vary in their choices as they seek full access and participation in the greater community. However, in order to receive approval of a State plan under which it will receive Medicaid funding for HCBS, a state must ensure that the choices available to individuals meet the requirements for community integration under the final rule.

Modification and Restrictions:

The following are two areas that were discussed by the workgroup and has been interpreted to be a restriction under the Settings Rule:

- An alarm on the door
- Not having locks on bathroom and living unit doors in a residential setting

The assumption is that a participant always starts with a lock (bathroom and bedroom or living unit), rather than being given the choice to have one installed. Locks are really about equal treatment and privacy, all staff should not have unlimited access to individuals’ rooms or living unit. If a restriction is in place, all requirements in the Rule must be met.

Settings with controlled-egress (such as a memory care unit) must demonstrate how they can make individual determinations of unsafe exit-seeking risk and make individual accommodations for those who are not at risk to allow them to circumvent this restriction.

Controls on personal freedoms and access to the community cannot be imposed on a class or group of individuals receiving Medicaid Home and Community Based Services. Restrictions or modifications that would not be permitted under the HCBS settings regulations cannot be implemented as “house rules” in any setting, regardless of the population served and must not be used for the convenience of staff.

Informed Consent in regards to a modification or restriction is a signature on the PCSP, but it is important to help the individual understand the decision they are making. For example, accommodations can be made to assist individuals to fully understand their PCSP, such as allowing them to take it home for review before making a decision.

Example of modifications or restrictions surrounding an individual who has Prader Willi Syndrome (a genetic disorder that includes symptoms of constant hunger) and requires restricted access to the refrigerator/food:

- There must be a documented and assessed need, and a way for other individuals in the home to circumvent this restriction.
- Is staff providing access to the fridge an appropriate way to circumvent this restriction? If only the staff have a key, this could have the effect of giving the staff additional power over program participants. There is a difference between limiting access because it is almost dinner time (acting as a parental figure), and opening the fridge whenever an individual wants (ensuring participant rights). Training and the individual's experience will be very important to distinguish compliance.
- The presumption is participants always have access. Restrictions are individualized and based on a documented and assessed need. The expectation is the same for knives, the stove, and other situations that could potentially be dangerous.

Stakeholder Focus Groups:

The purpose of the stakeholder focus group meetings was to engage stakeholders in a focus group format in an effort to provide a forum for stakeholders to talk openly to identify ways to bring HCBS services into compliance with the Settings Rule. Stakeholders were composed of providers, advocacy groups, consumers, community members, case coordinators, and State staff. The information discussed during the focus group meetings were the definition of community integration, workgroup determinations, objectives of how to enhance the quality of current HCBS services was identified, and focused brainstorming occurred.

The following focus groups were held:

- June 5, 2018- Residential (NCW)
- June 19, 2018- Non-Residential (Adult Day Care)
- July 3, 2018- Non-Residential (Employment)
- July 10, 2018- Residential (DSPD)
- August 28, 2018- Person-Centered Care Plan (PCSP)
- September 11, 2018- Modifications and Restrictions

Brainstorming performed by the focus groups resulted as follows:

Training and Resources:

The focus groups identified the following training and resources that would assist the State and Providers coming into compliance:

- Education on community integration and what this should look like in each type of setting
- Direct Care Staff education: how to make staff feel empowered to take action to support individual goals and choices
- Early consumer and family orientation on assessments, person-centered planning, services, etc.
- Education and outreach to the community and businesses
- Consumer rights education for individuals/families receiving services and what to do when they are not being met
- Resources for individuals on what services and providers are available to them
- Informed choice and informed consent for consumers, families, providers, case coordinators (including for people who have no representative and appear to not be able to understand)
- Person-centered Support Planning (PCSP) training for consumers, families, providers, case coordinators
- Consumer and family education on modifications and restrictions
- Ongoing quarterly settings meetings (education, input, updates, etc.)

Waiver Service Modifications:

The focus groups identified the following as areas to look at the current waiver service model to better support community integration:

- Transportation: Challenges currently include limited providers, limited public transportation schedules, transportation no-shows, accessibility, limited emergent transportation options, inflexibility with rates, and rates do not cover costs.
- Service reimbursement rates: Challenges currently include that acuity is not tied to rates, expenses are not covered by current rates, rates are not based on the level of need and supervision, and one rate does not fit all individualized circumstances.
- Service codes: There is no flexibility to service an individual under multiple codes (more individualized) and the current codes do not reflect the kind of services needed to support individuals in the community. Need better support for people in crisis; allowing fluidity of services when individuals demonstrate need.
- Staff ratios and group size: Evaluation of group size of individuals in each service and staff qualifications and ratios.

Community Integration Support:

The focus groups identified the following as areas to improve in to better support individuals to integrate in their communities:

- Have more options and choices of activities; larger variety of jobs to choose from; be more creative
- Base activities that are focused on individual preference versus staff preference
- Improve person-centered focus when care-planning; support individuals to be the driver of the PCSP process
- Navigate parent/participant/provider relationship better to ensure participant is not being required to participate in activities they are not interested in
- Improve on focusing on desires of versus parents/families
- Better coordination between agencies that are serving an individual
- Ensure people have informed consent of where and who they live with
- Base choices on individual needs versus group options
- Better connection with community resources, leveraging what is already available
- Stop making assumptions that a person does not care about a restriction (especially a restriction that is in place for another but affects them)
- Better communication with natural supports/families

Other Challenges:

The focus groups identified the following as other challenges that need to be taking into consideration:

- Individuals lack of interest in community integration, overstimulation, agitation, and stress in the community
- Health and personal care needs in the community
- Balancing risk, liability for providers, and safety of others
- Access to more affordable housing and to wheelchair accessible homes (to increase residing in the community)
- Include more self-advocates and families in the process
- Human Rights committee, with the Settings Rule, is overloaded and the time commitment is heavy for volunteers (due process versus committee requirements need to be assessed)

- Circumventing restrictions for those who do not need them

Additional Guidance:

Privacy and the Use of Cameras in the New Choices Waiver Residential HCBS Setting

Although the allowance/prohibition of cameras is not specifically discussed in the HCBS Settings Final Rule, a minimum requirement of States is to ensure individual rights to privacy, dignity, and respect in all HCBS service settings.

The residential self-assessment asks the following question: “Are cameras present in the setting? If yes, please provide evidence that surveillance equipment has been authorized.” This question is to assess the use of cameras used for the purpose of surveillance that violate a person’s right to privacy.

Removal of cameras is not a requirement of the Settings Rule. The use of cameras must be assessed against the HCBS Settings Rule to ensure that the presence and intended use of cameras is in compliance with the Rule. Surveillance cameras in a setting may change the perception of the site as institutional in nature versus Home and Community Based. Use the following information to determine if surveillance equipment is inline with the settings rule:

Surveillance equipment in the following circumstances generally do not raise privacy concerns and can be used as similar non-HCBS settings would use them:

- In areas dedicated to provider staff (desks/offices)
- Monitoring entrances and exits
- Monitoring exterior areas of the building (parking lots)
- In commercial/integrated areas of the setting (such as stores, cafes, etc.)

Surveillance equipment may also be used if it achieves one of the following:

- Increased independence for individual(s) receiving HCBS services
- Addresses a complex medical condition or other extreme circumstance
- Reduces or minimizes critical incidents
- Improves the quality of supports

Surveillance equipment must meet the following requirements:

- Address health and safety concerns, potential risks and safety planning
- Visual (concealed cameras are not allowed)
- Be the least restrictive option
- Be accessed (both equipment and any recordings) only by appropriate staff
- Method of secure disposal or destruction of any recordings after a reasonable period

If an individualized assessment indicates that a person needs to be watched at all times so that staff can intervene when they engage in behavior that is dangerous to themselves or others, this modification should be reflected in their person centered plan.

If surveillance equipment is used in an HCBS setting, individuals receiving services and their guardian must provide informed consent. We recognize there will be times when the person’s guardian may need to be heavily involved in this process. However, the participant, regardless of age, should be involved in the informed consent and planning process as much as possible.

Note: Only a resident or the resident's legal representative may operate or install a monitoring device in the resident's room per Utah Administrative Code 26-21-303.

Avenues for Additional Feedback:

Individuals receiving Waiver HCBS services or their guardian or authorized representative will have the opportunity to complete the Medicaid HCBS Settings Consumer Survey providing feedback on the settings they receive services in. The link to the survey will be posted on the Utah HCBS Waiver Programs Settings page.

The State has an email dedicated to the Settings Rule transition. Feedback, general questions, a request for technical assistance, or any other settings related inquiries can be submitted to HCBSSettings@utah.gov.

The Utah Department of Health and the Utah Department of Human Services are participating in the National Core Indicators (NCI) and the National Core Indicators- Aging and Disabilities (NCI-AD) project. NCI and NCI-AD is a voluntary effort by State Medicaid, aging, and disability agencies to measure and track their state's performance. The core indicators are standard measures used across states to assess the outcomes of services provided to individuals and families. Indicators address key areas of concern including service planning, rights, community inclusion, choice, health and care coordination, safety and relationships. The State will use the information collected to improve the services provided to Utahns who are aging or have disabilities.

Technical Assistance:

The State has a dedicated staff member to provide technical assistance to providers upon request. The technical assistance is frequently initiated by provider phone calls or emails in response to completing their Provider Remediation Plans.

Provider Transformation:

Beginning in 2013, the State invested in capacity building and began contracting with Griffin Hammis to assist DSPD providers to be able to provide customized employment and learn the essential elements of successful customized employment. In 2015, the state applied for resources through the Office of Disability Employment Policy- Employment First State Leadership Mentoring Program (ODEP- EFSLMP) and chose to focus those resources on provider transformation among provider companies that offer either day support or supported employment services. The state also allocated resources to school to work efforts and concentrated on rates and reimbursement restructuring.

In year one, the state worked with two providers, who received extensive technical assistance from nationally recognized subject matter experts. In year two, the state added two more providers to the program and continued to provide support to the year one sites through EFSLMP resources. The state added two more providers in year three and continued to provide support to year one and two providers as needed. In year four, the state added three providers while continuing to offer quarterly check-ins, webinars, and trainings to past transformation participants.

In addition to the targeted technical assistance, we have offered at least two webinars to all DSPD providers and partners about community engagement, person-centered services, shifting from caregiving to community-connecting. We have also shared the ODEP monthly webinars and provider transformation series and manual with ALL providers.

In addition to the ODEP resources, we have continued to contract with Griffin Hammis training a combination of 50 employment specialists each year that includes educators, VR counselors, Workforce counselors and support coordinators to receive a national certificate level training in customized employment and provide technical assistance after training.

DSPD plans to offer additional transformation technical assistance to all contracted ABI and CSW HCBS Waiver service providers (not just those that offer day or employment), to help them better understand and achieve compliance with the settings rule. This will include technical assistance, similar to previous transformation technical assistance offered, but will include mentorship specific to the settings rule.

In addition, DSPD has been awarded a technical assistance grant for person-centered planning through NCAPPS.

Community Integration in Adult Day Care and Day Support Services:

Training and technical support to traditional adult day care and day support services programs will be provided to improve the quality of those programs and to help those providers plan for future business models that support community integrated services and compliance with the HCBS Settings Rule.

Center Based Employment (CBE) Hub and Spoke Model:

For Day Support Service centers that currently engage in center based employment, the following model has been proposed.

To assist providers to transition to the CBE model, the State will identify and engage technical assistance contract that specializes in this service delivery area, modify employment and day support service descriptions, and identify rate changes needed to employment and day support billing codes.

- Limit use of CBE to up 24 months (with some exceptions that allow CBE beyond 24 months)
 - Ability to extend beyond 24 months - Based on the goals outlined in the individual's person centered support plan (PCSP) on a case by case basis
 - Option to return to center-based employment for additional (up to) 24-month periods if the individual quits or loses competitive, integrated employment
- Complete meaningful person-centered planning to determine what tasks the individual will work on to build job skill while in CBE
 - Must work toward (and document) specific and measurable employment goals for competitive integrated employment
 - Opportunity for yearly career counseling
- Create opportunities for integration during both the pre-vocational phase and during periods of the day when the individual is not at work at their competitive, integrated, employment site. (This could entail the use of a new service definition "Community Participation" or a combination of service codes (for example – some services could be coded as "supported employment" and some "day supports")
 - Evaluate implementing a requirement where individuals will spend a minimum of 20% of their time in the community participating in experiences that are meaningful to the individual
 - CMS has stated that providers must avoid reverse integration
- Limit enrollment of new CBE providers to those that:
 - Meet the pre-vocational hub and spoke model standards

Training:

The State has engaged in several face-to-face training opportunities. Trainings up to this point have focused on education and awareness of the Settings Rule, Provider Remediation Plan requirements, and the State's progress towards compliance.

The State recognizes that the requirement for settings to be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community is a key component of the HCBS Setting Rule. Providers were assessed on how they currently comply with the integration component within the provider self-assessments and remediation plans, but did not expect providers to be fully compliant with this requirement until June 2021. The State will continue providing ongoing education and technical assistance to ensure that providers understand that reverse integration alone is not enough to be fully compliant with this requirement.

The State is planning multiple training opportunities for providers, consumers, and other stakeholders to discuss reoccurring themes in provider-initiated technical assistance, self-assessment characteristics identified with a high percentage of settings requiring action, and workgroup and focus group outcomes.

The State will also continue to train support coordinators, case managers, and contract review staff to ensure they are ensuring settings are making progress towards compliance through the current services delivery system. Training will include steps to take to increase access to non-disability specific settings among individual service options for both residential and non-residential services.

Greater Family Engagement:

For waiver participants who have involved family members, educating and informing family members regarding community integration and employment as a critical step towards compliance. The State has begun meeting with consumers and family members to educate and answer questions.