

Home and Community Based Services (HCBS) Settings Rule Overview

- Federal HCBS Settings Rule enacted in 2014 – established standards for settings reimbursed by Medicaid for home and community based services (42 CFR§ 441.301)
- Full compliance required by March 2022
- By March 2015, states were required to submit to CMS, a plan (Statewide Transition Plan) to detail how compliance will be achieved. 7 states have final approval, Utah is one of remaining states with initial approval.

Utah's Transition Plan – Activities Update

- To evaluate compliance with settings rule, providers completed self-assessments for ~2000 sites
 - Residential Services – assisted living facilities, group homes
 - Services delivered during the day – supported employment, day supports, sheltered workshops
- State performs onsite validation visits of a sample of provider sites (279 sites)
- Providers submitting initial remediation plans based on self-assessments and onsite validation visits (~1600 sites assessed require some level of remediation to come into full compliance)
- Part of CMS final approval requires Utah to submit results of provider self-assessments and state remediation efforts.

How does Settings Rule Define Home and Community Based Services?

Settings that are NOT HCBS:

- Nursing Facilities
- Institution for Mental Diseases (IMD)
- Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID)
- Hospitals

Settings Presumed NOT to be HCBS:

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- **Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS**
 - CMS' Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community states that the following two characteristics alone might, but will not necessarily, have the effect of isolating individuals: 1) The setting is designed specifically for people with disabilities, or for people with a certain type of disability 2) Individuals in the setting are primarily or exclusively people with disabilities

CMS Definition of Setting Characteristics that ARE HCBS:

- **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. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)
- **Characteristic 2:** The 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 are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)
- **Characteristic 3:** The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/441.710(a)(1)(iii)/441.530(a)(1)(iii)

- **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. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)
- **Characteristic 5:** The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v)/441.710(a)(1)(v)/441.530(a)(1)(v)
- **Characteristic 6:** The setting enforces the Home and Community-Based Settings Regulation requirements. 42 CFR 441.301(c)(4)/441.710(a)(1)/441.530(a)(1)

Examples of Non-Residential Provider Self-Assessment Questions: (Questions developed by CMS)

- Does the setting provide individual HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS?
- Does the setting restrict access to non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA?
- In settings where the individual(s) are of working age, is there activity with the individual(s) to pursue work as an option?
- Does the setting allow the individual(s) the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting?
- Can the individual(s) come and go at any time?

Modifications to HCBS Characteristics are permitted when:

- Supported by specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan including:
 - Specific individualized assessed need
 - Prior interventions and supports including less intrusive methods
 - Description of condition proportionate to assessed need
 - Ongoing data measuring effectiveness of modification
 - Established time limits for periodic review of modifications
 - Individual's informed consent
 - Assurance that interventions and supports will not cause harm

Heightened Scrutiny Process

States will have the ability to employ a "heightened scrutiny process" to evaluate individual providers that are presumed to have qualities of an institution or that have been evaluated to have the effect of isolating.

- The settings regulation requires that, in order to overcome the presumption that a setting has the qualities of an institution, CMS must determine that the setting: –
 - Does not have the qualities of an institution; and
 - Does have the qualities of a home and community based setting
- A state may overcome the presumption that a setting has institutional qualities by submitting evidence to CMS demonstrating the setting does not have the qualities of an institution and that it does have the qualities of a home and community-based setting
- When the state submits this evidence to CMS, the state triggers a process known as "heightened scrutiny"
- Under the heightened scrutiny process, CMS reviews the evidence submitted by the state and makes a determination as to whether the evidence is sufficient to overcome the presumption that the setting has the qualities of an institution/has the effect of isolating