

State Process for Settings Rule Compliance and Heightened Scrutiny

utah department of
human services
SERVICES FOR PEOPLE WITH DISABILITIES



Provider Monthly Meeting - 02/26/2020

New Settings Review Process

- All new residential, day support, and group employment settings are required to be in compliance with the Settings Rule from the first day services are provided
 - DSPD, DOH, OQD, and OL have worked together to create a new review process for new settings

New Settings Review Process (cont.)



What is Heightened Scrutiny?

- The process where CMS reviews sites that have institutional qualities to ensure that those sites demonstrate that they have overcome those institutional qualities and are in compliance with all aspects of the Settings Rule
- CMS will also review the state's process for determining compliance for those sites that have institutional qualities

Settings That Have Institutional Qualities

- The setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment
- The setting is in a building located on the grounds of, or immediately adjacent to, a public institution
- The setting has the **effect of isolating** individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS

Isolating Factors

- Heightened Scrutiny determinations will be made based on **isolating factors** established by the State and Settings Workgroup
 - These include limited opportunities for community integration, restrictions on choice that are not appropriately documented, and being physically located separate from the broader community.

Current Settings Review Process

- Settings Rule compliance determinations will be made based on how the sites meet the indicators on the residential and non-residential attestation and self-assessment forms
 - A setting could be determined to not be settings compliant, but not be required to go through Heightened Scrutiny
 - If a setting has multiple identified concerns that result in the setting looking and/or feeling like an institution, that setting will be categorized as requiring heightened scrutiny

Current Settings Review Process (Cont.)

- In-depth site reviews took place between August and November 2019 (Some additional sites will be reviewed through March 2020)
 - Sites were reviewed based on concerns with a self-assessment report or provision of day supports
- The State and Settings Workgroup is currently reviewing all in-depth site review reports to make Settings compliance and Heightened Scrutiny determinations

Heightened Scrutiny

- Once determinations are made, the Department of Health will compile a list of all providers being submitted for Heightened Scrutiny and send the list to CMS
- CMS will pick a random sample of providers from the list and request all documentation for those providers of how they have overcome the established isolating factors
 - Documentation = provider policy, self-assessments, remediation plans, pictures, etc.

Heightened Scrutiny (Cont.)

- CMS will review the documentation and make a final determination of compliance or non-compliance for all similar type settings on the list sent to CMS
- The determination CMS makes will be based on the state's ability to demonstrate the process they are using to review settings with isolation factors to ensure that the settings overcomes those factors and does in fact provide home and community based services

Settings Rule Compliance

- Current providers have to be in full compliance with the Settings Rule by March 2022
- Current providers that are compliant by July 1, 2020 do not have to be reviewed by CMS as part of Heightened Scrutiny
- Providers that underwent an in-depth review can expect a preliminary report by the end of February 2020 and a final report with categorization by early April 2020

Settings Rule Team

Questions? Contact:

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Settings Rule & Employment

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Home and Community Based Services (HCBS) Settings Rule

- 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...**
 - An individual is not required to seek employment, but they must be given the opportunity to do so.
 - **Competitive Integrated Employment** means that individuals with disabilities are able to work in the community with people of all abilities; and that they are paid at a rate comparable to those people without disabilities who work in the same place.

Employment First Priority

- [Utah Code 62A-5-103.3](#): Employment first emphasis on the provision of services.
 - “When providing services to a person with a disability... give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment...”
- Utah was at the forefront of a national movement
 - One of the first ten states to pass Employment First legislation

Employment Pathway Tool

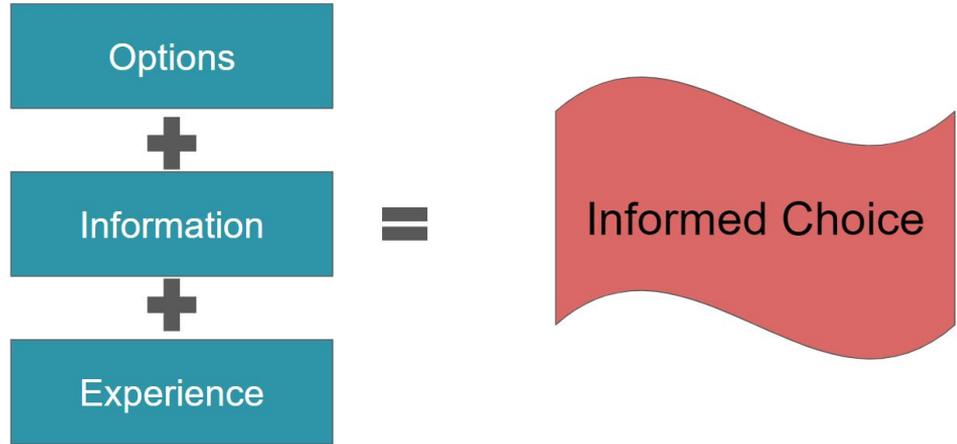
- A tool to guide conversations with individuals around their work experience, understanding of what work is, prompting questions to understand their current interest in work, and next steps suggestions based on the direction they want to go.
- Being finalized after feedback was received from several stakeholder groups.

Commonly Asked Questions About Employment

- How can employment be integrated with other services?
 - DSPD service responses
 - Do all DSPD wraparound services support success at work?
 - Partner agency responses
 - Do services from all agencies compliment each other?

Commonly Asked Questions About Employment (Cont.)

- What do I do when people don't want to work?



Person-Centered Employment Supports

- Employment supports are person-centered when they:
 - Know the job matches individual's interests and strengths
 - Connect individuals to employment resources and information
 - Address:
 - Challenges or barriers to work
 - Accommodations
 - Ideal conditions for employment

Employment Team

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Family and Self-Advocate Engagement

- DSPD is hosting a quarterly meeting to provide informational updates on DSPD processes to families and self-advocates
 - Self-advocates are individuals who have a disability and may or may not participate in DSPD services.
- First gathering was held in November and the Settings Rule was presented by a parent and self-advocate.
- Feedback was positive and the second meeting was held February 12 and employment was presented with a parent.

PCSP Workgroup Updates

- Developing a Pathway to Employment Tool
 - Soon will be pilot testing
- Continuing to develop the new PCSP software, tools, and protocol for how tools will interact with the software
 - Open to feedback on use of Charting the Life Course tools
- Aligning the requirements for rights restrictions with the Settings Rule and refining the definition of a rights restriction