

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

On March 17, 2014, new federal Medicaid rules for Home and Community Based Services (HCBS) went into effect. The rules impact many parts of HCBS. One of the most important topics is the places where HCBS can be provided.

Because HCBS programs are offered as alternatives to nursing and intermediate care facility services, the new rules make sure that HCBS are provided in settings that are not institutional in nature. To follow this rule, states must make sure that HCBS settings are part of a larger community, people are able to have choices about their service settings, and that people are assured their rights to privacy, dignity and respect.

States must evaluate their HCBS programs to determine the level of compliance with the new rules. The setting indicated on this form has been identified as requiring to go through the heightened scrutiny process as part of the compliance process.

Additional information on Heightened Scrutiny can be found here: [HCBS Settings Rule: Heightened Scrutiny](#)

Setting Information

Site Name:	South Valley Training Company, Inc.	Site ID:	1480
Site Address:	9160 South 455 West Sandy, Utah 84070		
Website:	https://www.southvalleytraining.org		
# of Individuals Served at this location regardless of funding:	83	# of Medicaid Individuals Served at this location:	68
Waiver(s) Served:		HCBS Provider Type:	
<input checked="" type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input checked="" type="checkbox"/> Community Supports <input checked="" type="checkbox"/> Community Transition <input type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> https://medicaid.utah.gov/ltc/		<input checked="" type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living <input type="checkbox"/> Employment Preparation Services	
Heightened Scrutiny Prong:			
<input type="checkbox"/> Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment <input type="checkbox"/> Prong 2: Setting is in a building on the grounds of, or immediately adjacent to, a public institution <input checked="" type="checkbox"/> Prong 3: From the initial assessment, the setting was found to have the effect of isolating individuals from the broader community. The following is the area that was identified: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> A. Individuals have limited, if any, opportunities for interaction in and with the broader community and /or the setting is physically located separate and apart from the broader community and does not facilitate individual opportunity to access the broader community and participate in community services consistent with their person centered service plan 			

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	<input checked="" type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting <input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include: <ul style="list-style-type: none"> • The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place • The setting does not ensure an individual’s rights of privacy, dignity, and respect
Onsite Visit(s) Conducted:	10/04/21 (virtual), 8/11/22 (virtual)
Description of Setting:	
<p>South Valley Training Company (SVTC) is a Day Supports Program located in Sandy UT and is located in a broad community where people live, shop, access services and have connections with neighboring businesses. SVTC chose to apply for and participate in the USU technical assistance program. They engaged with industry experts through USU to identify what areas they needed to focus on to come into compliance with the settings rule and established a transformation plan for their setting.</p>	
Current Standing of Setting:	
<input checked="" type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above <input type="checkbox"/> Approved Remediation Plan: the setting has an approved remediation plan demonstrating how it will come into compliance. The approved timeline for compliance is:	

Evidence the Setting is Fully Compliant or Will Be Fully Compliant

Prong 1: The setting is in a publicly or privately operated facility that provides inpatient institutional treatment; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

Prong 2: The setting is in a building on the grounds of, or immediately adjacent to, a public institution; the setting overcomes this presumption of an institutional setting.	
Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

Prong 3 A: The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Transformation Plan Summary: The setting developed and implemented a multi-faceted approach to providing information and educating to the general public, businesses, civic organizations, families and staff regarding integrated community inclusion for adults with disabilities and for future consumers. SVTC is positioned to offer access to the broader community. They have public transportation located very near their main building. Tracks station is 3 blocks away, a main route for the regular bus is one block away. Two convenience stores, craft stores, and clothing stores are within our block.</p>

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They also have fast food establishments very near. The neighborhood consists of several businesses that engage with the agency several times a year.

SVTC currently has a contract to provide services through Vocational Rehab and has a department dedicated to these services. Weekly discussions with clients address the employment piece as well as other community activities and life engagements and builds those services around their interests and desires. There is a formal process to address what support is needed to gain employment.

SVTC supports an individual account here for each person who wants to participate in activities that require money. Each person decides what they want to do and checks out money from their own account to do so. Each time they check out money they get an accounting of their balance and can plan accordingly. Many individuals carry their own pay cards and or cash to spend outside of the program.

SVTC is a few blocks from a train station and has regular bus routes that run every 15 minutes along 90th south which is a block away. Participants use regular bus routes to get to and from the program. Some participants use UTA Paratransit, Flex and have begun training for public transportation

The Activities Director's position is to develop community integration activities for all individuals. Shopping for personal care items would include budget discussion, appropriate choices for meeting one's needs, development of preferences and communicating choices. Individuals go to local gas stations, dollar stores, grocery stores, libraries etc. Senior citizens participate in the local senior center activities at least twice a week, and also work with the cats at the Humane Society. Individuals are also encouraged to plan activities with preferred people, setting up lunch dates with one another and even activities together outside of the south valley in the evenings.

Onsite Visit Summary (10/04/21):

People are able to access their communities, mostly near the program building. They are going to Maverick, coffee shops, the library, stores, and picking up food for lunch. Due to COVID-19 they are not eating in restaurants at this time

Volunteer opportunities have been identified along with people interested in those opportunities. They will pilot a 'hub and spoke' model of programming where the program building is a touch point throughout the day, but all activities occur in the community. They are prepared to begin the pilot, but have not due to COVID-19 restrictions and adequate staffing. The Provider is piloting a customized employment option. They have a staff trained that is currently supporting 3 people who are interested in customized job development.

Remediation Plan Summary:

In order to promote competitive integrated employment including skills learned in the contractor work and other activities being reinforced in the community the following will bring South Valley Training Center (SVTC) into compliance.

As of January 1 2021 SVTC will separate out Day Services DSG and Employment Preparations Services EPR physically in the building. Each client who wishes to be served under each service code will be appropriately placed with their input into the correct program. This can be done by utilizing one or both service codes and people will move fluidly from one to the other according to their desires and as outlined in their person centered plan.

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	<p>The Community Employment Director will also provide training to each staff of both programs on linking skill development and interest building for all individuals served.</p> <p>As noted in the evidence of compliance comments activities happen almost daily in one on one or small groups up to 4 during pandemic. Svtc does not routinely offer large group activities in groups as large as 8-10. Only on the rare occasion for a large planned event such as the concert in the park or festival of trees, clients may go in this large of a group. It is the exception but definitely not the rule. If a large group activity is done the group will split up with one staff to one to four individuals and intermingle with others.</p> <p>As of January 1 2022, Day Services will include daily community integration activities with multiple offerings per day. As noted, individuals being served participate in the development of activities and when they choose to attend. This allows for structure but not overly regimented.</p> <p>Onsite Visit Summary (8/11/22):</p> <p>Individuals are able to go into the community in small, individualized groups. Typically 2 staff to 3-5 individuals. Different groups are able to choose where they go in the community, allowing for multiple options. Individuals report they get to choose, and sometimes write a list of who wants to go. They meet every Friday with staff to plan out their schedule. Individuals and staff stated that individuals could choose what community activities or work project each day based on individual input at weekly and monthly “social”. Then staff sit with clients to get feedback after the activities as well.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Training Records ● Policy book Table of Contents ● Activity planning Logs ● Activity calendar ● Mission statement ● Training materials ● Pilot overview ● Breakdown of number of activities sample of one month
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Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary (10/04/21):</p> <p>The setting does not restrict access to non-disability settings. The setting has an admission process that assesses individuals' needs and preferences and regularly reassesses to ensure services are provided in a person-centered manner.</p> <p>Each consumer has the grievance procedures provided when first coming as well as during the “where i stand” survey and the 511 counseling. And again at their annual rights review they have choices and have the right to change their services if they desire. They are supported to make choices based on their preferences. This right and many others are discussed in the weekly social meeting on Thursdays and through the person centered process. Each individual's support coordinator visits each client once every couple of months where the question of</p>

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	<p>whether or not they are satisfied with their services is addressed as well. This is also explored each year in the person centered planning meeting. Each year they are given opportunities to make changes and attest to their choices.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Rights guide ● Annual Summary example ● PCSP Process
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Prong 3 C: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices. The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint. The setting ensures the individual has the freedom and support to control his/her own schedule and activities.

Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
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Summary:	<p>Transformation Plan Summary:</p> <p>The setting developed and implemented a multi-faceted approach to providing information and educating to the general public, businesses, civic organizations, families and staff regarding integrated community inclusion for adults with disabilities and for future consumers. The Activities Director’s position is to develop community integration activities for all individuals. Shopping for personal care items would include budget discussion, appropriate choices for meeting one's needs, development of preferences and communicating choices. Individuals go to local gas stations, dollar stores, grocery stores, libraries etc. Senior citizens participate in the local senior center activities at least twice a week, and also work with the cats at the Humane Society. Individuals are also encouraged to plan activities with preferred people, setting up lunch dates with one another and even activities together outside of the south valley in the evenings.</p> <p>Onsite Visit Summary (10/4/21):</p> <p>Individuals are able to work on social skills and are supported to develop relationships with those they see often at the places they visit frequently, such as Maverick. The Provider has worked to individualize schedules and gain input on activities to ensure that everyone is not coming, going, and doing the same things all day.</p> <p>The staff talk with individuals on Thursday to get ideas and schedule them for the coming week. During the intake process a person is placed by the program into a group. However, once they get to know other people and staff they are welcome to pick another group if they prefer. No concerns were identified in this area.</p> <p>Onsite Visit Summary (8/11/22):</p> <p>Individuals report they get to pick activities. Staff ask where they want to go. Individuals get to pick the type of things they want to work on.</p> <p>Leadership states that goals are around generalized skills or soft skills for the jobs offered onsite and not the speed. If individuals get bored they can switch between jobs available whenever they want throughout the day. SVTC is very selective about contracts chosen because they</p>
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	<p>don't want high demand productivity or turn around time to be a barrier to getting into the community and the focus on community integration.</p> <p>SVTC indicated that they use volunteer opportunities to help individuals decide what kind of work they enjoy doing and then work on developing those skills and opportunity outreach.</p>
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Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.	
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Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
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Summary:	<p>Overall, this setting, through the transformation process, has addressed all segregating and institution concerns and the State was able to validate the areas through the validation visit process. Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will be reviewed through ongoing monitoring activities.</p>
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Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2021):</p> <ul style="list-style-type: none"> ● Individuals report they get to choose what activities they participate in. ● Individuals report they make their own schedule. ● Individuals report they use public transportation. ● Individuals are starting to work with Voc Rehab and Pre Employment skills. <p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Individuals involved with EPR report going on Tours of job of interest went to pet stores, Harmons, garden stores and learned about what they are doing. ● Individuals report they shared job interests with staff and have been given the opportunity to apply for a Community Integrated Employment (CIE) position and learn about the position through video and community outing.
Staff Summary:	<p>Summary of interviews (2021):</p> <ul style="list-style-type: none"> ● Staff report they are knowledgeable on how to make community activities meaningful for individuals. ● Staff report they are knowledgeable on how to encourage integration in the community. ● Staff report utilizing public transportation is encouraged. ● Staff reported there has been a huge shift in spending more time on community integration activities since "the settings rule" implementation. ● Staff report Employment is exploding. ● Community Calendars and signs have been implemented. ● Pilot program is not running yet, but will when more staff is available. <p>Summary of interviews (2022)</p> <ul style="list-style-type: none"> ● Staff report actively working with individuals with job touring, gathering individuals' interest in work, and skill building through EPR services at the setting and in the community. Individuals who show interest in employment are connecting the person to their support team who will connect them to the needed supports.

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	<ul style="list-style-type: none"> Staff report if they say they have interests in a job, they are directed into the right department. Newly involved with Voc Rehab and learning how it works.
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Ongoing Remediation Activities	
Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	<input checked="" type="checkbox"/> N/A for currently compliant
Ongoing Monitoring Activities	<p>The State will use the following tools to ensure settings continue compliance with the Settings Rule criteria:</p> <ul style="list-style-type: none"> Conducting individual served experience surveys Addressing settings compliance during the annual person centered service planning process Ongoing provider training and certification Monitoring through critical incident reporting Case Management/Support Coordinator visit monitoring HCBS Waiver Reviews/Audits

Summary of Stakeholder Workgroup Comments Received and State Response:

Public Comment Period: December 12, 2022 to January 13, 2023	
Setting Specific Comments:	
Comment:	<p>One commenter reported that SVTC is by far the very best Day Support Services program my son has ever been in. He enjoys going to work every day. I have only seen 1 thing that I objected to and that they had my son's workstation facing a brick wall instead of sitting with his peers. I mentioned this to them, and the situation was immediately corrected. The director and the employees of SVTC seem to deeply care about the clients.</p>
Response:	<p>Thank you for your positive feedback on the setting.</p>
Comment:	<p>One commenter reported that her daughter goes to South Valley Training (SVT). "She is profoundly disabled with cerebral palsy, blindness, and wheelchair bound. I feel her ride in on UTA Paratransit and her time at SVT are in itself getting out & accessing the community. She already spends a lot of time on the bus and doesn't need more time riding on a bus. Also, if she needs a diaper change out in the community, where are they to privately change a grown woman's diaper? SVT has been compliant with the settings rule in [my daughter's] case by offering her a ride out to get smoothies, but we have denied for the above reasons. Thank you."</p>
Response:	<p>The State appreciates the feedback and encourages providers to work with the individual's planning team to seek the level of community integration they prefer. The Settings Rule encourages individuals to participate in differing types of life experiences by ensuring options are available to them when this desire is expressed. It is not intended to force individuals to engage in activities which make them uncomfortable if that is not their preference.</p>

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General Comments Received:

Comment:

The materials provided by the State in the newly-released evidentiary packets raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a final desk review and/or virtual review instead of an in-person visit. We believe that this is insufficient to confirm that a setting does not isolate individuals or have the indices of an institution.

Response:

The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process.

Comment:

In many instances, the packages state that the setting is compliant based on a remediation plan and indicate that a validation visit will be completed in the future. Many of the reviews state that individuals are not getting into the community to the degree they would wish and that there are still institution-like restrictions on individuals in the settings. The state needs to give the results of final validations to the work group and other stakeholders before it can submit the setting to CMS for heightened scrutiny.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of action's to certify they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process.

Comment:

The reviews in many instances lack the detail necessary to determine whether a setting is institutional/segregating. For example, there are reviews of 14c certificate holders that do not indicate whether the setting will pay subminimum wage moving forward. Reviews indicate that individuals access the community, but in many instances don't specify how large the groups are, what types of activities they engage in and the frequency with which activities occur. Some reviews mention work groups/work enclaves, but do not specify what type of work individuals engage in, where people work and how large the work groups are. The reviews frequently say that the setting does not restrict access to the community, that community amenities are within "miles" and that there is access to public transportation, but often do not specify how the facility supports individuals to access these amenities/public transportation.

Response:

While the State agrees that certain criteria can create concerns with compliance, several elements described do not determine on their own whether a setting meets or fails requirements. Individual settings are reviewed and assessed on their merit. For example, payment of sub-minimum wage work or group sizes in and of themselves are not including or excluding criteria. The state determines compliance based on factors such as person centered planning, individual choice and autonomy, individualized schedules, and individuals self-reporting they are accessing the community at the level that they desire.

Comment:

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We are very concerned about how the state has handled non-residential settings, particularly large day programs and sheltered workshops. These reviews do not demonstrate that the state has ensured that these particularly problematic settings have remediated sufficient to comply with the settings rule as well as title II of the ADA and Olmstead. Again, many final reviews have not been completed in person, and most frequently the state is submitting sites that have submitted a remediation plan but have not been validated as remediated.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of action's to certify they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process. The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process. While the State does acknowledge that activities for remediation extended into March 2023, it does not believe strategies deviated from its Statewide Transition Plan, or that inappropriate methods were used in validating compliance. The State also acknowledges that Settings compliance is not a one time activity and the usage of ongoing monitoring will aid to reinforce core tenants of the Rule as well as the development and dissemination of best practices. The State encourages the submission of providers who are believed to be non-compliant with requirements of the Settings Rule, including the elements/criteria which are not sufficiently meeting expectations.

Comment:

Reviews indicate that individuals are still being segregated by "level of functioning" and even by whether an individual resides in an ICF or an HCBS setting.

Response:

The State agrees that settings identified as having this concern are institution and segregating in nature. The purpose of the heightened scrutiny process was to identify settings that were institutional and segregating in nature and go through the process of showing how they overcame those qualities. Settings submitting for heightened scrutiny were required to remediate through training of staff, provide evidence of compliance, and demonstrate compliance through validation that they were compliant in these areas of concern.

Comment:

Reviews do not indicate that the EPR codes which contemplate meaningful, individualized, time-limited pre-vocational programs are being implemented in Workshops. Reviews do not indicate that individuals are spending at least 20% of their time in the community engaging in activities chosen by the individual. Reviews do not (for the most part) indicate whether or not the provider is continuing to pay subminimum wage. Reviews do not consider what type of work individuals engage in the setting and whether or not that work is chosen by the individual. Frequently, specificity as to how many individuals are working in a group is not given. Frequently, information about how settings are supporting individuals to gain competitive, integrated employment as guaranteed by the settings rule is not given.

Response:

As with all settings, the State's review was for the purpose of determining whether the tenants of the Settings Rule had been met, regardless of which specific services were delivered at the location. The State has separate

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compliance monitoring for the appropriate authorization of Employment Preparation Services and the delivery of those services by providers.

Comment:

Frequently, reviews indicate that there are still restrictive practices in the settings indicating an institution-like environment.

Response:

The State agrees that many reviews indicated settings still had restrictive practices in place indicating an institution-like environment as they had not yet gone through their final validation process at the time they went out for heightened scrutiny. The State has spent considerable time with settings and providers providing technical assistance beyond what was documented in their remediation plans to remediate their institutional and segregating characteristics to come into compliance with the rule.

Summary of Public Comments Received and State Response:

Public Comment Period: December 12, 2022 to January 13, 2023

General Comments Received:

Comment:

The Disability Law Center (DLC) appreciates the opportunity to provide comments on the HCBS Settings Rule Heightened Scrutiny process as both a member of the settings stakeholder committee and through the public comment process. As the Protection and Advocacy agency for people with disabilities for the State of Utah, the Disability Law Center (“DLC”) is uniquely suited to provide assistance and input during this process. Based on our own observations as the P&A as well as our evaluation of the state’s assessments of settings, the state did not engage in a sufficient assessment process or provide adequate support to bring settings into compliance with the rule prior to the February 2023 deadline. We are concerned that HCBS waiver dollars will continue to be spent on segregated, institutional settings despite the state’s obligations under the HCBS settings rule, Title II of the ADA and *Olmstead*. This heightened scrutiny evidentiary package demonstrates these ongoing concerns as detailed below.

Response:

While the State does acknowledge that activities for remediation extended into March 2023, it does not believe strategies deviated from its Statewide Transition Plan, or that inappropriate methods were used in validating compliance. The State also acknowledges that Settings compliance is not a one time activity and the usage of ongoing monitoring will aid to reinforce core tenants of the Rule as well as the development and dissemination of best practices. The State encourages the submission of providers who are believed to be non-compliant with requirements of the Settings Rule, including the elements/criteria which are not sufficiently meeting expectations.

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: December 14, 2022- December 29, 2022

Only one member of the Stakeholder Workgroup Responded. Their specific comments are noted above.

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Utah's Recommendation

Recommendation: Compliant

The State has determined the setting has overcome the effect of isolating individuals from the broader community and is in compliance with the HCBS Settings Rule.