

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:	Williamsburg Retirement Community	Site ID:	174
Site Address:	132 W 300 N, Logan UT 84321		
Website:	https://www.williamsburgretirement.com/		
# of Individuals Served at this location regardless of funding:	76	# of Medicaid Individuals Served at this location:	8
Waiver(s) Served:		HCBS Provider Type:	
<input type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input type="checkbox"/> Community Supports <input type="checkbox"/> Community Transition <input checked="" type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> https://medicaid.utah.gov/ltc/		<input type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input checked="" 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 			

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	community services consistent with their person centered service plan
<input type="checkbox"/>	B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting
<input checked="" type="checkbox"/>	C. The setting has qualities that are institutional in nature. These can include: <ul style="list-style-type: none"> • The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place • The setting does not ensure an individual’s rights of privacy, dignity, and respect
Onsite Visit(s) Conducted:	09/11/2019 (in-person), 08/17/2021 (in-person), 11/9/2022 (Virtual)
Description of Setting:	
This is a residential setting located in Logan UT; it is located in a cluster of businesses for opportunities to mingle with the community. It is located within a couple miles of grocery stores, pubs, restaurants, and parks.	
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>Onsite Visit Summary (09/11/2019):</p> <p>The setting is located in a residential neighborhood close to town and community resources. Public transportation is available; one individual reported she uses it often. The setting goes out into the community 2-3 times weekly The setting does one big outing a year (Moab, Yellowstone, etc.) The setting has a resident council meeting monthly to get feedback. Both residents interviewed reported they were able to get out into the community as often as they wanted to. Better planning in regards to activities to make them more meaningful to individuals to ensure integration into the greater community. The setting has a lot of activities come into</p>
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	<p>the facility (bands, choir, music, etc.). This is considered reverse integration; on its own, it is inefficient to demonstrate compliance.</p> <p>Remediation Plan Summary: The provider will have policies, procedures and training materials that support facilitation with the greater community.</p> <p>Onsite Visit Summary (08/17/2021): It was found the setting needs better planning in regards to activities to make them more meaningful to individuals to ensure integration into the greater community. Friday’s activity is a drive in the community. Since there is no interaction with others, this is not considered a community integration activity and it is inefficient to demonstrate compliance. The setting needs to include activities that involve more interaction with members in the community. The Resident Council Meeting can be employed to understand what interests individuals have and how they would like to integrate with community members. The setting has a lot of activities come into the facility (bands, choir, music, etc.). This is considered reverse integration; on its own, it is inefficient to demonstrate compliance.</p> <p>Remediation Plan Summary: As of 11/1/2021, residents have the opportunity to discuss and plan activities as part of a monthly resident meeting. The residents have the ability to discuss and plan activities they would like to do. The setting is planning activities to include higher levels of integration into the community. There is also a suggestion box being implemented for residents who may not want to interact at the meeting. The setting takes residents to a regular Bridge game, classes, church, etc along with other locations and events if the residents request.</p> <p>Onsite Visit Summary (11/9/2022): This setting is an independent living facility and while the setting has incorporated activities with community integration individuals have an independent connection to the community outside of what is provided by the provider. The setting demonstrated understanding of individuals interests and facilitating individual and group community integration. Leadership provided an example of a resident wanting to play Bridge. The individual teaches residents at the facility and goes to the senior center and country club to play regularly. The setting has established a resident council meeting led by a resident president. The resident council meeting provides time to discuss any concerns, food, and activities. The setting has a monthly newsletter that is given to residents that includes a spotlight of residents, information on what is happening, reminders, and activities. Management holds a meeting before the resident council meeting so that they can tell residents what they were or were not able to incorporate from their previous feedback and why.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Chef Chat proof.pdf
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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

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Summary:	<p>Onsite Visit Summary (09/11/2019):</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>
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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>Onsite Visit Summary (09/11/2019):</p> <p>The setting does not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities. Although the setting has a process for individuals to give input towards their schedule and activities (monthly resident council), the administrator reports they do not get a lot of feedback using this method. The setting does not have a process in place for individuals to participate in meal planning. Individuals can sit anywhere they choose in the facility. They are able to request alternate food choices. The administrator reports they try to get residents involved in organizing onsite activities. This has resulted in more successful and meaningful participation. Residents run their own book club. There is a resident driven exercise program every day at 10am. The administrator allows residents to make decisions about the facility. During meal times, food is served to each table. Staff ask each resident if they want everything on the menu and if they want a small or medium serving. No personal information posted. We observed staff communicating with respect. Staff perform personal care services performed in privacy. Residents are able to have private phones, computers, personal devices, etc. Observed staff knocking and waiting for individuals to answer the door</p> <p>Remediation Plan Summary:</p> <p>The provider will submit policies, procedures and training materials that support staff are knowledgeable about capabilities, interests, preferences and needs of individuals. Policies, procedures and training materials that support the creation of individual schedules that focus on the needs and desires of an individual. The provider will develop a process for individuals to participate in meal planning.</p> <p>Onsite Visit Summary (08/17/2021):</p> <p>It was found that the setting does not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities. Although the setting has a process for individuals to give input towards their schedule and activities (monthly resident council), it was reported by the staff that they do not get a lot of feedback using this method.</p> <p>Additional HCBS training required. One staff member interviewed reported they had not received any training related to the rights of individuals or individualized experiences. Individuals may not have access to food at any time. Administrator reported there is access to snacks at any time, but individuals must ask the admin.</p>
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	<p>One resident reported there are no snacks and residents share their snacks with each other. The setting may not optimize autonomy and independence in making life choices. The setting does not have a process in place for individuals to participate in meal planning. The setting does not ensure an individual's rights of privacy, dignity, and respect. There are no locks on bathroom doors and staff was observed knocking and immediately walking into the residence room without receiving a response.</p> <p>Remediation Plan Summary:</p> <p>As of 11/1/2021, residents have the opportunity to discuss and plan activities as part of a monthly resident meeting. The residents have the ability to discuss and plan activities they would like to do. The setting is planning activities to include higher levels of integration into the community. There is a suggestion box being implemented for residents who may not want to interact at the meeting.</p> <p>Staff members are being trained to not only knock, but to wait for a response before entering. Residents will also be informed that if they want staff to open the door to announce themselves, without waiting for a response, then we will have that documented and signed by the resident. Chef Chat and Group Me have been implemented as ways for residents to discuss menu options. The provider was also taught about the importance of locks on bathroom doors due to privacy.</p> <p>Onsite Visit Summary (11/9/2022):</p> <p>Settings has added a comment box that residents can use. An additional comment box was added outside the resident president's room after requested. All staff interviewed said that they have been trained on knocking and receiving an answer before entering a resident's room. Setting has a process to incorporate feedback for meals, activities, etc. Setting has created a process to ensure that residents always have access to food. All resident apartments have a full kitchen, staff check to make sure that residents apartments have food/snacks stocked. Additional snacks are available if requested. Confirmed by leadership and staff. Leadership talked to us about how through our training and process they saw the importance of having bathroom locks for privacy. Previously they had been left off due to safety concerns but have been added and verified through a desk review.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Chef Chat proof.pdf
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Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Overall, all segregating and institutional concerns were addressed through the remediation process and the State was able to validate that the areas were remediated through the validation process.</p> <p>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"> ● Some residents were not aware of the chef chat. ● Indicated by residents that they really enjoy the facility and would not change a thing. ● Residents feel comfortable to reach out to the activities person at any time. ● Those who are aware of chef chat feel very comfortable utilizing it. ● Residents don't feel that they are restricted in any way. <p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Individuals indicated that there is a resident council meeting where they can give feedback on activities. ● Individuals indicated that they are able to purchase and prepare their own meals. ● Individuals indicated that they are able to give feedback on meals. ● An individual indicated that the owner likes to sit and talk with them about concerns and things that are going on. ● An individual said that the provider does a pretty good job with activities that people like to participate in. ● Individuals indicated that staff knocks before entering their room.
Staff Summary:	<p>Summary of interviews (2021):</p> <ul style="list-style-type: none"> ● Staff is unsure if the residents are choosing the activities but is aware of the resident council meeting conducted by the activities director - for both outings and setting activities. ● Residents will need to ask for snacks outside of their room. ● Snacks are available in the AL office at any time - they will need to ask staff for the food since it is located in the back: Yogurt, sugar free cookies, protein drinks. ● Residents get out once or twice a week facilitated via the bus ● Staff are regularly trained once a month at training meetings. ● Indicated that if staff hear feedback they relay the information to the activities person. ● One staff member interviewed reported they had not received any training related to the rights of individuals or individualized experiences. <p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Staff indicated that residents have their own kitchens to store and prepare meals. ● Staff indicated that some individuals have their own cars and are able to travel on their own. ● Staff said they have a large and small van for activities with different sized groups. ● There is a newsletter and resident council. ● A staff member indicated that they talk to people everyday about their schedule and activities. ● Staff members indicated that they enter a private space without knocking only in cases of emergency. ● Staff indicated that there is a management meeting to address resident concerns.

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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	
<i>Setting Specific Comments:</i>	
<i>Comment:</i>	
<p>One commenter stated that Williamsburg Retirement Community is an assisted living facility located at Logan, Utah. It provides services to 8 waiver participants. The materials provided by the State in the evidentiary packet raise concerns about whether the identified setting currently demonstrates the qualities of HCBS. The evidentiary package lacks specificity regarding compliance with the rule. The state should gather more information regarding how individuals are accessing the community and whether or not the individuals are accessing the community in the way and to the extent desired. For example, the final onsite visit fails to describe what changes have been made to ensure that resident activities facilitate community integration. The visit also fails to describe examples of integrated activities are offered by the facility.</p>	
<i>Response:</i>	
<p>Because the provider is an independent living facility where individuals have a higher level of independence from the provider, the State focused on the processes the provider has in place to ensure that individuals are able to give feedback to the provider. The State wanted to ensure that while the individuals have a higher level of independence there are still processes in place that are the same as expected from other providers where individuals have less independence. The State conducted technical assistance with the provider to ensure they have processes in place for residents to give feedback on areas such as provided activities. The provider implemented a resident council meeting and suggestion box to ensure that their feedback on activities is heard. The provider also provides a newsletter highlighting activities and interests going on.</p>	
<i>Comment:</i>	
<p>The same commenter had additional feedback stating the setting knocks on doors before entering an individual apartment. Given this description it appears individual units do not have locks. If there is a demonstrated need for</p>	

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an individual to have a lock removed this should be documented in the PCP and applied on an individual basis and not to all residents.

Response:

The State verified locks on apartment doors during an earlier visit and a follow up verification on that item wasn't part of the follow up visit. The State confirmed through staff and individual interviews that our concern of staff entering rooms without knocking had been resolved and staff were knocking before entering rooms out of respect for individual's privacy.

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.

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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:

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

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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 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.

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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.

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.