

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:	RITES, Inc.	Site ID:	1143
Site Address:	2465 N Main Street, Main St., Sunset, UT 84015		
Website:	https://www.ritesutah.com/		
# of Individuals Served at this location regardless of funding:	30	# of Medicaid Individuals Served at this location:	30
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 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:	8/14/2019 (in-person), 10/13/2021 (virtual), 12/22/22 (Virtual)
Description of Setting:	
The setting is a day support program located in a strip mall on Main Street in Sunset, UT, that facilitates integration with the greater community. The setting is located close to multiple restaurants and other community businesses that individuals can independently access. The setting is close to public transportation.	
Current Standing of Setting:	
<input type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above <input checked="" 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: The State will conduct another visit on 12/22/22 and remaining items will be validated by 1/31/23	

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.	
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Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
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Summary:	<p>Onsite Visit Summary (2019): Individuals are able to go out as often as they choose to. The individuals participate in multiple volunteer opportunities of their choice. The setting utilizes company vehicles and public transportation for engaging in the community.</p> <p>There was a concern during the visit that rooms/groups seem to be created around the level of assistance required/disability; this has a segregating effect for individuals receiving services. Lunch was separated by groups. Individuals were not given the choice of who they got to eat</p>
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with. When given a tour, classrooms were described as “this is where the lower functioning are,” and “our most independent are in here.”

Remediation Plan Summary:

The clients choose which groups they would like to be in during the scheduling process. RITES will support and assist as needed. Groups will not be pre determined by RITES but will be determined by the client. In many instances the client will not only go in a small group setting but will be provided the opportunity to have individualized community access when needed.

Onsite Visit Summary (2021):

There is a schedule on the wall with a book of options. Each individual chooses their activity at the beginning of each day. Individuals are able to go out into the community everyday if they want. When out in the community individuals are encouraged to interact with community members. Staff teach about jobs and then show individuals what it looks like in the community. 2-3 times a year the setting has an activity where clients can learn about public transportation. Setting has an employment specialist on site that helps individuals look for jobs based on their interests, conduct mock interviews, teach skill training, and help with job searches. All staff were able to describe next steps if an individual expressed interest in working. There was a concern identified at the visit that there was no formal way for individuals served to provide feedback about activities they participated in. Having a formal way for individuals to provide feedback promotes individual choice and person-centered planning. Another concern identified was that some individuals are paid to do jobs at the setting like janitorial or shredding paper. One individual mentioned that even though they worked for the setting they were not allowed to be part of the halloween luncheon for staff. The individual wanted a client luncheon to be fair or to be part of the staff luncheon. For all employed individuals, they must be treated no differently than any other employees.

Remediation Plan Summary:

RITES Utah does have a formal way for the individuals to provide feedback, make suggestions and choose different activities. Activity letters are sent home the last week of every month. Clients have the opportunity to indicate which activities they are interested in. The letter also has a spot for suggestions and requests. Clients return the form and they are used in scheduling. RITES also has a suggestion box, this box is for all suggestions; activities, menu items, ideas, complaints, compliments, etc. The boxes are emptied and reviewed on Fridays. Employees of RITES Utah are treated equally and all RITES UTAH employees are encouraged to participate in company events. This particular individual does not work for RITES UTAH. This is a topic that is discussed frequently with this individual. On many holidays we have employee events and client events. It is often hard for her to understand that she does not attend both. The individual did participate in the Halloween event for clients.

Onsite Summary (2022):

Leadership has created multiple resources promoting community access and employment. Binders given to people in services and staff include pictures of multiple community places as well as job descriptions for employees that work in those locations. Conversations about employment occur naturally throughout community activities. People served in the program often ask employers questions on visits. Multiple people served by Rites have jobs. Rites created a suggestion box for activities that is reviewed weekly. People served and families can submit suggestions. There is a resource called “Let’s make a plan” which has 5-6 daily activities

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	<p>that individuals can choose from. Staff let individuals take the lead when in the community and staff are trained to help with individualized skill development. Community activities are small 1-3 people groups. During the visit it was communicated that staff wear branded shirts when in the community so individuals can find staff easily.</p> <p>Remediation Plan Summary:</p> <p>The provider will provide documentation that the practice of wearing branded clothing in the community will end as this can be seen as segregating. As this is the only remaining area to be remediated in this section, the State will determine final compliance through a desk review.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● RITES Utah Policies <ul style="list-style-type: none"> ○ # 325B Community Integration ○ # 315 Visit and Contacts ○ #320 Person Specific Trainings ● Other documents <ul style="list-style-type: none"> ○ #205 Employee Orientation and New Hire Training Schedule
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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 (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>

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 type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary (2019):</p> <p>Individuals have access to food at any time. There are vending machines in the setting that individuals can choose to use. Individuals can eat out or make a trip to the local grocery store if they want. There were no observed or reported restrictions during the visit.</p> <p>There was a concern during the visit 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. Staff present community activities available to individuals; individuals are not in control of their schedules.</p> <p>Remediation Plan Summary:</p> <p>The setting submitted updated day program client scheduling procedures that outlined a formal process for individuals to give input towards their individualized schedules. RITES Utah staff members will be responsible for the weekly schedules of a maximum of 12 individuals. Staff</p>

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will maximize time in the community utilizing community resources and minimize time in the center.

Staff will begin with work schedules and employment seeking/related activities. The next step will be to include on the schedule: planned activities that the client has chosen and participates in on a regular basis, volunteering, community classes, community groups, etc. All schedules are reviewed weekly and daily. Individuals have the opportunity to adjust schedules at any time. Clients will be involved in all steps of this process. Staff are just there to support. Ideas are presented based on assessments and clients are full participants in developing their schedule and which groups they would like to be in. The client chooses groups/activities/employment opportunities and can change which group they participate in at any time.

Onsite Visit Summary (2021):

Individuals choose their activities each day and whether to stay at the setting or go out into the community. There is a schedule on the wall with a book of options. Each individual chooses their activity at the beginning of each day. The setting has implemented a formal person centered feedback and suggestion process. Meal services are provided: Individuals are sent home with a menu for the next week where they can choose what days they would like lunch or when they would like to bring their own. There is also no formal way for individuals to provide feedback on the meals provided.

Remediation Plan Summary:

RITES Utah participates in the CACFP food program provided by the federal Department of Education. We have very strict guidelines to adhere to. Individuals are provided with the components and serving sizes required by this program. Individuals receive a menu and can opt out a particular meal or multiple meals. On those days the individual would eat breakfast at home, bring lunch, and bring a snack. If they feel that they need more than what is provided They are encouraged to bring additional snacks from home. If they do not bring something from home they are always encouraged to have what is provided. Individuals are also able to go purchase their own lunch from restaurants, or the grocery store which is located within walking distance. Individuals can also bring snacks that we store for them and they can access at any time. We do have informal discussion about menu items as well as they are encouraged to use the suggestion box. We are unable to accommodate all suggestions based on our budget constraints as well as the component rules of the CACFP program. The program does not allow for non whole grain foods and sugar items which are usually the suggestions. This is why all individuals can choose to bring their own items.

Onsite Summary (2022):

Some people interviewed understood they had choices throughout the day. Leadership and staff stated in the past they were only offering one option for community activities daily and recently multiple options per day are offered and presented. Staff also stated that people can change their mind and make their own choices. Individuals are initially assigned groups based on ability level and are then able to choose to switch groups they want to be in to participate in activities. Staff referred to people based on their functional level. Some individuals said that they were able to make daily changes to their schedule, hold jobs, change groups if they chose and declined certain activities. However others stated they wanted to go out in the community

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	<p>more than they were currently. Based on the responses, it is unclear if everyone served by Rites knows they have the flexibility and choice to switch groups, change daily choices and activities, and how their suggestions get added to the schedule. Staff references diet and nutrition restrictions but some individuals indicated that there were other restrictions.</p> <p>Remediation Plan Summary: The provider will provide an update on if any individuals have restrictions outside of diet and nutrition. The provider will provide documentation that individuals are able to access the community at the amount they desire regardless of support needs and that they can choose to participate in the community as much as those with lesser support needs. The provider will form groups based on interests, preferences and choice of the individual rather than functional level. The provider will train staff on person-first language.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● RITES Utah Policies <ul style="list-style-type: none"> ○ # 323 HCB Settings Competency Test ○ #320 Person Specific Trainings ○ #325A Client Schedules ○ #205 Employee Orientation and New Hire Training Schedule ● Other documents <ul style="list-style-type: none"> ○ Day Program Client Scheduling Procedures
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Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.	
Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	The setting has identified areas for remediation and the State will conduct a validation visit.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Individuals reported they can participate in activities that are important to them in the community ● Individuals reported they have had training on how to use public transportation ● Individuals reported they are able to eat when and where they want <p>Summary of interviews (2021):</p> <ul style="list-style-type: none"> ● Individuals reported they got to choose which activities they got to participate in ● Individuals reported they got to choose which group they were in ● Individuals reported there is no way to provide feedback on the food provided for lunch ● One individual reported they can't have seconds for food and often they are still hungry ● One individual reported they got to choose what peers and staff they got to do activities with ● One individual reported that classes used to be "high functioning" and "low functioning" but now they are mixed up
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	<ul style="list-style-type: none"> ● One individual reported there is no way to talk to staff about activities, whether they liked them or not. They can tell the staff, but they are mostly busy ● One individual reported that they have a staff luncheon for special occasions like holidays but they are not included, even though they work there and they do not feel like it is fair. <p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Some people served stated in interviews they were able to make daily changes to their schedule, held jobs, changed groups if they chose and declined certain activities. However others stated they wanted to go out in the community more than they were currently. ● Interviews with people served mentioned some potential restrictions with personal funds and spending money. ● Some people interviewed understood they had choices throughout the day.
Staff Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Staff reported they receive regular training ● Staff reported individuals are not required to participate in any activities they do not want to <p>Summary of interviews (2021):</p> <ul style="list-style-type: none"> ● Staff is knowledgeable on how to address skill building and community integration when in the community ● Staff reported individuals can go into the community daily if they choose to ● Staff reported individuals choose what group they are in ● Staff reported there is no formal process for individuals to provide feedback on the activities they have attended. <p>Summary of interviews (2022):</p> <ul style="list-style-type: none"> ● Staff stated they allow the people they serve to “take the lead” in community settings. ● Staff also highlighted the “Let's make a plan” resource. This was shown during the interview and offers 5-6 daily options that people are supported to choose from. ● Staff stated they maintain small groups while out in the community, usually no more than 1-3. Staff reinforced that activities are based on choice and interest.

Ongoing Remediation Activities	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	The setting has identified areas for remediation and the State will conduct a validation visit.
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

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- Case Management/Support Coordinator visit monitoring
- HCBS Waiver Reviews/Audits

Summary of Stakeholder Workgroup Comments Received and State Response:

Stakeholder Workgroup Review: January 3, 2023 - January 18, 2023

General Comments Received

Comment:

The materials provided by the State in the newly-released evidentiary packets (“batch 5”) raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a virtual review instead of an in-person visit. In our experience as the P&A, it is difficult to accurately assess characteristics of an institution as well as to communicate effectively with waiver participants without an in-person visit.

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. It is difficult for stakeholders to provide feedback on whether a setting has the characteristics of an HCBS setting if it is still in the process of remediating. The remediation plans seem to lack the detail necessary to assist a setting with becoming compliant and the short time frame until the final compliance deadline leads us to believe that these sites will not remediate in time.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State’s oversight to ensure completion of actions 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

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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:

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 actions 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 institutional 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:

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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 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: January 2, 2023 to February 3, 2023

Setting Specific Comments:

Comment:

One commenter stated RITES Inc. site 1143, is a day support services program located at 2465 N Main Street, Main St., Sunset, UT 84015. It provides services to 30 waiver participants. The materials provided by the State in the evidentiary packet do not demonstrate that the identified setting currently demonstrates the qualities of HCBS. We have concerns that the most recent assessments of the setting have not been completed in person. In our experience as the P&A, it is difficult to accurately assess characteristics of an institution as well as to communicate effectively with waiver participants without an in-person visit.

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.

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Comment:

The same commenter had additional feedback stating For stakeholders to provide effective feedback, the state needs to present stakeholders with final validations of compliance with the rule rather than un-validated remediation plans. Not doing so does not provide appropriate notice to community partners of the steps the state has taken to ensure that settings are fully in compliance with the settings rule.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of actions to certify they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process. The state conducted a validation visit 12/22/22 which included interviews with both staff and individuals being served. The setting was deemed compliant by DHHS. Leadership created multiple resources promoting community access and employment. Binders given to individuals and staff include pictures of multiple community resources as well as job descriptions for employees that work at these locations. Conversations about employment occur naturally throughout community activities. Individuals often ask employers questions while in the community. RITES created a suggestion box for activities as well that is reviewed weekly. Individuals and families can submit suggestions. Staff highlighted the "Let's Make a Plan" resource. This offers 5-6 options that individuals can choose from. The setting maintains small groups (1-3) while out in the community and ensures activities are based on choice and interest. Staff are well prepared to train on independent skills in existing community settings and individuals are allowed to take the lead in community settings. Individuals interviewed reported they were able to make daily changes to their schedules, held jobs, changed groups if they chose, and declined activities if they did not want to participate. There were some individuals that stated they wanted to go out into the community more than they were currently. Staff were observed wearing provider logo shirts during the visit and some staff referred to individuals by functional level. Some staff reported that groups were initially assigned on a functional level and then they can change and are able to choose which groups they participate in for activities. RITES submitted a comprehensive remediation plan addressing the remaining compliance areas. Logo shirts are no longer allowed and their dress code policy has been updated. Program groups are no longer categorized by functional level, groups are based on individuals interests and friends. Training on restrictions and person first language were provided as part of the remediation prior to compliance determination.

General Comments Received:

Comment:

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 March 17, 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

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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: January 3, 2023 - January 18, 2023

We only got a response from one workgroup member. Their comments are noted above.

Utah's Recommendation

Recommendation: Compliant

At the time the heightened scrutiny packet was submitted for public comment, the State had not completed the final validation visit. The State has since completed the final validation visit and determined the setting has overcome the effect of isolating individuals from the broader community and is in compliance with the HCBS Settings Rule.