

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:	Beehive Homes of West Jordan (Old name), All Seasons Assisted Living (New name)	Site ID:	23
Site Address:	8912 S 2700 W West Jordan, UT 84088		
Website:	https://allseasonsseniorliving.com/west-jordan-utah/		
# of Individuals Served at this location regardless of funding:	36	# of Medicaid Individuals Served at this location:	18
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 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:	06/25/2021 (virtual), 12/2/22 (virtual)
Description of Setting:	
The setting is located in a residential area. There are two houses on the same property. One house is a memory care unit; families are given a code to access the unit at any time. There is a gas station, grocery store, and a Mexican restaurant within walking distance for residents.	
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 (6/25/2021):</p> <p>Individuals (not in the memory care unit) are able to come and go independently. Companions and families assist in transporting individuals into the community. Residents can go out in the community by themselves and have access to transportation via waiver services. 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. The setting does not have a process for individuals to give input and control their schedule and activities (including community integration). The majority of activities provided are onsite activities and</p>
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the setting uses reverse integration to provide community access. Covid protocols are still in place at this time.

Remediation Plan Summary:

Facility has created a large 3'x5' Events Announcement Board dedicated to local events, meet-ups, transportation options, church services, and restaurants near the facility for any resident that would like to attend. Residents are given instructions on where to find the board and how they can get additional information upon request. The setting has also assigned a facility concierge that is dedicated to providing information and helping to arrange community outings for residents. While the setting does not provide facility run transportation at this time, they have purchased a vehicle to provide transportation to residents, but have been unable to employ a CDL licensed driver. Off site offerings will be made available once a qualified driver is found. While they anticipated having a goal date of August 1, 2020, given the ongoing pandemic, any facility sponsored offsite activities have been postponed indefinitely per State Health Department Guidelines. They will reassess once State and Federal health authorities have the pandemic under control. The setting has, upon request, provided information to residents concerning transportation options. The setting will now provide each current resident, and new residents, a Medicaid transportation options brochure and also the UTA System map to facilitate education of options for residents. These resources include:

<https://health.utah.gov/umb/benefits/medicaid/transp.pdf>

https://www.rideuta.com/-/media/Files/System-Maps/2019/AUG_2019_SL_System_Map.ashx

As the setting has done in the past, they will continue to facilitate private transportation for residents using taxi services, Uber and Lyft.

The setting has already engaged in training with staff and conversations with Medicaid Case Workers and families regarding transportation and community resources for transportation. The facility has continuously held Monthly Resident Council meetings every month with residents. Notes are taken at the meetings and they take place with our Activities Coordinator. These meetings facilitate and provide resources and guidance both to residents and to staff. It is a clear opportunity for residents to express concerns, likes and dislikes, and needs. During these meetings menus, activities, upcoming events, etc. are discussed with residents, and they are provided the opportunity to add ideas, modifications, or gain additional information. Staff is on hand for anyone that needs physical assistance to attend the meeting and signs are posted in advance, noting the date and time of the Resident Council meeting.

The setting provides these services within our facility to meet the needs of all of our residents, primarily those who are unable to leave the facility due to safety concerns.

Residents who have severe dementia or wandering and elopement issues, are limited by the staff or family that might be able to accompany the resident on outings and activities outside the facility.

We encourage, help and support residents that have asked to leave the facility for such activities as church attendance by utilizing volunteers to take them to and from their destination. We will further comply with the remediation requirement by having our staff provide residents the information they need to access comparable services outside of the building and by providing information regarding public transportation options and local transportation services provided through Medicaid.

Onsite Visit Summary (12/2/2022):

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	<p>We confirmed that individuals have access to a bulletin board that is used to post activities in the community. Individuals during the visit communicated that they use non-facility transportation to access the community. The provider facilitates with individual's case workers if they aren't participating in activities to ensure that their feedback is heard and they are aware of what activities are happening. The individuals we spoke with gave detail about what activities they did in the community and seemed to be getting out as much as they desire. Both staff and individuals said that a new activities director had recently been hired and that this individual has been educating residents on transportation options. The new activities director has also been talking with residents regarding what activities they would like the provider to offer. The provider is in the process of being able to provide facility transportation as another resource to the transportation options already available to individuals.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● WJ resident council Notes ● Example of comment card ● Settings Rule Cameras
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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 (12/2/2022): The setting is chosen by individuals.</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 checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary(2021): Staff seem knowledgeable about the individuals' wants, needs, and interests. The setting provides an alternative menu and snacks in the common area. The setting does not optimize autonomy and independence in making life choices. Staff need to knock and receive permission before entering the residents' private room. Residents indicated that they would like locks on their doors. Resident Council meetings occur every week. Residents report that they feel like suggestions are implemented.</p> <p>The setting does not have a process in place for individuals to participate in meal planning or shopping for the site. Staff reported the menu was bought from a nutritionist and no ideas are gathered from residents. Residents report there is assigned seating in the dining room. One individual reported there are not many options for alternative meals. Residents desired more activities outside (e.g. on the lawn, porch) but were unsure if this is allowed.</p> <p>Remediation Plan Summary: Continued training will be provided to all staff.</p>

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6 doors with locks have been installed. Doors have been back-ordered, remainder will be installed once delivered. Individuals provide feedback as it relates to snacks through Resident Council meetings. There is an open door policy with the administrator or dietary aide and cook. Individuals can always express their wishes.

Residents have an opportunity to influence the menu. Although the menu is built by a nutritionist per state law, the menu has multiple options that residents may select or reject based on preferences. The facility also provides a daily "report card" to residents to rate food and determine if they like or dislike menu options. We use the report card to discuss the situation with the cook and dietary aide to address concerns by either offering alternative meal options. Additionally, residents have access to our fully stocked and accessible kitchens and are within 100 yards of at least 2 restaurants, a gas station and a grocery store for easy shopping. Residents are also entitled to provide their own meals if they so choose. As indicated above, state law requires all menus to be approved by a certified nutritionist. Further, this is not a static menu, but one that has multiple options for each day. In our monthly Resident Council meeting, menus and meal ideas are discussed and residents provide menu feedback. We focus on meal preparation as is desired and appetizing to residents. There has never been assigned seating in the dining room and no such rule is enforced in any way. Residents often sit in the same seats by resident preference and not a required assignment. Residents have an opportunity at Resident Council meetings to make menu change requests. Additionally, we customize meal options for individual dietary needs, and residents have the opportunity to prepare their own meals in our stocked kitchens. We offer substitution options to residents and provide a second option. We will reinforce this policy with residents at our next Resident Council meeting to ensure all are aware of it. Open door policy with Administrator and Dietary aides and cook.

We are working with Kevin Broughton Construction to address the bathroom doors. Expected Date of Completion is April 2021. Staff receive continual training regarding knock prior to entering and other privacy related concerns. Placement of cameras allows our staff to improve resident support and for such things as prevention of critical incidents like falls. Cameras allow us to determine if a fall happened, potentially why it happened. It allows us to assess an environment at the time of an incident, they allows us to visually monitor resident care and interactions between residents in the event of an incident, it also allows us to see and determine if things like furniture arrangement or staff or resident traffic patterns are optimal for safety and risk prevention Exterior cameras are primarily for security of the outside of the building and also in to assess resident movement if required. Footage access is password protected and only administrative personnel have access to the information. Files are digitally saved and automatically deleted by the equipment after a certain amount of time has passed. Individuals are allowed to keep snacks in their rooms at all times, they are allowed to purchase food and store it in the facility cabinets and refrigerators, and are allowed to have access to snacks at the facility at any time. Staff has been trained and will be retrained to provide food to residents at resident request. However, there are times in which there are doctor's orders that prohibit access to certain foods or any food during certain times, and in those instances we have explicit and implicit permission from residents and/or resident families to not acquiesce to resident requests for snacks or additional food for resident's own safety and health.

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	<p>As indicated previously, residents are able to access or store their own snacks. The facility provides snacks multiple times throughout the day. For those with dietary restrictions, we have obtained the proper paperwork and have noted in individual assessments where necessary. State law requires access to laundry rooms and areas that contain any chemicals including soaps and cleaning products to be locked. Despite this, all residents have access to laundry facilities to do their own laundry. They need simply request staff access. Residents are also allowed, under current policy, to request a key. To date, there have been zero requests from any resident to do their own laundry; all current residents enjoy having facility staff do their laundry. State law and our ethics do not allow us to provide individuals unaccompanied access to laundry facilities if there is a concern for their safety due to consumption and access to chemicals.</p> <p>Onsite Visit Summary (12/2/2022):</p> <p>During the visit we confirmed through interviews with both staff and residents that individuals can lock their bathroom doors. Additionally we confirmed that staff knock before entering a private space. The visit also confirmed that individuals had access to food at any time through meals and access to snacks. Access to laundry was confirmed through a desk review prior to this meeting and wasn't part of the visit. Individuals said they could ask for alternative meals and have the ability to keep food in their rooms if they desire. No individuals reported any restrictions or assigned seating.</p>
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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>Onsite Visit Summary (2021):</p> <p>Leadership reported that they have removed cameras that were not setting compliance. Please send information on any cameras that remain to ensure that they are compliant with the settings rule. Including where the cameras are located and how they are used. Cameras remain in permitted areas of the facility that are directed at an entry/exit, med cart, Employee specific areas like offices. Any cameras that were in non-permitted areas have been removed or deactivated.</p> <p>Remediation Plan Summary:</p> <p>All staff receive 16 hours of training at the time of hiring, including training on privacy concerns. Staff is retrained annually on keeping individuals identifying information confidential and private. Upon hire, all staff sign a statement acknowledging they have read our employee handbook, which specifically addresses resident privacy. This handbook is available to any staff member at any time. We have Resident Rights flyers posted in multiple locations. We will provide a staff retraining to ensure resident privacy is maintained.</p> <p>We will have a staff meeting to discuss the Settings rule to inform and educate our staff about the items that need remediation, as well as those that do not, to make sure staff and residents are well informed on the Settings rules. We will provide additional information to our residents during the next upcoming Resident Council meeting on any areas that require remediation. The setting will redirect interior cameras to meet settings rule guidance to be used only to monitor entrances and exits, staff specific spaces like offices and laundry areas, and medication</p>

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	<p>administration areas. Unnecessary cameras will be removed. Camera footage is stored on remote cloud servers, and will only be accessed by setting Management and owners.</p> <p>Onsite Visit Summary (12/2/2022): We confirmed through communication with the provider that they are using cameras according to Settings guidelines. Staff training in the remediation plan was reflected in the items we discussed during the visit.</p>
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Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Residents reported that some staff do not knock before entering the room. ● One resident reported now knowing that snacks were available. ● Residents report they do not know how to use public transportation ● One resident reported they do not get to participate in activities that are important to them in the community. That person stated they only travel outside of the setting with their son and only to go to doctor appointments. <p>Summary of Interviews (12/2/2022):</p> <ul style="list-style-type: none"> ● Individuals interviewed indicated that their family comes and takes them out to eat and to church. ● Individuals interviewed talked about how they have access to transportation to access the community as much as they'd like. ● Individuals indicated that they recently hired a new activity director that is focused on planning activities in the community. ● Individuals indicated that there is a bulletin board with available community activities. ● Individuals interviewed said they like living at the provider. ● Individuals indicated that they are able to lock their bathroom doors. ● Individuals interviewed indicated that staff knock before entering. ● Individuals interviewed said that their are alternate meals available.
Staff Summary:	<p>Summary of Interviews (12/2/2022):</p> <ul style="list-style-type: none"> ● Staff indicated that individuals are able to lock their bathroom doors. ● Staff interviewed indicated that they knock before entering individual's rooms. ● Staff interviewed said they talk with the case worker for individuals without a lot of natural support to make sure they can give feedback and make sure they have access to activities.

Ongoing Remediation Activities	
Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	N/A

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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
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Summary of Stakeholder Workgroup Comments Received and State Response:

Stakeholder Workgroup Review: January 3, 2023 - January 18, 2023
<i>General Comments Received</i>
<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>

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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:

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 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

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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 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:

No comments received

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,

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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: 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

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.