

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:	Central Utah Enterprises (CUE)	Site ID:	393
Site Address:	1170 South 350 East, Provo, Utah		
Website:	https://www.centralutahenterprises.org/		
# of Individuals Served at this location regardless of funding:	115	# of Medicaid Individuals Served at this location:	34
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 checked="" 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 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 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 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:	October 16, 2019 (in-person), June 21, 2021 (virtual), May 9, 2022 (virtual), January 31, 2023 (Scheduled, Virtual)
Description of Setting:	
The setting is a day support and employment program located in Provo, the setting is close to community resources such as restaurants, parks, stores, etc. The setting is a vendor with Vocational Rehabilitation.	
Current Standing of Setting:	
<input 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: January 31, 2023	

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 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 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 type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	Onsite Visit Summary (2019): The setting does not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services. There are limited active measures taking place to facilitate activities outside of the setting. Reverse integration is used as the primary form of integration; on its own, reverse integration is inefficient to demonstrate compliance. Community outings are primarily delivering contract work (laundry)

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Services are not provided in an area that is fully integrated; services not provided in the community (linen supply contract, laundry contract, other contracts). Setting does not facilitate the process for individuals to pursue competitive integrated work as an option (contracts).

Remediation Plan Summary (2019):

The provider is taking active measures to facilitate more meaningful opportunities for participants to engage in activities in the community instead of relying on reverse integration. CUE will increase the integration into the greater community by providing more opportunities for individuals to access local businesses and interact with the community by planning and scheduling community activities on a consistent basis as well as seeking out volunteer opportunities with those of the greater community. The planning process will involve the individuals served to include the places of interest they have. While in the community, the individuals will independently complete as many steps of the activity they can thus giving them more interaction with community workers. Those requiring assistance will be given the minimal assistance necessary for them to be comfortable. The plan is to have access on a daily to weekly basis for those who choose to participate but until the COVID 19 pandemic and social distancing eases, for the safety of those attending, a target date has yet to be determined. Until full attendance is again reached, planning will begin with those attending so some community activities are in place at the time others return.

Onsite Visit Summary (2021):

The setting is located in a busy part of Provo. It was observed that day support and employment services have seldom been occurring in the community due to COVID-19 restrictions related to the rules for individuals attending from ICF facilities. It was also observed that there were few efforts being made to help individuals connect the pre-vocational skills they are learning to job options in the community, staff and leadership were clear that they did not support people interested in working in the community to connect with Vocational Rehabilitation or other job placement supports. Staff and leadership noted they are asking individuals for input on non-work activities. They have worked with individuals to learn how to give input as they are not used to being able to voice their opinions. The state requested remediation on areas of concerns.

Remediation Plan Summary:

Rights/grievance/rules packet was reviewed with all individuals attending CUE and again when their annual PCSP is held. This packet includes information on the right to change providers, making choices as to what they do throughout the day, how to present a grievance as well as reviewing the rules at CUE. The new cover sheet was implemented which addresses the likes and dislikes of the individual giving CUE a better idea of things to plan that will interest them. Individuals are more involved in the planning of activity options throughout the day. This is a new concept for them and they are getting use to expressing their ideas. While community activities did not happen during this past year because of COVID restrictions, a list of available activities to do in the community has been compiled and sent home with each individual so their family or residential provider could do them if they were comfortable. These are seasonal activities as well as activities available for the month.

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	<p>Onsite Visit Summary (2022): During this visit, it was determined, the setting must provide a greater diversity of choice in their community integration opportunities that meets the needs of the individuals that they serve. It was also recommended that the setting provide training to staff to ensure they understand the work they are doing in the community is promoting and encouraging. Based on these visits, it was determined that the Setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community; it requires heightened scrutiny. There is also a community reintegration plan for this provider.</p> <p>Remediation Plan Summary: The summary pointed out that community activities for clients were never based on COVID restrictions set for the ICF facilities. For several months, community activities were limited due to the high number of COVID cases and family concerns. Community activities took place in settings where there were fewer people and social distancing could take place. CUE has assigned each area one day a week to schedule community activities. This was done to ensure each area was guaranteed to have access to a van to transport individuals to the activity. CUE is in the process of hiring additional staff so there is enough staff to do community activities while still having the needed supervision for those who are not on activities. While each area has one day where they are scheduled to do an activity, they are not limited to that one day. Activities are done in small numbers so the supervisor is able to spend quality time with the individuals to ensure the activity is meaningful. Currently we have 2-3 vans available during the day for activities so more than one activity can occur at a time. While each area plans the activities, those who go on the activity do not have to be from that area. If there isn't a full group that wants to go on the activity from an area, others are sought out to fill the spaces. Also an activity can be done multiple times if there is enough interest in the activity and other areas can do the same activity if the interest is there. Individuals are given a choice to go on an activity or to not go. Individuals have not nor will ever be told they have to go on an activity or what activities they have to go on. There is a calendar posted with activities that individuals express interest in monthly. CUE helps accommodate those in wheelchairs in close distance activities due to the company vans lack of wheelchair friendliness.</p>
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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 type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary: May 9, 2022 (virtual): 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 type="checkbox"/> Remediation Plan demonstrating will be compliant

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<p>Summary:</p>	<p>Onsite Visit Summary: October 16th, 2019 (in person)</p> <p>During this visit, it was determined that the setting does not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services. There were limited measures taking place to facilitate activities outside of the setting, reverse integration was used as the primary form of integration. It was also observed that community outings were primarily delivering contract work and that services were not provided in an area that is fully integrated. Additionally, the setting did not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities.</p> <p>Remediation Plan Summary:</p> <p>A staff meeting was held to discuss helping to promote job opportunities in the community. Also staff will be trained on what CIE is as we typically just refer to CIE as a community job vs. CIE. The setting will again review the goals of EPR and CIE. Before requesting EPR services, CUE sought input from individuals, family members and support coordinators to determine if the individuals were interested in exploring community employment options. It was explained to them what EPR was and what it entailed when it came to receiving services. While some of the individuals currently on EPR were hesitant in pursuing community employment, they wanted to be able to continue to have paid work opportunities and were open to exploring different community job opportunities.</p> <p>With all of our individuals, if they express an interest in a particular job in the community while on an activity, the staff doing the activity will notify the individual's program manager of the interest. The program manager will talk to the individual to determine what they are interested in. Do they like the place they visited, do they want a job there and if so what type of job they are interested in, talk to them about the qualifications of that job or do a follow up visit to the establishment to get more details from someone who works there on what is required. After this then the individual will have more information on what is entailed and determine if they are still interested. Maybe the individual just likes being in the environment and if this is the case what are some other jobs there they might be more qualified to do.</p> <p>If the individual still wants to pursue the job, the program manager will then contact their support coordinator who will then start the process of finding a provider who can do the Voc Rehab process.</p> <p>Onsite Visit Summary (2021):</p> <p>Staff have improved their process for asking individuals for input on non-work activities and their schedules. This change has been a positive improvement for both staff and individuals. Staff seem knowledgeable on an individual's needs and wants. Staff and individuals said that they had choice in what they work on each day. Training on individual choice had been clearly implemented and staff were trained.</p> <p>Policy/Document Review:</p> <ul style="list-style-type: none">● Employment Pathway Tool● Activity Calendar● Reintegration Plan● Rights/grievance/rules packet
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Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.

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Compliance:	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	Overall, all identified concerns were addressed on the setting’s submitted remediation plan. In addition, leadership has a plan in place to train all of their staff on integration towards competitive integrated employment. The State has provided technical assistance to the setting around community integration and will validate their remediation plan in January 2023.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews 2021 (virtual):</p> <ul style="list-style-type: none"> ● Individuals expressed they had a choice on what activities they participated in. ● Individuals mentioned that they were not going out in the community as much due to COVID-19. ● Individuals mentored that they go out into the community to places such as Walmart and Summerfest. ● Several individuals talked about the work they do at CUE and the skills they have learned such as cooking. ● Individuals indicated preferred staff and were able to spend time with them <p>Summary of interviews May 9, 2022 (virtual):</p> <ul style="list-style-type: none"> ● Individuals said they are able to do activities outside of the building and that they chose which activities they participated in as well as help put the activities together. ● Individuals expressed they learn communication and other tools to help them get a job in the community. ● Individuals did mention that due to the pandemic, activities had been more limited.
Staff Summary:	<p>Summary of interviews 2021 (virtual):</p> <ul style="list-style-type: none"> ● Staff mentioned that there are opportunities to help individuals with skill building based on their interest ● Staff provided insight on activities that are outside of the laundry area. Activities included, other options within the building such as coloring and puzzles as well as opportunities out in the community. ● Staff said there were no restrictions and that they had access to participants' folders to gain information on the individual's needs and interests. ● Staff expressed that individuals are a part of the planning for the activity calendar. <p>Summary of interviews May 9, 2022 (virtual):</p> <ul style="list-style-type: none"> ● Staff expressed there are a variety of community integration opportunities that individuals participate in. ● Staff gave examples that skill building and community integration promoted while in the community. ● Staff confirmed they have been trained on specific needs, supports, and preferences of the individuals.

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Ongoing Remediation Activities	
Current Standing: <input type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	<p>Remediation Plan Summary:</p> <p>For several months, community activities were limited due to the high number of COVID cases and family concerns. Community activities took place in settings where there were fewer people and social distancing could take place. Each group is scheduled to go out the same day each week (1 day/week or 4x/month). Monthly each area will solicit ideas from the individuals on what they would like to do in the community for the next month as well as present ideas for activities (This will be done about 2 weeks before the beginning of the new month). A list of activities will be created and presented to the individuals so they can express their interest in which activities they would like to participate in so we know how to schedule from there. From this information, a calendar will be created with days the activity will be held. If only a few are interested in the activity it might only be held 1-2 times during the month. If several want to do the activity, it will be held more often to accommodate all who want to participate. During the month if an individual expresses an interest in doing an activity that is not on the calendar, if at all possible it will be added during the month or possibly added to the next month. Also if an individual later decides they want to participate in an activity, every effort will be made to accommodate them. Depending on staff and availability of transportation, more than one activity a day will be available. This calendar will also be posted for the individuals to refer to throughout the month as their desire to attend might change.</p> <p>With all of our individuals, if they express an interest in a particular job in the community while on an activity, the staff doing the activity will notify the individual's program manager of the interest. The program manager will talk to the individual to determine what they are interested in. Do they like the place they visited, do they want a job there and if so what type of job are they interested in, talk to them about the qualifications of that job or do a follow up visit to the establishment to get more details from someone who works there on what is required. After this then the individual will have more information on what is entailed and determine if they are still interested. Maybe the individual just likes being in the environment and if this is the case what are some other jobs there they might be more qualified to do.</p> <p>If the individual still wants to pursue the job, the program manager will then contact their support coordinator who will then start the process of finding a provider who can do the Voc Rehab process. A staff meeting will be scheduled in July to address this issue and to educate the staff that what we are doing is helping to promote job opportunities in the community. Also staff will be trained on what CIE is as we typically just refer to CIE as a community job vs. CIE. The state will confirm these plans with an additional visit.</p>
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

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 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

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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 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,

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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 Central Utah Enterprises Site 17, is a day support services program and employment preparation services program located at 1170 South 350 East, Provo, Utah. It provides services to 115 individuals including 34 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 visited CUE on multiple occasions. It is physically isolated from the larger community and individuals very infrequently leave the setting. Schedules are highly regimented and there is a lack of choice as to activities individuals engage in. The setting does not seem to facilitate competitive, integrated employment for individuals. We are very concerned that the state thinks this setting will be compliant within the March deadline as there are very significant obstacles to be overcome by this sheltered workshop.

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. As indicated on the heightened scrutiny package, a validation visit was conducted 12/29/23 to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined compliant at the validation visit. The setting is a day support and employment program located in Provo, the setting is close to community resources such as restaurants, parks, stores, etc. The setting is a vendor with Vocational Rehabilitation. All identified concerns were addressed on the setting's submitted remediation plan. The State has provided technical assistance to the setting around community integration and integrated employment for individuals prior to their January validation visit.

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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. As indicated on the heightened scrutiny package, a validation visit was conducted 12/29/22 to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined compliant at the validation visit. During the visit, interviews were conducted with both staff and individuals being served. During the validation visit, staff and leadership validated that CUE is providing consistent inclusive and integrated community activities with planned and unplanned opportunities for informed choice experiences for employment. Staff verified that every person is offered and included in informed choice experiences throughout the week. Based on the provided remediation and validation visit, the setting has been deemed compliant.

Comment:

The same commenter had additional feedback stating we have concerns that the most recent assessments of the setting and the planned assessment of the setting after public comment was not/will not be 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.

Comment:

The same commenter had additional feedback stating the evidentiary package states that the setting is close to community resources, but fails to mention that the setting is located in an industrial area. The review does not indicate if individuals are free to come and go as they please, if there is an open-door policy, and if individuals wish to access the community resources within walking distance/driving distance, how staff facilitates this.

Response:

The setting is a day support and employment program located in Provo, the setting is close to community resources such as restaurants, parks, stores, etc. Individuals said they are able to do activities outside of the building and that they chose which activities they participated in as well as help put the activities together. Individuals are able to come and go as they please unless they have a documented rights restriction in place.

Comment:

The same commenter had additional feedback stating The evidentiary package lacks specificity regarding compliance with the rule. The state should gather more information regarding how individuals are accessing the

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community and whether or not individuals are accessing the community in the way and to the extent desired. The review summary states that CUE plans to have each group plan an activity one time per week, and that other individuals could attend that activity if desired. The state does not indicate how big the groups are, and what types of activities people are engaging in. If the setting is using the EPR code, the state should be assessing whether or not the setting is actually providing that service. This evidentiary package doesn't demonstrate that individuals are spending 20% of their time in the community as outlined in the EPR code. Additionally, it is concerning that individuals who use wheelchairs are unable to access the community unless it is within a short distance because of a lack of accessible transportation. The state and setting need to ensure that each individual's needs for community integration are met no matter their disability/disabilities.

Response:

As indicated on the heightened scrutiny package, a validation visit was conducted 12/29/22 to ensure that the remediation plan was implemented and the setting was compliant in the areas indicated. The setting was determined compliant at the validation visit. During the validation visit, it was determined via interviews that CUE is providing consistent inclusive and integrated community activities with planned and unplanned opportunities for informed choice experiences for employment. CUE does not limit their integration time to 20% in the community. Many choose to be in the community at a greater capacity. Interviews with both staff and individuals served reflected this level of integration. CUE makes accommodations for a variety of transportation and support needs so all who want to participate in activities are able to do so. The setting goes into the community in small groups (4-5 individuals per group). The setting offers volunteer opportunities in the community as well. One individual reports they go into the community everyday because that is what they choose to do. Another individual reported they go to program part time and work a competitive integrated job the other days of the week.

Comment:

The same commenter had additional feedback stating In addition there is no indication that CUE is implementing the EPR code in regards to meaningful prevocational activities. The review does not indicate whether or not the setting pays subminimum wage, what types of prevocational work activities occur in the setting, whether the service is time-limited and how and if individuals are able to choose between work activities. The plan to support competitive, integrated employment outlined in the remediation plan is insufficient. An individual's program manager is contacted if an individual volunteers that they would like to do a particular job in the community, the manager will get more information about the job requirements, and if the individual still wants the job the support coordinator will be contacted to find a provider to "do the voc rehab process." This is insufficient under the EPR code. Individuals should be working on vocational goals leading to competitive, integrated employment if they are enrolled in EPR services and providers should be working with VR to support these goals.

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.

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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 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.