

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:	Lifelong Learning Center inc.		895
Site Address:	2440 S 900 W Salt Lake City, UT 84119		
Website:	N/A		
# of Individuals Served at this location regardless of funding:	11	# of Medicaid Individuals Served at this location:	8
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 			

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	community services consistent with their person centered service plan
	<input type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting
	<input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include: <ul style="list-style-type: none"> ● The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place ● The setting does not ensure an individual’s rights of privacy, dignity, and respect
Onsite Visit(s) Conducted:	10/30/19 (in-person), 4/14/21 (Virtual), 12.9.22 (Virtual, Scheduled)
Description of Setting:	
The Lifelong Learning Center is a Day Supports Program in Salt Lake City. The day programs provide life skills, job skills and social skills so individuals can achieve a greater degree of independence and participate more fully in the community. The setting is in an industrial area but is within walking distance of restaurants and is within short driving distance to other community resources.	
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: Remediation plan will be completed in December 2022, Validation Visit is scheduled for December, 2022	

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 type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
--------------------	---

Summary:	<p>Onsite Visit Summary (10/30/19):</p> <ul style="list-style-type: none"> ● The setting does not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services <ul style="list-style-type: none"> ○ Better planning in regards to activities to make them more meaningful to individuals to ensure integration into the greater community <p>Remediation Plan Summary:</p>
-----------------	---

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Activities for Friday will not be differentiated from any other day of the week. Additional staff time will be assigned to plan activities. Staff is required to maintain an updated copy of the Rules and Procedures Manual. As a part of the required annual training, staff is required to read, understand and implement all aspects of the manual. In addition, the staff is tested to measure their understanding of the contents of the manual. HCBS requirements will be added as an appendix to the Rules and Procedures. Activities will include going out into the community as budget, staff, and transportation permit. Specifically, the Millcreek Library, the BonWood Bowling alley and the Columbus Community Center will continue to be included to allow greater integration into the community. Other outside activities will continue to include the Utah Museum of Fine Arts and the Natural History Museum. Individuals are asked for input on ongoing community activities as detailed above. Staff time has been allocated to review and seek out additional community activities and present to clients as options. Specifically, it should be understood that the Columbus Community Center is not the disability specific Columbus Center. It is operated by the City of South Salt Lake and provides lunches to Seniors as well as sports activities and meetings

Individuals will continue to be included in all company and customer events at the adjoining business.

Staff will work on teaching independence while out in the community. As noted above, staff will be trained to understand HCBS compliance as part of their Rules and Procedures training and will ensure independent living skills while out in the community will comply with HCBS. The long-term goal is to teach the clients to perform all of the functions in the community with complete independence.

Clients may bring personal funds. Clients will be allowed to use their funds in any way they choose either at the facility or out in the community. Money handling skills training will be added to the curriculum and personalized to accommodate various levels of understanding and will include identification of currency as well as guidance for responsible spending. Money handling skills will be practiced while out in the community.

Onsite Visit Summary (4/14/21):

Setting is located close to other businesses and is in an area where locations and activities are easy to get to. Setting uses a company vehicle for transporting individuals. During COVID, individuals are going into the community 2-3 times per week. Individuals are able to come and go from the setting if they choose to.

The setting must do a better job at providing community integration activities for individuals.

The setting must make more of an effort to help individuals who may not know what employment options are out there to learn more and have informed choice.

The setting must provide opportunities for individuals to experience their community the same as individuals that do not have a disability.

Remediation Plan Summary:

Staff will meet with individuals each morning to discuss interest in community activities. Staff use office time to research community activities. The provider will change from having third

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<p>party activities brought to the facility to having individuals travel to a third party activity (instead of a class being taught at the provider they will travel into the community for a class). If the provider is unable to provide accommodations for an activity requested by the individual they will coordinate with that individual's support team to explore options to meet that request.</p> <p>Staff will facilitate employment specific activities to include search for jobs or career options online, visit with businesses to conduct a worksite tour and talk to community members about their jobs.</p> <p>Staff will work on meaningful employment skills to include social skills, appropriate dress and hygiene as well as focus on teaching students to complete assigned tasks.</p> <p>Staff will work with individuals on workplace skills including the value of being on time, the ability to work independently and arrange for transportation and meals while working.</p> <p>Staff will seek volunteer activities that have the potential to lead to employment.</p> <p>Staff will document individual skills and maintain a record of individuals' level of interest in employment.</p> <p>Staff will use the annual PCSP review process to ensure individuals are offered informed choices for employment during each review cycle. Upon completion of informed choice procedures listed above, for individuals who express an interest in employment, staff will focus on the next steps. Staff will facilitate access to Vocational Rehab resources with individuals, Support Coordinator, caregivers and family. Staff will facilitate access to other providers that provide a full range of employment services with individuals, Support Coordinator, caregivers and family. Staff will be trained on Employment Services Workflow and EPR information when it is available as part of the DSPD annual training requirements.</p> <p>Policy/Document Review:</p> <ul style="list-style-type: none"> ● Lifelong Learning Center - Policy and Procedures ● Lifelong Learning Center HCBS Settings Re-Integration Plan
--	---

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 (4/14/21):</p> <p>The setting is selected by the individuals and their support team.</p> <p>The setting does not restrict access to any non-disability settings and facilitates access when requested.</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:	Onsite Visit Summary (10/30/19):

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

- The setting does not allow the freedom to move outside of the building and individuals cannot come and go at any time
 - The front door is typically locked; restrictions and modifications process as well as a way for others to circumvent this restriction must be in place
- 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.
 - Weekly schedule is very regimented; the same thing is scheduled M-Th with Friday being a “free day in the community”
 - Everyone does the same thing (large group) as there is only one large van (12 person) for transportation

Remediation Plan Summary:

Individuals will be able to select which activities they participate in each day. They may choose from the entry area reading/writing/computer tables, the inside office area for games/crafts or the basketball court area for indoor sports. Individuals may move freely between any of these areas at any time. Individuals will be asked as part of the quality survey which regular/constant activities they would like to have offered. This quality survey is in a written format and is completed by the client with the assistant and input from their caregivers.

Individuals will be asked for input daily on any activities they would like to add to the schedule. This will be offered during the “Daily News” portion of the program when the news, weather and calendar are discussed. The “Daily News” is not a required activity and clients who choose not to participate will be specifically asked for their input. Additional activities will be selected in advance and added to a shared calendar. The process for adding activities is for staff to compile the requested activities. Staff will then research the availability of these activities and add the activities to the monthly calendar. Staff will then share the calendar with the clients.

Onsite Visit Summary (4/14/21):

Staff ask individuals each morning what activities they want to participate in. Other than some activities that require advance scheduling (such as going to appointment only activities), scheduling is done on a daily basis. Individuals are able to eat where they want within the setting. Individuals are able to bring their own lunch and snacks and are able to choose what they eat. The setting must provide a way for individuals to have a choice in their daily schedules. It was reported by staff that the current process of scheduling on a daily basis has been a response to the pandemic and that previously they had a structured and repetitive weekly schedule (e.g. Monday is bowling, Wednesday is swimming, etc.).

Remediation Plan Summary:

Staff is required to meet with individuals every morning to seek input for requested activities and prepare the schedule for the day and coming weeks

When the group goes out into the community, each individual will be given the choice to participate or stay back at the facility. There is always an option to stay back at the program. When on activity individuals can break off into small groups if desired.

Policy/Document Review:

- Lifelong Learning Center - Policy and Procedures
- Lifelong Learning Center HCBS Settings Re-Integration Plan

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

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:	Overall, all segregating and institutional concerns were addressed through their remediation plan and the State will conduct their final validation to ensure compliance through a validation visit in December 2022. Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will also be reviewed through ongoing monitoring activities.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of Interviews (2021):</p> <ul style="list-style-type: none"> ● Individuals are able to eat where they want within the setting. ● Individuals are able to bring their own lunch and snacks and are able to choose what they eat. ● Individuals can come and go as they please. ● An individual said they like to go to the store by their house and to the park. ● An individual said they like to go to Camp Kostopoulos. ● An individual said they like to go to the learning center and get to choose what they do. ● An individual said they take the van out into the community. ● An individual said they like going to the park to see blossoms.
Staff Summary:	<p>Summary of Interviews (2021):</p> <ul style="list-style-type: none"> ● Staff ask individuals each morning what activities they want to participate in. Other than some activities that require advance scheduling (such as going to appointment only activities), scheduling is done on a daily basis. ● Staff seem knowledgeable about the individuals' wants, needs, and interests. ● Staff said they aren't away from any individual restrictions. ● Staff said they are trained on new things that are going on - CPR, food handlers permit, book of things that we do to make sure we are keeping up to date

Ongoing Remediation Activities	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	The setting is finalizing its remediation activities in prong 3A and 3C. the State will conduct another validation visit to ensure they are compliant in the areas indicated.
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

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Summary of Stakeholder Workgroup Comments Received and State Response:

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

Setting Specific Comments:

Comment:

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

Response:

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

General Comments Received:

Comment:

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

Response:

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

Comment:

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

Response:

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

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

Comment:

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

Response:

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

Comment:

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

Response:

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

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Comment:

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

Response:

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

Comment:

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

Response:

As with all settings, the State’s review was for the purpose of determining whether the tenants of the Settings Rule had been met, regardless of which specific services were delivered at the location. The State has separate compliance monitoring for the appropriate authorization of Employment Preparation Services and the delivery of those services by providers.

Comment:

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

Response:

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

Summary of Public Comments Received and State Response:

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

Setting Specific Comments:

Comment:

One commenter stated Lifelong Learning Center is a day supports program located in Salt Lake City, Utah. It provides services to 8 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. For stakeholders to provide

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

effective feedback, the state needs to present stakeholders with final validation of compliance with the rule rather than vague unvalidated remediation plans. While the evidentiary package contains information from the first virtual validation in April 2021, it does not have any information from the second virtual validation visit that was to have taken place in December 2022. We have concerns that the two most recent assessments of the setting were not 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:

As indicated on the heightened scrutiny package, and as the commenter said, a validation visit was conducted in December (12/9/22) 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. Although the visit was conducted just prior to the heightened scrutiny package being submitted for public comment, the assessment of the visit was not completed in time to be included in time to be included on the package. Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of action's to certify they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process. The State has a comprehensive virtual validation visit process in place to determine HCBS Settings Rule compliance. If at any time the State determines that the virtual process is not sufficient for a specific setting, then the State will make the determination that an in-person visit is required at that time. Once a setting has completed its remediation and the State has validated its compliance with the HCBS settings rule, it moves to the ongoing monitoring process.

Comment:

The same commenter had additional feedback the evidentiary package lacks specificity regarding compliance with the rule. The state should gather more information regarding how individuals are accessing the community and whether individuals are accessing the community in the way and to the extent desired. The remediation plan is insufficient given the lack of detail and given the large obstacles to compliance that must be overcome by the February 2023 deadline. For example, the first assessment indicated that participants could not leave the facility freely and that the doors were typically locked. The remediation plan contained no reference to, or specific remediation for ensuring that doors were not locked or that waiver participants had freedom of movement.

Response:

As indicated on the heightened scrutiny package, a validation visit was conducted in December (12/9/22) 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. Individuals are allowed to leave the program unsupervised and come and go as they choose.

Comment:

The same commenter had additional feedback There was no information to indicate that the site has or will fully implement the EPR codes, or what specific opportunities are available for competitive integrated employment. Further, there was no information confirming that the site does not pay or facilitate the payment of subminimum wage, or that to the extent piecework is used, it is truly in service of gaining specific and measurable vocational skills. In addition, there was no assurance that individuals at the facility will spend a minimum of 20% of their time in the community.

Response:

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

As indicated on the heightened scrutiny package, a validation visit was conducted in December (12/9/22) 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. Both staff and individuals interviewed reported they are going into the community most days of the week. There is a larger cost activity once a week and then lower cost or free activities the other days of the week. Examples of recent activities reported included: Nutcracker ballet, shopping malls, craft stores, stopping (several examples), restaurants (several examples), Thanksgiving Point museum, farms, Zoo, and bowling. A daily discussion is happening each morning to get ideas from individuals regarding what they would like to do that day and which group they would like to be a part of. Daily planning meetings include discussions around Competitive Integrative Employment (CIE) jobs and places they can go and questions they can ask while in the community about employment tasks at locations they are visiting. There is a clear understanding, based on staff interviews, on how to refer anyone that expresses interest in finding a CIE job to SCEs for job coaching assistance. Individuals reported that they are talking about different jobs and are getting help with finding jobs (one person is exploring what it would be like to work in a movie theater). Center explores options for community access to classes, settings based on interests expressed during daily planning sessions and then supports in finding resources. They try not to bring people into the center anymore but rather if they can find an option in the community they use that instead (from staff interviews). Individuals reported attending classes/events at local libraries to learn new things/use computers.

Comment:

The same commenter had additional feedback finally, there was no evidence present that this setting was selected from options that included non-disability specific settings. The information only says that individuals who choose this setting were selected by the individual and their support team, and that the setting does not restrict access to other non-disability specific settings. This information does not speak at all to how, and from what options, the setting was originally selected.

Response:

While the State agrees oversight is necessary to ensure individuals are presented with an appropriate array of service options, including non-disability settings, this practice is primarily handled during the person-centered planning process. When individuals are interested in exploring options, it is reasonably expected that the conversation includes the individual's selected Support Coordinator and their planning team. The State did not observe any concerns with this practice when evaluating the provider.

General Comments Received:

Comment:

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

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Response:

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

Summary of Stakeholder Workgroup Recommendation:

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

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

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.