

# 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

<b>Site Name:</b>	Apple Tree Assisted Living	<b>Site ID:</b>	177
<b>Site Address:</b>	565 N 300 W, Kaysville UT 84037		
<b>Website:</b>	<a href="https://www.cozyretire.com/our-communities/apple-tree-in-kaysville/">https://www.cozyretire.com/our-communities/apple-tree-in-kaysville/</a>		
<b># of Individuals Served at this location regardless of funding:</b>	34	<b># of Medicaid Individuals Served at this location:</b>	16
<b>Waiver(s) Served:</b>		<b>HCBS Provider Type:</b>	
<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> <a href="https://medicaid.utah.gov/ltc/">https://medicaid.utah.gov/ltc/</a>		<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	
<b>Heightened Scrutiny Prong:</b>			
<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"> <li><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</li> </ul>			

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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"> <li>• The setting has policies and practices which control the behaviors of individuals; are rigid in their schedules; have multiple restrictive practices in place</li> <li>• The setting does not ensure an individual’s rights of privacy, dignity, and respect</li> </ul>
<b>Onsite Visit(s) Conducted:</b>	06/24/2021 (Virtual), 10/31/22 (Virtual)
<b>Description of Setting:</b>	
Apple Tree Assisted Living is a residential facility located close to Main Street and within a couple miles of groceries stores, a gym, restaurants, and other community resources. There are community resources within walking distance that promote independent community integration activities for the residents.	
<b>Current Standing of Setting:</b>	
<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

<b>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.</b>	
<b>Compliance:</b>	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

<b>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.</b>	
<b>Compliance:</b>	<input type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant <input checked="" type="checkbox"/> Not Applicable

<b>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.</b>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Onsite Visit Summary (6/2021):</b></p> <p>It was found that residents can come and go at any time independently. The facility’s residents include both waiver and non-waiver individuals. The setting has a formal process to solicit feedback from residents on the settings activity schedule. The activity schedule is created by the activity director. The activity director solicits feedback through monthly resident council meetings, one-on-one conversations, and a suggestion box. Through interviews, it was found that the setting needs to provide a variety of activities that match the diversity of age and ability of its residents.</p> <p>The setting needs to ensure that activities are available at a variety of times so that residents who want to can attend. Feedback can be solicited during the Resident Council meeting and</p>

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during the Activity Directors one-on-one with special attention to residents who do not participate or attend the meeting. The setting must have a process to notify residents how they are responding to their recommendations and input.

Residents are able to come and go from the setting when they choose and can go into the community daily if they have the resources to do so. Individuals do utilize NCW non-medical transportation and go places with friends and family.

The majority of activities provided are onsite activities and the setting uses reverse integration to provide community access. The Setting must do a better job at facilitating opportunities for community integration. The setting must demonstrate a process to address community integration for individuals that do not have natural support to take them into the community.

### **Remediation Plan Summary:**

The Activities Dept will post upcoming activities that are occurring in the greater community, which clients can sign up for and transportation will be arranged to accommodate. Resident council meetings with management were canceled due to a lack of participants, to still allow individuals the opportunity to voice any concerns a form will be passed out for clients to fill out if any concerns arise. Technical assistance was provided to the setting around resident council meetings and participation challenges. The setting provided a new remediation plan indicating they would re-establish resident council meetings to ensure residents were given the ability to provide feedback. The activities director will send out a survey to get more information from residents and create a program to have activities for different interests and age groups. The setting will use the Life Survey; they use this to get to know each resident and it has been beneficial for activities as well. They will start reading the surveys at staff meetings as a way to engage more with residents with their interests. Activities will expand more into other areas such as spiritual, entertainment, physical, emotional, and intellectual.

### **Onsite Visit Summary (10/2022):**

The provider addressed concerns regarding collecting individual feedback by developing a monthly resident council meeting where individuals can give feedback on the activities available in the facility and in the community. They also installed a community bulletin board that is posted to share the monthly schedule. There is a comment box for anonymous feedback. The facility coordinates with natural supports and third party transportation options for activities and individual needs in addition to their own facility vehicles. Feedback was given that individuals feel there is a variety of activities provided both within the facility and out in the community.

Staff appeared to be involved in connecting with residents to obtain feedback on their needs and interests. They collect this feedback by taking feedback from the resident council to staff meetings. They also communicate personally with individuals to get information on needs and interests.

We observed the following during interviews with individuals that helped us determine the provider had made an effort to expand community integration with a focus on planning activities based on resident feedback:

Individuals indicated that there is a resident council and then the activity calendar comes out. Individuals indicated that they are happy with events being around the same time each week because that helps them know their schedules. Individuals indicated that they have non-facility

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	<p>provided options for transportation. Individuals indicated that they thought the times the activities were held made sense.</p> <p>Individuals indicated that they have attended a resident council meeting and given feedback. Individuals indicated that there is a diversity of activities available at the facility and in the community.</p> <p><b>Policy/Document Review:</b></p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Community Board (picture)</li> <li>● Intake Assessment/Life Survey</li> <li>● Activity Calendar</li> <li>● Resident Concern and Suggestion Form</li> <li>● Activities Survey</li> </ul>
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<b>Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.</b>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Onsite Visit Summary (6/2021):</b></p> <p>The setting does not restrict access to non-disability settings. The setting has an admission process that assesses individuals' needs and preferences and regularly reassesses to ensure services are provided in a person-centered manner.</p> <p><b>Policy/Document Review:</b></p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Intake Assessment/Life Survey</li> </ul>

<b>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.</b>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p><b>Onsite Visit Summary (06/2021):</b></p> <p>There was no personal resident information posted in the facility. Staff were observed to be communicating with residents with respect. Staff are flexible and can meet the individual waking and bathing needs of the residents when requested.</p> <p>During the visit, it was observed that the setting may not optimize autonomy and independence in making life choices. Food is available for residents at any time including snacks and drinks. The setting must ensure that residents are aware of how to submit input towards the setting menu and and follow up to how input from residents are implemented into the menu must be submitted. Residents are not allowed in the kitchen area and do not have access to communal refrigerator or microwave. The setting must provide an option for residents to store their own food.</p> <p><b>Remediation Plan Summary:</b></p>

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	<p>Leadership responded that individuals have the right to have refrigerators, microwaves, and Keurig Coffee Makers in their rooms. Residents are able to make simple meals in their rooms. If residents want to make more elaborate meals, they can make arrangements with the facility. Forms are given to residents to give feedback on menu concerns. The setting consults with the dietician prior to implementing. Follow up will occur during the resident council meeting.</p> <p><b>Onsite Visit Summary (10/2022):</b></p> <p>We needed to validate that individuals had access to food at all times. The visit determined that individuals have access to food outside of scheduled mealtimes and are able to choose to eat or prepare simple meals in their rooms. There are dry and refrigerated snacks available to residents. There is a monthly resident council meeting where individuals can give feedback on meals and daily schedules. Staff was unaware of any restrictions placed on individual schedules or behaviors. Residents gave feedback saying they are able to have visitors whenever they would like. Individuals are able to prepare meals in their rooms, eat out, use an alternative menu, or give feedback to the cooks if they don't care for the scheduled meal. Individuals said they feel that staff listen to their feedback that they give through conversations, the resident council, and the suggestion box.</p> <p><b>Policy/Document Review:</b></p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> <li>● Intake Assessment/Life Survey</li> <li>● Resident Concern and Suggestion Form</li> <li>● Resident Concern and Suggestion Form Kitchen</li> <li>● Menu</li> </ul>
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<b>Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.</b>	
<b>Compliance:</b>	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
<b>Summary:</b>	<p>Overall, all segregating and institutional concerns were addressed through the remediation process and the State was able to validate that the areas were remediated through the validation process.</p> <p>Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will be reviewed through ongoing monitoring activities.</p>

## Input from Individuals Served and Staff

<b>Individuals Served Summary:</b>	<p><b>Summary of interviews (2019):</b></p> <ul style="list-style-type: none"> <li>● One Resident reported that there is no way to provide feedback for the menu.</li> <li>● Residents report that there is no alternative menu.</li> <li>● Residents report that the food is bland and catered to the oldest residents. They also reported that the food does not meet dietary needs of individuals (diabetes, allergies)</li> <li>● One resident reported that the setting's van lift does not support both them and their wheelchair.</li> <li>● One resident reported that they do not feel like anything that is suggested at the Resident Council meeting is implemented</li> </ul>
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	<ul style="list-style-type: none"> <li>● One resident reported that the activities were always scheduled on the same days (based on then there was enough staff) which occurred while they were receiving services and therefore could not attend. They also are not able to attend Resident Council meetings</li> <li>● One resident reported that the activities were catered to older and disabled residents.</li> </ul> <p><b>Summary of interviews (2022):</b></p> <ul style="list-style-type: none"> <li>● Individuals indicated that there is a diversity of activities available at the facility and in the community.</li> <li>● Individuals indicated they feel listened to and respected.</li> <li>● An individual indicated that they sometimes suggest activities but that they are shy.</li> <li>● An individual indicated that there is a resident council and then the activity calendar comes out.</li> <li>● Individuals indicated that they are happy with events being around the game time each week.</li> <li>● An individual indicated that they have non-facility provided options for transportation.</li> <li>● An individual indicated that they thought the times the activities were held made sense.</li> <li>● An individual indicated that they have attended a resident council meeting and given feedback.</li> <li>● An individual indicated that they feel the kitchen staff listens to their feedback.</li> <li>● An individual indicated that alternative meals are available and that they keep their own snacks in their room.</li> <li>● An individual indicated that they are able to prepare simple meals in their room.</li> <li>● An individual indicated that people can come visit them whenever they want.</li> <li>● An individual indicated that they usually go with what food is served but gives feedback if they don't like what is served.</li> <li>● An individual indicated that they have freedom to go where they want.</li> <li>● An individual indicated that they finally got a good cook that makes good food.</li> <li>● An individual indicated that there is a comment box.</li> </ul>
<b>Staff Summary:</b>	<p><b>Summary of interviews (2019):</b></p> <ul style="list-style-type: none"> <li>● Staff reported that residents choose a restaurant to go to but are only allowed to do take-out and bring it back to the setting.</li> <li>● Leadership reported that activities included scenic van rides, picnic in park, and target shooting</li> <li>● Staff report that they have consistent and ongoing training. They also report that there is a monthly employee meeting that addresses activities, individual needs, and additional training.</li> </ul> <p><b>Summary of interviews (2022):</b></p> <ul style="list-style-type: none"> <li>● Staff indicated that individuals have a microwave and refrigerator in their private rooms to store and prepare food.</li> <li>● Staff indicated that a snack basket and community refrigerator are available outside of meal times.</li> <li>● Staff indicated that they have monthly meetings between residents and the kitchen manager where meal feedback is shared.</li> </ul>

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	<ul style="list-style-type: none"> <li>● Staff indicated that they have an alternate menu that individuals can choose from if they don't like the meal.</li> <li>● Staff is not aware of any restrictions placed on individuals.</li> <li>● Staff indicated that there is a posted community activity board informing individuals of events happening each month.</li> <li>● Staff indicated that there is a monthly resident council meeting.</li> <li>● Staff indicated that they help facilitate natural supports or third party transportation for activities if the facility vehicles aren't available.</li> <li>● Staff indicated that if they notice residents aren't attending activities they will go and speak with them to get their feedback or to invite them to activities.</li> <li>● Staff indicated that there is a comment box for feedback.</li> <li>● Staff indicated if a resident shares an activity idea they take it to the activities director.</li> <li>● Staff indicated that individuals like to walk to local stores.</li> </ul>
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<b>Ongoing Remediation Activities</b>	
Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
<b>Continued Remediation Activities</b>	<input checked="" type="checkbox"/> N/A for currently compliant
<b>Ongoing Monitoring Activities</b>	<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"> <li>● Conducting individual served experience surveys</li> <li>● Addressing settings compliance during the annual person centered service planning process</li> <li>● Ongoing provider training and certification</li> <li>● Monitoring through critical incident reporting</li> <li>● Case Management/Support Coordinator visit monitoring</li> <li>● HCBS Waiver Reviews/Audits</li> </ul>

## Summary of Stakeholder Workgroup Comments Received and State Response:

<b>Public Comment Period:</b> December 12, 2022 to January 13, 2023	
<b><i>Setting Specific Comments:</i></b>	
<b><i>Comment:</i></b>	<p>One commenter stated Apple Tree Assisted Living located at Kaysville, Utah. The materials provided by the State in the evidentiary packet raise concerns about whether the identified setting currently demonstrates the qualities of HCBS. The evidentiary package lacks specificity regarding compliance with the rule. The state should gather more information regarding how individuals are accessing the community and whether or not the individuals are accessing the community in the way and to the extent desired. The package notes several problems identified during the initial visit such as the need to schedule activities at varied times, the need to plan activities for a variety of support needs and ages. The residents reported that staff do not implement their suggestions. Staff also restricted residents from eating at restaurants and planned non-integrated activities such as van rides. The evidentiary packet does not address these concerns and how they were remedied or if they were remedied. The</p>

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evidentiary packet does not adequately address what activities and how many activities were offered after the site implemented a remediation plan. The package does not address the times and types of activities that are offered. The package does not address whether the activities offered are integrated. The package is not adequate to demonstrate compliance with the rule and the setting description does not overcome the institutional characteristics of the facility.

**Response:**

As part of the follow up to the initial visit in 2019 the State provided technical assistance to the provider meant to assist them in addressing deficiencies from the visit. Part of that process included desk reviews of documents showing the provider's activity calendar, intake assessment, activity survey, community bulletin board, and resident council. As the goal of the Settings rule is for individuals to access the community as much as they desire the State doesn't place a quota on the amount and variety of activities. During the follow up visit in 2022 the State determined that the provider had addressed these concerns by collecting feedback from individuals on community activities through the resident council, suggestion box, and an activity bulletin board. The provider coordinates with individuals' natural supports and third party providers for transportation in addition to facility owned vehicles that provide individuals the opportunity to access the community. Individuals indicated that they have non-facility provided options for transportation in addition to the facility provided transportation options. From interviews it was found that staff are having conversations regarding the individual's interests and bringing those ideas to provider leadership such as the activities director. Staff said that when they notice individuals not participating in activities they will invite them to activities and talk with them about the things they would like to do. Individuals reported that there is a diversity of activities within the community and the facility. Individuals interviewed indicated that they are aware of the resident council and the availability of the activity calendar and are given the option to provide feedback and go out into the community at the level they desire.

**Comment:**

The same commenter had additional feedback stating the package notes several problems identified during the initial visit such as residents reported there is no alternative menu, that food is catered to the oldest individuals, and food did not meet the dietary needs of individuals. The evidentiary packet does not address these concerns and how they were remedied or if they were remedied. The package only states that food is offered any time but does not address if the food provided meets the dietary and personal preference of waiver participants.

**Response:**

As part of the follow up to the initial visit in 2019 the State provided technical assistance to the provider meant to assist them in addressing deficiencies from the visit. Part of that process included desk reviews of documents showing changes to the menu and processes for individuals to give feedback regarding their meals. The State documented an alternate menu, suggestions boxes, and a resident council as part of the changes the provider made. During the follow up visit in 2022 the State determined and documented through staff and individual interviews that residents were using the feedback mechanisms in place and these mechanisms had increased choice regarding food prepared by the provider. The visit also confirmed that the provider had provided individuals the ability to prepare meals in their own rooms, provided access to a communal microwave and refrigerator, and increased the availability of snacks. With all of these changes the State determined that the provider offers individuals choice and availability regarding access and choice of food.

**General Comments Received:**

**Comment:**

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

**Response:**

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

**Comment:**

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

**Response:**

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

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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, 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:**

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

**Response:**

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

## Summary of Public Comments Received and State Response:

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

**General Comments Received:**

**Comment:**

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

**Response:**

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

## Summary of Stakeholder Workgroup Recommendation:

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

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.**