

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:	Danville Services of Utah, LLC	Site ID:	1401
Site Address:	12257 S Business Park Drive #140, Draper Utah 84020		
Website:	https://www.danvilleservices.com/		
# of Individuals Served at this location regardless of funding:	29	# of Medicaid Individuals Served at this location:	27
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 checked="" type="checkbox"/> Prong 3: From the initial assessment, the setting was found to have the effect of isolating individuals from the broader community. The following is the area that was identified: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> A. Individuals have limited, if any, opportunities for interaction in and with the broader community and /or the setting is physically located separate and apart from the broader community and does not facilitate individual opportunity to access the broader community and participate in community services consistent with their person centered service plan 			

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	<input type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting <input 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:	9/20/2019 (In-person)
Description of Setting:	
Danville Services of Utah is a Day Supports Program located in Draper Utah. Danville provides a wealth of daytime options for people with disabilities, ranging from employment services, field trips, arts and crafts projects, and physical therapy sessions. The setting is located in an industrial area but is close to community resources via a short drive.	
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 January, 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 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

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Summary:	<p>Onsite Visit Summary (9/2019):</p> <p>During the onsite visit, it was determined that the setting was physically located separate and apart from the broader community and did not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services. There were additional concerns that there were limited active measures taking place to facilitate activities outside of the setting and that groups seemed to be created around the level of assistance required/disability and this had a segregating effect for individuals receiving services. Typically, individuals are accessing the community a maximum of twice weekly and community access consists of visiting parks and shopping.</p> <p>Remediation Plan Summary:</p> <p>The setting will increase the variety of experiences, including new experiences based on input from each person reflecting their preferences. Increased in depth discussions of local community activities including volunteer opportunities based on interest/preferences. Weekly planning meetings are already in place, local events are discussed to see who is interested in participating. The setting will explore opportunities to volunteer in the community to foster new relationships and lead to competitive employment if the client desires. This site does not currently offer SEI services. With the introduction of EPR there is one client currently that will have EPR support added to their budget.</p> <p>In addition to utilizing provider vehicles for community access, the setting will explore public and private transportation options and provide training based on each person’s interest and level of needed support. Program location does not have direct access to the bus line; however, the Trax station is nearby. Participants and staff have access to this location. Use of a company vehicle to the Trax location to be able to access.</p> <p>People are free to move between groups, people are encouraged to make choices of activities/groups based on their preference or scheduled events. While groups may seem to have been created around the level of assistance required/disability; the groupings can and do change daily.</p> <p>The setting will disseminate additional information regarding HCBS settings rule to individuals and family members, discuss cultural and systemic changes to improve community integration. Information has been sent home to community and residential clients.</p> <p>The setting will provide training for all employees regarding HCBS settings rule.</p> <p>Policy/Documents:</p> <ul style="list-style-type: none"> ● Volunteer Opportunities ● Training Documentation ● Activity Schedule ● Weekly Planning Form
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Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	Onsite Visit Summary (9/2019):

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	Individuals choose this facility to stay in their community. The setting does not restrict access to any non-disability settings and facilitates access when requested.
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Prong 3 C: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices. The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint. The setting ensures the individual has the freedom and support to control his/her own schedule and activities.

Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
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Summary:	<p>Onsite Visit Summary (9/2019): Individuals are able to move about the setting independently. There was no observed personal information posted in the setting. Individuals were able to eat when and where they wanted. There were no observed or reported restrictions. Both staff and Individuals reported individuals chose what activities they participated in. The setting had a formal process for individuals to give input towards their schedules. Individuals are able to spend their money how they want when they are in the community and the individuals reported staff treat them with dignity and respect. Staff were observed to give time and attention to each individual and take the time to understand their communication style.</p>
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Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.

Compliance:	<input type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
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Summary:	<p>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 January 2023.</p> <p>Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will also be reviewed through ongoing monitoring activities.</p>
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Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Individuals indicated that they chose which activities they did or did not participate in. ● Individuals stated they were able to spend their money however they wanted. ● Individuals stated staff help them with personal hygiene in private as needed and that staff keep sensitive information private. ● Individuals expressed that staff talk to them in a respectful manner and that they are able to have a meal/snack when they’d like to.
Staff Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Staff mentioned that individuals have choice on what activities they participate in. ● Staff stated they keep individual information private and talk to everyone in a respectful manner. ● Staff stated they are trained on human rights and the settings rule.

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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. 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

Summary of Stakeholder Workgroup Comments Received and State Response:

Public Comment Period: December 12, 2022 to January 13, 2023	
<i>Setting Specific Comments:</i>	
<i>Comment:</i>	<p>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 <i>Olmstead</i>. This heightened scrutiny evidentiary package demonstrates these ongoing concerns as detailed below.</p>
<i>Response:</i>	<p>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.</p>
<i>General Comments Received:</i>	
<i>Comment:</i>	<p>The materials provided by the State in the newly-released evidentiary packets raise concerns about</p>

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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 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

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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 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.

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

Setting Specific Comments:

Comment:

One commenter stated Danville Services of Utah is a day support program located in Draper, Utah. It provides services to 27 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 effective feedback, the state needs to present stakeholders with final validation of compliance with the rule rather than vague unvalidated remediation plans. The packet is rife with references to the validation visit, but there is no information present to confirm that the visit has occurred, nor any specificity on what the state of the remediation plan was at the time of the visit. Without that information, there is no way to provide adequate feedback, nor to demonstrate compliance. Also, the onsite visit occurred in 2019, prior to the pandemic. Given the degree of change that so many providers experienced in their operating models from 2020-2022, without a validation review, the remediation plan is likely to be out of date.

Response:

The State agrees the information presented on the 2019 onsite visit was not clear. The information has been added to the heightened scrutiny document above under prong 3 A and 3 C. The State also agrees that much has changed since the start of the pandemic which is why, as indicated on the heightened scrutiny package, a validation visit was conducted in January (1/13/23) 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.

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.

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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.

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 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. The information did not specify how large the community groups are, what types of activities they engage in and the frequency with which activities occur.

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. As indicated on the heightened scrutiny package, a validation visit was conducted in January (1/13/23) 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 area has built up in the past few years to include more businesses in the immediate area. There is a gas station, fast food restaurants, and other community resources within a short walking distance of the setting giving individuals independent access to their community, if they desire. Individuals expressed through interviews they are enjoying the increased community outing and activities of their choice with their friends. Individuals confirmed they schedule their weekly activities and choose what they want to do. Individuals choose what groups they go into the community with and staff reported groups are chosen based on who they want to participate in what activity. They are going out into the community in small groups with whom they choose. Some examples of community activities they have frequented recently are: gas stations, restaurants (they have multiple examples), bowling, library, different parks, and shopping (multiple examples). The setting has created an adventure book with ideas of several community adventure options for individuals to get ideas from if they are unsure of what to do in the community to encourage them to add to the calendar or try something new.

Comment:

The same commenter had additional feedback stating 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:

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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:

The same commenter had additional feedback stating, finally, there is no evidence present that this setting was selected from options that included non-disability specific settings. The information only says that individuals choose this setting to “stay in their community” and that the setting does not restrict access to other non-disability specific settings when requested. 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.

Comment:

One commenter reported that they were a support coordinator who provides support to an individual who attends the Danville, Draper day program. The individual they work with is rarely in the community when they do their visits. When they inquire about activities outside the facility, there are few activities that are anything other than things like van rides, helping a staff fill the van with gas or getting the van cleaned, or going to the store for supplies. Other activities do happen outside the facility, but as near as I can tell it is happening weekly or less and it is a whole group activity, with maybe a few people staying back that maybe can't or don't want to go. There is little to no choice about activities outside the facility. Even inside there isn't a lot of choice--TV, crafts, games, reading, talking, cleaning. Their client likes their peers and staff so he doesn't want to leave. It is sad that he is being underserved but I can't get the staff to understand how it can be better. They have talked with them about how other providers are operating and they get excuses.

Response:

The State believes that this observation is likely accurate with how services were delivered in previous years. However, after the receipt of significant technical assistance, the validation visit in January 2023 demonstrated significant changes in service delivery. If the commenter has additional concerns with observed care provided by this setting after January 2023, we strongly encourage this feedback to be shared to our email support at HCBSettings@utah.gov or on our website at <https://medicaid.utah.gov/ltc/hcbstransition/>.

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.

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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.