

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:	Alta Ridge Alzheimer's Facility	Site ID:	175
Site Address:	1375 East 9400 South, Sandy		
Website:	https://altaridgeassistedliving.com/		
# of Individuals Served at this location regardless of funding:	N/A	# of Medicaid Individuals Served at this location:	5
Waiver(s) Served:		HCBS Provider Type:	
<input type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input type="checkbox"/> Community Supports <input type="checkbox"/> Community Transition <input checked="" type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> https://medicaid.utah.gov/ltc/		<input type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input checked="" type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living <input type="checkbox"/> Employment Preparation Services	
Heightened Scrutiny Prong:			
<input type="checkbox"/> Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment <input type="checkbox"/> Prong 2: Setting is in a building on the grounds of, or immediately adjacent to, a public institution <input checked="" type="checkbox"/> Prong 3: From the initial assessment, the setting was found to have the effect of isolating individuals from the broader community. The following is the area that was identified: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> A. Individuals have limited, if any, opportunities for interaction in and with the broader community and /or the setting is physically located separate and apart from the broader community and does not facilitate individual opportunity to access the broader community and participate in community services consistent with their person centered service plan <input checked="" type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the 			

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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:	9/23/2019 (in-person)
Description of Setting:	
Setting is a residential facility (memory care setting), the setting is located on a busy road in Sandy, Utah with stores and restaurants nearby.	
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: January 27th, 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

Summary:	<p>Onsite Visit Summary (9/23/2019): Administrator reported if residents requested something like a milkshake, they could go as long as they had staffing. Exterior doors locked; documentation in place for individuals requiring memory care level of care including restricted exterior doors. The setting does not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services.</p> <p>There are limited active measures taking place to facilitate activities outside of the setting. One staff reported there is not much of a variety of community activities, most activities are on site.</p> <p>Administrator reported there are bus rides twice weekly; every Friday a scenic ride is scheduled.</p>
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	<p>Administrator reports the activities director does outreach to the community to visit residents and the facility. This is considered reverse integration; on its own, it is inefficient to demonstrate compliance. The setting does not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities. The setting does not have a process for individuals to give input and control their schedule and activities. Schedules are set by the setting; individuals are allowed to not participate or skip what is on the schedule.</p> <p>Remediation Plan Summary:</p> <p>The setting presents numerous opportunities to interact with the community outside of the facility. COVID-19 restrictions prevent this; however, virtual opportunities are presented equally and abundantly to all residents. E.g. Virtual museum visits, virtual arts and crafts, virtual concerts, and enrichment. Resident input is obtained from the whole population to ensure equal opportunity to engage in community activities to their liking. Staff facilitate the inquiries of what residents would like to do. Another example is currently in place, e.g. Residents participating in virtual classes of yoga and sewing. Individuals are always asked for their input on what they would like to see and do. This is documented in resident council notes. Residents are asked what they like to do, and it is noted so future engagements can be geared equally to the whole population while encompassing individual desires.</p> <p>The setting strives to optimize autonomy and independence in making life choices and support individuals to control their own schedule and activities by holding resident council. Every resident is invited and encouraged to participate in this council to ensure equal opportunity is presented in decision making for scheduling and autonomy of an activity.</p> <p>The setting has a process in place to heed residents and what schedules they would like to see. Like the above, admin. and staff inquire individuals about what they would like to see and do relative to their interests. The setting does its best to accommodate.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Alta Ridge Resident Rights ● Resident Council Agenda
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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:	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.

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

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<p>Summary:</p>	<p>Onsite Visit Summary (9/23/2019):</p> <p>Private rooms are an option. The setting does not optimize autonomy and independence in making life choices and the setting does not support individuals to control their own schedule and activities. The setting does not facilitate the opportunity to be integrated into the greater community to the same degree as individuals not receiving HCBS services. The setting does not provide access to typical home activities. No access to home facilities (kitchen/laundry). Individuals are not allowed to have a microwave or refrigerator in their room if they choose. No personal information posted. Observed staff communicating with respect. Personal care services performed in privacy. Residents are able to have private phones, computers, personal devices, etc. Observed staff knocking and waiting for individuals to answer the door. The setting may not optimize autonomy and independence in making life choices; The setting does not have a process in place for individuals to participate in meal planning. Staff are knowledgeable about individuals and their needs and wants.</p> <p>Family members are very involved in service and support choice. Common bathroom doors locked from outside; access only with staff permission. Room doors locked from outside; access only with staff permission. All internal doors locked. Observed cameras in the hallways and main living area. Policy and the Use of Cameras in the NCW Residential HCBS Setting Flyer is attached outlining requirements for cameras. No process in place to notify residents if they are getting a roommate. Residents are able to decorate their rooms as they choose. The setting does not have a process for individuals to give input and control their schedule and activities. Schedules are set by the setting; individuals are allowed to not participate or skip what is on the schedule. Individuals may not have access to food at any time. Setting has restrictions on visitors. Visiting hours between 8am-8pm but they can still enter after those times.</p> <p>Remediation Plan Summary:</p> <p>The setting holds meetings with all residents to seek out wants, needs, and interests. These are noted in a resident council binder. If a resident cannot answer questions, staff members are trained to offer a myriad of options to get positive reactions out of residents due to cognitive declines.</p> <p>The setting facilitates interactions to the best of their ability with COVID-19 in place. Prior to, residents are offered many choices and encouraged to do what they please. Plans are in place for staff to facilitate such activities so they can be performed safely.</p> <p>The setting offers residents choice in doing laundry or cooking meals. Staff converse with individuals and set times where residents can safely cook or do laundry, so they so choose. Individuals can have refrigerators and microwaves in rooms. However, given the nature of memory care, it is often appropriate to discuss and have negotiated risks signed. Residents are offered opportunities to utilize the microwave in the kitchen. The refrigerator is always acceptable.</p> <p>The setting facilitates meal planning through resident council. Every resident is inquired on what meals they would like to eat, and the cooks/staff assist in planning meals out. Everyone is asked what they would like to see on the menu, and it is integrated.</p> <p>Residents may plan with the cooks at any time.</p> <p>The setting acknowledges an individual's rights of privacy, dignity, and respect. Full disclosure is given at the admittance of a resident on cameras and locked doors for resident safety.</p>
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	<p>The setting keeps the common bathroom unlocked for free usage of residents, and staff assist in directing residents to it when they inquire.</p> <p>All individuals are offered a key and are always allowed in their rooms, any time. Staff are there to assist in using keys if a resident inquires.</p> <p>Residents are free to leave the facility with staff facilitation and within reason pertaining to their safety. Families and residents acknowledge it is a secured unit due to dementia/Alzheimer's disease. Internal doors locked are maintenance rooms and any room with chemicals. Residents are free and able to access doors with their keys and codes with facilitation of the staff.</p> <p>Residents may decide whether to keep their doors locked or unlocked. Staff inquire often to see if residents' minds change and assist as needs arise.</p> <p>Cameras are disclosed to both families and residents. The use of the cameras in the hallways and commons monitors an exit/entrance to the community and falls in accordance with quality of support and safety for individuals in the entire community.</p> <p>Individuals are asked what activities they would like to see, and at what times. Administrator and activities staff work together with all residents to ensure equal opportunity of scheduling and type of activity. This is achieved through resident council and one-to-one inquiries from the staff.</p> <p>Due to COVID-19, visitations are currently on hold. Virtual visits may happen at any time. Pre-COVID-19, families and residents are informed visitations may occur at any time. Staff are trained to facilitate visits at any given time.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Screen capture of Camera locations. ● Resident Council Agenda
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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
Summary:	<p>Onsite Visit Summary (9/23/2019):</p> <p>It was reported that an individual had not received any training related to the rights of individuals or individualized experiences.</p> <p>Training on characteristics that require remediation would be beneficial for staff.</p> <p>Remediation Plan Summary:</p> <p>Upon hire, a process is in place to train staff on resident's individual rights. This is disclosed in their paperwork and continued, re-occurring training thereafter.</p>
Input from Individuals Served and Staff	

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Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● One resident reported they do not get to participate in activities that are important to them in the community. This individual enjoys dancing and singing and would like to go to church services outside of the facility. ● One resident reported they have very little opportunities to interact with anyone outside of those who visit the facility. ● One individual reported they can sit anywhere they choose in the facility, they are able to request alternate food choices, and that they can give opinion on food/menu choices (but not sure if they are listened to). ● Individuals reported they thought they could have visitors at any time. ● indicated by a resident that they enjoy the facility. ● indicated that it was unclear what services were provided to a resident. ● Indicated that staff knocks and states names before entering rooms.
Staff Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● One staff member interviewed reported they had been trained on individual rights within the last six months. ● One staff member interviewed reported they had not received any training related to the rights of individuals or individualized experiences. ● One staff member mentioned they had no idea what HCBS was. ● It was also indicated that there is a lack of variety of activities for the residents.

Ongoing Remediation Activities	
Current Standing: <input type="checkbox"/> Currently Compliant <input checked="" type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	The provider has identified areas of remediation that will be validated by the State. A validation visit has been scheduled in January.
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:

Stakeholder Workgroup Review: January 3, 2023 - January 18, 2023
General Comments Received
Comment:

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The materials provided by the State in the newly-released evidentiary packets (“batch 5”) raise concerns about whether the identified settings currently demonstrate the qualities of HCBS. In most instances, the state has only completed a virtual review instead of an in-person visit. In our experience as the P&A, it is difficult to accurately assess characteristics of an institution as well as to communicate effectively with waiver participants without an in-person visit.

Response:

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

Comment:

In many instances, the packages state that the setting is compliant based on a remediation plan and indicate that a validation visit will be completed in the future. Many of the reviews state that individuals are not getting into the community to the degree they would wish and that there are still institution-like restrictions on individuals in the settings. It is difficult for stakeholders to provide feedback on whether a setting has the characteristics of an HCBS setting if it is still in the process of remediating. The remediation plans seem to lack the detail necessary to assist a setting with becoming compliant and the short time frame until the final compliance deadline leads us to believe that these sites will not remediate in time.

Response:

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

Comment:

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

Response:

While the State agrees that certain criteria can create concerns with compliance, several elements described do not determine on their own whether a setting meets or fails requirements. Individual settings are reviewed and 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.

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Comment:

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

Response:

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

Comment:

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

Response:

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

Comment:

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

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compliance monitoring for the appropriate authorization of Employment Preparation Services and the delivery of those services by providers.

Comment:

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

Response:

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

Summary of Public Comments Received and State Response:

Public Comment Period: January 2, 2023 to February 3, 2023

Setting Specific Comments:

Comment:

One commenter stated Alta Ridge Alzheimer's Facility 175, is an assisted living facility in Sandy, Utah. The materials provided by the State in the evidentiary packet do not demonstrate that the identified setting currently demonstrates the qualities of HCBS. The validation packet describes a facility that has all the qualities of an institution. There are limited opportunities for individuals outside of the setting aside from scenic bus rides. The facility does not provide access to kitchen/laundry facilities, residents don't participate in meal planning, and there is no process to notify individuals if they are getting a roommate which implies they don't choose their own roommate. The setting also limits visiting hours and individuals cannot access food at any time. The remediation plans in the packet describe virtual visits due to the pandemic. However, these plans do not reflect the current risk of COVID. The packet only states that a final validation will take place. For stakeholders to provide effective feedback, the state needs to present stakeholders with final validations of compliance with the rule rather than un-validated remediation plans. Not doing so does not provide appropriate notice to community partners of the steps the state has taken to ensure that settings are fully in compliance with the settings rule. The state has not described an adequate remediation summary for the setting and has not visited the setting. Therefore, the packet does not overcome the institutional presumption.

Response:

Settings must demonstrate compliance or demonstrate a plan along with the State's oversight to ensure completion of actions to certify they will become compliant prior to March 17, 2023 before the State submits them through the heightened scrutiny process. As indicated on the heightened scrutiny package, a validation visit was conducted in January (1/27/23) 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. During the visit, interviews were conducted with both staff and individuals being served. During the visit DHHS required remediation for cameras and locks on bathroom doors. The setting provided the requested timeline and acknowledges an individual's rights of privacy, dignity, and respect. Full disclosure is given at the admittance of a resident on cameras and locked doors for resident safety. Cameras were reviewed and the setting remediated to meet settings rule requirements. The setting keeps the common bathroom unlocked for free usage of residents,

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and staff assist in directing residents to it when they inquire. All individuals are offered a key and are always allowed in their rooms, any time. Staff are there to assist in using keys if a resident inquires. Residents are free to leave the facility with staff facilitation and within reason pertaining to their safety. Families and residents acknowledge it is a secured unit due to dementia/Alzheimer's disease (and proper rights restrictions and in place for those that require it). Internal doors locked are maintenance rooms. Residents are free and able to access doors with their keys and codes with facilitation of the staff. Residents may decide whether to keep their doors locked or unlocked. Staff inquire often to see if residents' minds change and assist as needs arise. Individuals interviewed said they could do their own laundry if they wanted. Individuals interviewed said there is a resident council meeting and a suggestion box. Leadership indicated that there are no set visiting hours and individuals interviewed said they didn't have restrictions on visitors. Individuals interviewed said they could give feedback on meals and activities. Individuals interviewed said they had access to snacks and could keep and prepare food in their rooms. Based on the information provided and through the validation visit, the setting has been deemed compliant.

General Comments Received:

Comment:

As the Protection and Advocacy agency for people with disabilities for the State of Utah, the Disability Law Center ("DLC") is uniquely suited to provide assistance and input during this process. Based on our own observations as the P&A as well as our evaluation of the state's assessments of settings, the state did not engage in a sufficient assessment process or provide adequate support to bring settings into compliance with the rule prior to the March 17, 2023 deadline. We are concerned that HCBS waiver dollars will continue to be spent on segregated, institutional settings despite the state's obligations under the HCBS settings rule, Title II of the ADA and Olmstead. This heightened scrutiny evidentiary package demonstrates these ongoing concerns as detailed below.

Response:

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

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: January 3, 2023 - January 18, 2023

We only got a response from one workgroup member. Their comments are noted above.

Utah's Recommendation

Recommendation: Compliant

At the time the heightened scrutiny packet was submitted for public comment, the State had not completed the final validation visit. The State has since completed the final validation visit and determined the setting has

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overcome the effect of isolating individuals from the broader community and is in compliance with the HCBS Settings Rule.