

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:	FAMILY TREE OF MORGAN	Site #:	94
Site Address:	862 E Mahogany Ridge Road, Morgan UT		
Website:	https://familytreeliving.com/		
# of Individuals Served at this location regardless of funding:	42	# of Medicaid Individuals Served at this location:	3
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 			

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<p>community services consistent with their person centered service plan</p> <p><input type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting</p> <p><input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include:</p> <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:	8/26/2019 (Onsite), 5/23/23 (Onsite)
Description of Setting:	
The setting is an assisted living facility. Setting relies on family and friends to assist with transportation because it is located in a rural location in the community.	
Current Standing of Setting:	
<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

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 checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary 8/26/2019:</p> <p>Setting is a facility (assisted living apartments). Setting relies on family and friends to assist with transportation. The residents choose where they would like to go shopping on shopping outings. The setting has periodic activities or events that families and friends are invited to participate in. Examples include Thanksgiving dinner, Christmas parties, Summer BBQs, Mother’s day socials, Father’s day social, Easter. They try to do a monthly big “social” for family and friends.</p> <p>Individuals control their own spending money and are able to buy whatever they choose to. The setting is not in a location conducive to integration in the surrounding community. There are</p>

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

limited active measures taking place to facilitate activities outside of the setting. Community based outings consist mostly of shopping and van rides. These outings occur once per week. Tuesdays are doctor appointment transportation days. Thursdays are shopping days. No other transportation is facilitated. One staff interviewed reported that there is not a lot of variety of community events. They go on rides every Thursday. If residents have strong family connections, they access the community through them. Another staff interviewed reported that residents do not like to go out into the community, especially in the winter. Transportation is minimal as they only have one facility van and there is no public transportation available. Schedules are general and do not seem to fit the ideas of the individuals living at the facility. Schedules seem centered on what is convenient for staff versus to benefit residents.

Remediation Plan Summary:

Family Tree will provide information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc. Family Tree will provide contact information, access to public transportation, taxis, uber, and their schedules. Individual care conferences are held to address the residents desire for community involvement. Family members often participate in the care conference process and also take residents into the community. Staff help get residents ready for these activities. Staff will provide additional information such as phone numbers for transportation companies upon request. Residents may also use Medicaid transportation services. Family Tree will provide information and resources to access the broader community, including wheelchair accessibility transportation. Family Tree will hold a town hall meeting monthly for individuals to share feedback and give input on activities available to them to ensure they are accessing the community as much as they desire. Town Hall has been created and designed to allow individuals the ability to present ideas to fit their preferred schedules. Individual schedules are also created and changed based on the individuals needs and desires as reflected in their person centered service plan. Individual care conferences are conducted so residents can ask for information regarding community activities or options available to them outside of the resident council. Staff will support as much as possible. Family members often take part in care conferences and take individuals out to the community and staff assist to help ensure residents are ready for these activities.

Residents have the freedom to choose community outings. These outings are determined by town hall meetings and individual care conferences or residents talking with staff.

Weekend Activities: Residents have had an opportunity to express the desire for weekend activities. Residents enjoy spending time with family and perusing their own religious practices on weekends. We will continue to address this in our town hall and individual meetings.

The facility provides a Community Event and Resource binder that is used to give information of events and activities going on in the local community. This allows residents to choose things they would like to attend and coordinate with staff, family and others to integrate into the broader community anytime they like. Staff research events in the community and provide information in the binder.

Onsite Visit Summary 5/23/2023:

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Residents have the freedom to choose community outings. These outings are determined by town hall meetings and individual care conferences or residents talking with staff. The facility created a space in the common area that provides a Community Event and Resource binder that can be used to give information of events and activities going on in the local community. There is a monthly calendar hanging up here as well.

Some of the residents are from around the area and they look forward to going to familiar places. Residents stated they were able to visit the fair park in the area.

At the visit there were concerns of the activity calendar not being individualized/getting feedback. Per individuals, the posted activity calendar is repetitive; weekly activities are the same for the entire month. It was also reported that the resident council does not always address activities available. Residents were not aware of non medical transportation if they wanted to go somewhere independently . There are no activities on Saturdays and Sundays unless the family picks up. This was ok for those individuals that have family, however, not if someone wanted to go out during the weekend. In general, residents reported they were accessing the community to the frequency they desired.

Remediation Plan Summary:

Town Hall has been created and designed to allow individuals the ability to present ideas to fit their preferred schedules. Individual schedules are also created and changed based on the individuals needs and desires as reflected in their person centered service plan. Residents have had an opportunity to express the desire for weekend activities. Residents enjoy spending time with family and perusing their own religious practices on weekends. We will continue to address this in our town hall and individual meetings. Transportation companies are available on request, providers will have this information available in the common area. For those residents that don't feel comfortable speaking in the town hall, there will be an anonymous feedback system/box.

The setting provided a transportation flier that now includes weekends giving directions on how to contact other forms of transportation so residents can assess the community to the extent they desire. They also submitted a description of their Vibrant Living program, including how the program works and how the residents work with the staff for their choice of activities.

Vibrant Living activity interest form to be completed at time of move-in. The Vibrant Living program starts when residents move into the facility by filling out an activity interest list that includes their likes, accomplishments, and social interactions they would like to continue. The resident then works with the staff to have a more individualized schedule that will help them achieve more meaningful activities in their community.

The facility has included a transportation flier that will provide transportation during the week as well as weekends. This will be displayed in the common areas.

Desk Review:

Due to the review of the policies, the State came to the determination that all overly restrictive and segregating concerns were addressed through the communication with provider and updates of more robust policies and training of staff.

Policy/Document Review:

The following were reviewed for compliance:

- Resident outings April 2023

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<ul style="list-style-type: none"> ● April Activity Calendar ● Community Activities and County Resources Bulletin Board Picture ● Morgan Senior Center April Calendar ● Community Events and Resources Binder (picture) ● Town Hall Meeting Agenda (Resident Council) ● Transportation flier ● Vibrant Living program information
--	--

Prong 3 B: The setting is selected by the individual from among setting options, including non-disability specific settings.

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

Summary:	<p>Onsite Visit Summary 8/26/2019: Individuals chose this setting to stay in their community. The setting does not restrict access to any non-disability settings and facilitates access when requested.</p>
-----------------	---

Prong 3 C: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices. The setting ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint. The setting ensures the individual has the freedom and support to control his/her own schedule and activities.

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

Summary:	<p>Onsite Visit Summary 8/26/2019: Better planning is needed in regards to activities to make them more meaningful to individuals to ensure integration into the greater community. The posted activity calendar is repetitive; weekly activities are the same for the entire month. There is not a lot of variety. Observed resident names on both dining room chairs and tables to specify where residents have to sit during meal times. The executive director reported they have assigned seats to prevent fights but that they will change them as often as needed per their request and new residents are able to choose any open seat available for meals. Individuals interviewed reported they cannot lock their bathroom doors. Observed no locks on bathroom doors.</p> <p>The setting has no mechanism in place for individuals to choose their schedule and for the setting to accommodate changes to the schedule within a reasonable timeframe. Individuals interviewed reported they are required to keep to a set schedule for everyday activities (assistance with ADL’s).</p> <p>Remediation Plan Summary: Cameras removed from the facility. All assigned seating labels have been removed. Family tree will provide locks on all bathroom doors Individuals living at Family Tree can create their own daily schedule. Staff do work at the same time each day. The staff schedule is designed to accommodate their needs but to also create a stable schedule, so residents will be able to have staff. They coordinate this with the staff. Staff schedules can be adjusted to accommodate resident needs. Staff schedules are designed to accommodate residents needs and also create a stable schedule. Care conferences are held quarterly or as requested to provide an avenue for resident involvement and flexibility for changing everyday activities and schedules. Staff receive</p>
-----------------	---

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

new hire training and continue education staff related to the rights of individuals. HCBS settings rules are regularly reassessed for compliance and effectiveness.

Onsite Visit Summary 5/23/23:

All cameras have been removed throughout the facility. There are no longer labels on seats and Residents have locks on their doors/bathroom. Individuals were asked if they can manage their locks with ease. If they have issues with their locks, they can inform the staff.

The staff indicate that residents can choose their schedules for ADL's and the schedules are flexible if they need to change ADL's or anything else in their schedule. Staff was educated on the settings rule and restrictions. At the visit there were concerns that the facility monitors alcohol consumption for certain residents. Staff indicated there is a Lock box available if the family wants the residents money locked up. Two staff have the key, the resident must ask the staff for the money. As part of the admission, the Nurse decides if individuals are "capable" and assessed for administering their own medications. Education/training needs to be completed with staff and individuals in services regarding restrictions and access to money, choice in activities. If money is locked in a box the individual should have a key or access independently.

Remediation Plan Summary:

The setting provided a transportation flier that now includes weekends giving directions on how to contact other forms of transportation so residents can assess the community to the extent they desire. The setting submitted their medication management preference form that is completed at time of move-in. This allows the resident to determine what medication management program they would like to participate in. The choices for medication management are to either administer their own medications or choose to have the assistance of the facility to receive their medications. This form can be updated at any time.

A new bathroom door lock policy was created and submitted. The policy describes the proof of door locks being monitored for the ability to use by residents (accessibility). This check is done monthly by maintenance. The resident personal funds policy describes how each resident has the freedom to manage and have access to their personal funds. Staff is not to have access to the residents funds or manage their personal finances. Staff can assist residents and or family in acquiring their own personal lock box and key if requested. The resident alcohol consumption policy states the facility does not monitor, restrict or take away a resident's personal use of personal alcohol. If the resident jeopardizes the safety and wellbeing of themselves or others, a care conference shall be held and the facility will have the right to issue a discharge notice. Residents and staff have been notified of the changes made to the updated policies. Making the facility settings compliant.

Desk Review Summary:

Due to the review of the policies, the State came to the determination that all overly restrictive and segregating concerns were addressed through the communication with provider and updates of more robust policies and training of staff.

Policy/Document Review:

The following were reviewed for compliance:

- Family Tree Additional Review Request for Information Tool.docx
- Town hall agenda (blank form)
- April Meeting Agenda

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<ul style="list-style-type: none"> ● Photos of installed bathroom locks ● Town Hall Meeting Agenda (Resident Council) ● Transportation flier ● Medication management flier ● Bathroom Door lock policy and maintenance ● Resident Personal Funds policy ● Resident Alcohol Consumption Policy
--	--

Overall, the setting enforces the Home and Community-Based Settings Regulation requirements.	
Compliance:	<input checked="" type="checkbox"/> Met <input type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Overall, all segregating and institutional concerns were addressed through the remediation and validation process and the State was able to validate the areas that were remediated through the validation visit process.</p> <p>As indicated below, this setting will be reviewed through ongoing monitoring activities.</p>

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● One individual interviewed reported they had not been out of the facility in the month that she had lived there and she did not feel she was able to participate in activities that are important to her in the community and she feels very alone. ● One individual interviewed reported they did not have the information needed to choose who provides their services. She was told insurance accepted this facility. ● One resident interviewed reported they had the information they needed to choose who provides their services. This individual had moved from another assisted living and reported she chose this one over the one she had lived in previously. ● One of the individuals interviewed reported she can make her own schedule most of the time. She reported she has significant health limitations and they do their best to work around her needs. ● One individual interviewed reported that she can choose what activities to participate in but she doesn't have any say in what type of activities are added to the calendar. ● One individual reported they have specified spots to sit in the dining room and they have to ask if they want to move spots. ● One individual reported that she dislikes the food but does not say anything because she is sure nothing will change. ● One individual interviewed reported that they felt staff knew what is important to them and they get the assistance they need in the setting. ● One individual interviewed reported they know what services they are receiving and they knew how to request a change to their services if they wanted to. ● Both individuals interviewed reported they knew how to request a new place to live if they wanted.
------------------------------------	--

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<ul style="list-style-type: none"> ● One individual reported the staff do not really understand her or her needs and she would not know who to talk to if they wanted to request a change to their services. ● Individuals interviewed reported they can close and lock their apartment door and staff always knock prior to entering their apartments. ● Individuals interviewed reported they cannot lock their bathroom doors. ● Both individuals interviewed reported they could have a meal or snack when and where they want to (but the snack cart is only available on the weekdays, not the weekends). ● Individuals interviewed reported they are required to keep to a set schedule for everyday activities (ADL's). One individual reported the schedule can be flexible but only every once in a while. ● One individual interviewed reported they can have visitors at any time. ● One individual said they can have visitors most of the time; that visitors usually come during the day and she is unsure about visitors during night hours. ● Both individuals interviewed reported they are able do their own laundry if they want to and there is a laundry room for residents to use. <p>Summary of interviews (2023):</p> <ul style="list-style-type: none"> ● Individual was not aware of non medical transportation ● Individual states does not go to town hall," it's not useful for their needs" ● ADL times can be changed if needed ● Individual does not see transportation on weekends ● Happy with facility and people ● No restrictions reported
Staff Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● One staff interviewed reported they do not necessarily participate in a variety of community activities, they focus on activities within the facility ● Another staff interviewed reported that residents do not participate in a wide variety of community activities. They go shopping or on a ride weekly. ● One staff member reported some of the younger staff do talk about personal information publicly. ● The executive director reported they have assigned seats to prevent fights but that they will change them as often as needed per their request and new residents are able to choose any open seat available for meals. ● Staff interviewed reported that residents make their own schedules and decide what activities to participate in. ● Both staff members interviewed reported they had been trained on the individual rights within the last year ● The executive director interviewed reported they do training at monthly in-service meetings as well as new hire orientation. <p>Summary of interviews (2023):</p> <ul style="list-style-type: none"> ● This admin is new this year ● Admin reports the activity staff gets feedback from care conferences and town hall meetings. ● ADL times can be changed if requested

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

	<ul style="list-style-type: none"> ● Anonymous suggestion box has been put into place ● Community binder is in common area ● There is a lock box for residents money staff has key ● Residents can drink alcohol, if they are in their room and “in control “ ● Activity director creates schedules and distributes the calendars
--	--

Ongoing Remediation Activities	
Current Standing: <input checked="" type="checkbox"/> Currently Compliant <input type="checkbox"/> Approved Remediation Plan	
Continued Remediation Activities	<input checked="" type="checkbox"/> N/A for currently compliant
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: June 27 2023 - July 30, 2023	
Comment:	<p>The 2019 visit demonstrated multiple areas of non-compliance--individuals were not getting into the community, individuals were not given sufficient access to transportation, individuals access to medications was limited and not based on an assessed need/documented in the care plan, individuals were limited in their access to alcohol without an assessed need/this being documented in the care plan. These issues were still present in the 2023 visit interviews. Although the state followed up with a desk review of policies and documents after this visit, there is insufficient information from resident interviews and observation to ensure that individuals are accessing the community (including transportation) and if access to medications/alcohol is being limited without an assessed need/appropriate documentation in the person centered plan. I don't think that a meeting is necessary to discuss this, but am happy to attend if the stakeholder group decides to meet. Thank you.</p>
Response:	<p>As indicated on the heightened scrutiny package, a thorough policy review was conducted regarding resident medication management and resident alcohol consumption to ensure the resident rights were not being restricted and appropriate individualized assessments were being completed. Individuals reported they are accessing the community to the frequency that they desire at the time of the visit; thus the State did not conduct additional interviews with those receiving services. The remediation plan that was validated through a desk review was to ensure that all policies and practices were in line with home and community based service requirements. The State will continue, as part of the ongoing monitoring process, to validate individual access to</p>

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

the community, policies and practices, and ensure that the setting continues compliance with the HCBS Settings rule.

Summary of Public Comments Received and State Response:

Public Comment Period: July 26, 2023 - August 2, 2023

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 implementation 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.

Family Tree of Morgan, Site 94 is an assisted living facility located at 862 E Mahogany Ridge Road, Morgan UT and serves 42 individuals, 3 of whom are Medicaid waiver participants. The State conducted an onsite visit on 8/26/2019 and 5/23/23.

Response:

While the State does acknowledge that activities for remediation extended past the March 17, 2023 deadline, this setting fell under the State [Corrective Action Plan \(CAP\)](#), allowing it more time to demonstrate compliance.

Comment:

The same commenter had additional feedback that the materials provided by the State in the evidentiary packet raise concerns about whether the identified setting currently demonstrates the qualities of HCBS. In both onsite visits, consumers state that they do not have access to the community activities they would like and do not have support from the provider to access transportation on the weekends. In the most recent visit, the state’s evidentiary materials state “At the visit there were concerns of the activity calendar not being individualized/getting feedback. Per individuals, the posted activity calendar is repetitive; weekly activities are the same for the entire month. It was also reported that the resident council does not always address activities available. Residents were not aware of non medical transportation if they wanted to go somewhere independently. There are no activities on Saturdays and Sundays unless the family picks up. This was ok for those individuals that have family, however, not if someone wanted to go out during the weekend. In general, residents reported they were accessing the community to the frequency they desired.” The state does not follow up with consumers regarding these ongoing issues after the most recent visit and instead deems the setting compliant through a desk review.

Response:

As indicated on the heightened scrutiny package, individuals reported they are accessing the community to the frequency that they desire at the time of the visit; thus the State did not conduct additional interviews with those receiving services. The remediation plan that was validated through a desk review was to ensure that all policies and practices were in line with home and community based service requirements. The State will continue, as part

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

of the ongoing monitoring process, to validate individual access to the community and ensure that the setting continues compliance with the HCBS Settings rule.

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: June 27 2023 - July 30, 2023

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.