

Home and Community Based Settings Rule Heightened Scrutiny Evidentiary Package

Settings that Demonstrated Compliance by July 1, 2021

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 had initially been identified as requiring to go through the heightened scrutiny process as part of the compliance process. They were able to demonstrate compliance with the settings criteria by July 1, 2021, so they are not required to go through the entire heightened scrutiny process, but they are required to go out for public comment.

Additional information on Heightened Scrutiny can be found here: [HCBS Settings Rule: Heightened Scrutiny](#)

Setting Information

Site Name:	STEPS Day Treatment Center Inc.	Site ID:	1679
Site Address:	845 North State Street Building C, Orem, UT 84057		
Website:	https://stepsdaytreatmentcenter.com/		
# of Individuals Served at this location regardless of funding:	19	# of Medicaid Individuals Served at this location:	4
Waiver(s) Served:		HCBS Provider Type:	
<input checked="" type="checkbox"/> Acquired Brain injury <input type="checkbox"/> Aging Waiver <input checked="" type="checkbox"/> Community Supports <input checked="" type="checkbox"/> Community Transition <input type="checkbox"/> New Choices <i>Description of Waivers can be found here:</i> https://medicaid.utah.gov/ltc/		<input checked="" type="checkbox"/> Day Support Services <input type="checkbox"/> Adult Day Care <input type="checkbox"/> Residential Facility <input type="checkbox"/> Supported Living <input type="checkbox"/> Employment Preparation Services	
Heightened Scrutiny Prong:			
<input type="checkbox"/> Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment <input type="checkbox"/> Prong 2: Setting is in a building on the grounds of, or immediately adjacent to, a public institution <input checked="" type="checkbox"/> Prong 3: From the initial assessment, the setting was found to have the effect of isolating individuals from the broader community. The following is the area that was identified: <div style="margin-left: 40px;"> <input checked="" type="checkbox"/> A. Individuals have limited, if any, opportunities for interaction in and with the broader community </div>			

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<p>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</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:	10/16/19 (in-person), 6/30/21 (virtual)
Description of Setting:	
Day Program Services are located near the Dollar Store and Chick-fil-A. It is located near public transportation and is close to multiple restaurants and community businesses that facilitate community integration.	
Current Standing of Setting:	
<p><input type="checkbox"/> Currently Compliant: the setting has overcome the qualities identified above</p> <p><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:</p>	

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 (10/2019): Visitors are welcome at any time. Although the setting is in a location that facilitates community integration, the setting does not facilitate the process for individuals to pursue competitive integrated work as an option and the setting does not facilitate the opportunity to be</p>

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	<p>integrated into the greater community to the same degree as individuals not receiving HCBS services. Community-based outings occur infrequently in the winter (maximum of weekly).</p> <p>Remediation Plan Summary: The setting updated their Integrated Work Policy, Community Outing Procedure, and Integrated Work Opportunity Rejection Form. Their community outing procedure included “participation in all community activities will always default to the individual’s personal choice. The health and safety of our individuals and staff will come above all else. Alternative activities will be provided to all individuals in the facility, if they choose to not attend an outing.” Part of their integrated work policy included “STEPS will facilitate discussion of pursuing integrated work, as part of the Employment First Initiative, upon admission, at their yearly planning meeting, and/or as needed to determine if employment is desired.”</p> <p>Onsite Visit Summary (6/2021): STEPS has a community outing procedure in place. They are focusing on more involvement with planned volunteer opportunities such as: the community garden, Meals on Wheels and providing skill training and interaction when in the community. The setting offers, on average, 3 community activities weekly. If individuals do not want to go, or if the group size is too big, they rotate who attends the activities or they provide alternative activities in the program. The program has started to utilize public transportation at a greater frequency as well, increasing individuals' independence and skill level in accessing the community. The setting has implemented a new Integrated Work Policy so that individuals can pursue competitive integrated work as an option. STEPS Employment Policy outlined a process for those interested in working in the community in the future.</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Integrated Work Policy ● Community Outing Procedure ● Visitation Policy ● Policy Manual ● Client Rights ● Employee Accepting Money from Individual’s Policy
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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: 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

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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 (10/2019): Schedules are individualized. They give choices to do individualized activities in house or in the community. There were no observed concerns with restrictions during the visit. Staff were knowledgeable of individuals capabilities, interests, and preferences.</p> <p>On Site Visit (6/2021): Staff and parents indicated that the activities met the individual's interests, preferences, needs and they were able to try new things at the building and in the community. No restrictions were observed during the visit. The setting is very person-centered around individuals' schedules and preferences. One individual interviewed splits their time between school and the setting. The setting also flexes pick up time for this individual based on activities that they do not enjoy participating in (such as Meals on Wheels).</p> <p>Policy/Document Review: The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● Restraint 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:	Staff are trained on HCBS requirements both upon hire and ongoing. As indicated below, this setting will be reviewed through ongoing monitoring activities.

Input from Individuals Served and Staff

Individuals Served Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Individuals reported they are able to participate in activities that are important to them ● Individuals reported they are able to control their spending money ● Individuals reported they are able to make their own schedule ● There were no concerns reported with restrictions or rules <p>Summary of interviews (2021):</p> <ul style="list-style-type: none"> ● Individuals reported they are able to participate in activities that are important to them. ● One individual indicated they prefer this setting over other settings they attend. ● One individual indicated they did have a competitive integrated job ● Another individual's family member (speaking on behalf of the individual with the individual present) reported they have spoken to the setting about employment with the individual and what that would look like for that individual
Staff Summary:	<p>Summary of interviews (2019):</p> <ul style="list-style-type: none"> ● Staff reported they receive ongoing training ● Staff reported they have received training on the HCBS setting rule

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	<ul style="list-style-type: none"> Staff reported individuals are able to make their own schedule and choose which activities to participate in <p>Summary of interviews (2021):</p> <ul style="list-style-type: none"> Staff reported individuals are in control of their own schedules Staff report there is a process in place to support Competitive Integrative Employment (CIE) Staff reported individuals are able to manage their own spending money
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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: October 24 to November 28, 2022
No comments received

Summary of Public Comments Received and State Response:

Public Comment Period: October 24 to November 28, 2022
<p>Comment:</p> <p>One commenter stated that the State conducted a desk review of policies and documents as well as a virtual visit in 6/2021. The setting states that the community outings are focused on planned volunteer activities and occur about three times weekly. The setting states that if the group is too big, individuals rotate who attends the activities or there are alternative activities at the setting itself. We would urge the state to conduct an in person visit to identify whether the setting complies with the rule. The descriptions of remediation in the evidentiary packet do not demonstrate community integration as required by the rule. The evidence presented seems to indicate a lack of choice on which outings are occurring or the infrequency/lack of access if too many people want to participate.</p> <p>Response:</p>

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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. The State would like to clarify the following statement in the heightened scrutiny document: "If individuals do not want to go, or if the group size is too big, they rotate who attends the activities or they provide alternative activities in the program." If individuals do not want to go on community outings, the setting provides alternative activities. If the group size is too big to go out all at once in one outing (creating a segregating effect), then multiple groups will go out at different times/on different days and individuals will rotate through until everyone is able to participate in the outing.

Comment:

The commenter had an additional concern that it also appears that STEPS is owned by the owner of the Tophams Tiny Tots intermediate care facility, located 1 mile away. The State has not assessed what connections there are between the HCBS day setting and the co-owned institutional residential setting (does the community setting share staff with the private institution? Do they share transportation, programming, or other services?).

Response:

As the setting did not fall under prong 1, a setting in a publicly or privately operated facility that provides inpatient institutional treatment, or prong 2, a setting in a building on the grounds of, or immediately adjacent to, a public institution, the State is not required to assess these connections. When reviewed by the State, there did not appear to be any overlap between the business entities (ie. shared staff, accommodations, etc.) that created concern. The businesses appear to be independent from one another.

Summary of Stakeholder Workgroup Recommendation:

Stakeholder Workgroup Review: October 24 to November 28, 2022

The Stakeholder Workgroup recommended that the heightened scrutiny packet is ready to be submitted to CMS (100% of those that responded).

Utah's Recommendation

Date of Recommendation: 1/12/23

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.