

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:	Canyon Creek Assisted Living/Truwood by Merrill	Site ID:	70
Site Address:	7235 S Union Park Ave		
Website:	https://www.merrillgardens.com		
# of Individuals Served at this location regardless of funding:	100	# of Medicaid Individuals Served at this location:	22
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:			

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	<input 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 type="checkbox"/> B. The setting restricts individuals choice to receive services or to engage in activities outside of the setting <input checked="" type="checkbox"/> C. The setting has qualities that are institutional in nature. These can include: <ul style="list-style-type: none"> • 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:	9/26/19 (onsite), 11/1/20 (virtual)
Description of Setting:	
The setting is a residential assisted living facility. The setting is located in Union Park on a busy street with restaurants and shops nearby. The setting is located on a street that allows residents to access local businesses and community resources.	
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:	Onsite Visit Summary (9/26/19): It was found that ALF residents can come and go at any time independently. The setting optimizes autonomy and independence in making life choices and the setting supports

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	<p>individuals to control their own schedule and activities. The facility's residents include waiver and non-waiver individuals. The setting has a process in place for individuals to give input and control their schedule and activities. The setting has town hall meetings as well as individual conversations with individuals to ensure their needs are met.</p> <p>The setting facilitates the opportunity to be integrated into the greater community</p> <ul style="list-style-type: none"> ● They go out into the community 3x/week ● Activity examples including trips to Wendover, bowling, men’s group, grocery store ● The setting volunteers at schools and churches. They coordinate with high school to integrate with their community volunteers. ● They put on concerns by the creek. This event is open to the public.
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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:	<p>Onsite Visit Summary (9/26/19):</p> <p>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. Individuals interviewed reported they get to access their community as often as they choose.</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 type="checkbox"/> Met <input checked="" type="checkbox"/> Remediation Plan demonstrating will be compliant
Summary:	<p>Onsite Visit Summary (9/26/19):</p> <p>There was no personal resident information posted in the facility. Staff were observed to be communicating with individuals with respect. During the visit, it was observed that the setting may not optimize autonomy and independence in making life choices. The setting did not have a process in place for individuals to participate in meal planning. One individual reported they told staff multiple times that they did not want certain food but kept getting it. It was also observed that residents had assigned seating in the dining room. It was also reported that some staff do not knock when entering rooms to empty trash. Individuals also reported they did not have access to food at any time and that there were restrictions on visitors.</p> <p>Remediation Plan Summary (11/1/20):</p> <p>All staff were trained to knock prior to entering any resident room during training on resident rights, at new hire orientation, during onboarding and during assigned training.</p> <p>During the COVID-19 pandemic, residents were given menus where they picked the items they wanted and the food was delivered to their rooms. Residents have several options to choose from from the daily menu. When the dining room is open, specials are served during meal times, but the everyday menu is available from 7:30 AM to 6 PM. Two meetings are held</p>

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	<p>monthly, the Food Committee meeting and the Resident Council in which residents are encouraged to talk about the food and provide input. The ALF has removed assigned seating; it is now first come, first served. Food is plated after residents order their meals. There is also a fridge stocked every night with snacks like sandwiches, cheese, yogurt, hard boiled eggs, etc. Visitor restrictions are only in place during COVID-19. Visitors are welcomed at any time, but must be scheduled in advance.</p> <p>Onsite Visit Summary (6/21/21):</p> <p>Visitors are allowed at any time. Staff report they are trained to knock and wait for permission prior to entering a resident's private living space. Staff gave examples of when they would enter residents' private living space and explained these circumstances are agreed upon with the residents. Residents confirmed they are comfortable with the way staff enter their rooms and have given permission under certain circumstances. The setting does not require assigned seating in the dining room. Both staff and residents interviewed confirmed residents can sit where they want.</p> <p>Residents have access to food at any time. Residents are allowed to keep food in their private living spaces. When the kitchen is open, residents can request a sandwich and when the kitchen is closed, there are pre-made sandwiches available in a fridge the staff have access to. There is a snack cart that is available during the day. When COVID-19 restrictions have been removed, the Bistro will open back up (the Bistro has additional snacks including self-serve snacks). The setting has implemented a monthly food committee meeting to discuss input on their menu. One resident reported they had seen the committee meeting on the calendar but they had chosen not to participate. They also reported they felt they could provide the feedback to any staff and they would pass it along. Another resident reported they knew about it but they do not want to participate in it.</p> <p>Policy/Document Review:</p> <p>The following were reviewed for compliance:</p> <ul style="list-style-type: none"> ● All Day Menu ● Residents Rights Training ● Door Signs
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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 process and the State was able to validate that the areas 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 (6/21/21):</p> <ul style="list-style-type: none"> ● Individuals reported that staff knock and receive permission prior to entering your private living space.
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	<ul style="list-style-type: none"> ● Individuals confirmed they are able to sit anywhere they want in the dining room and that they have the option of attending the monthly food committee meeting. It was also mentioned that the dining room does have hours but snacks are available at all times. Some residents purchase their own snacks that are kept in their room. ● Individuals mentioned that they could have visitors but they were sure what the after hour policies were. ● Individuals reported that they liked where they lived.
Staff Summary:	<p>Summary of Interviews (6/21/21):</p> <ul style="list-style-type: none"> ● Staff confirmed that individuals are able to have access to food at any time. Snacks, drinks and fruits are available at all times. ● Staff mentioned that residents no longer have assigned seating in the dining room. ● Staff confirmed that visitors were allowed at any time. However, screening was conducted during the COVID-19 pandemic to ensure resident safety. ● Staff confirmed they received additional training on entering a resident’s room or private space. ● Staff mentioned they received a lot of training including HCBS settings training. However, several staff said they had not received training on the NCW.

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:

Public Comment Period: October 24 to November 28, 2022
No comments received

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Summary of Public Comments Received and State Response:

Public Comment Period: October 24 to November 28, 2022

No comments received

Summary of Stakeholder Workgroup Recommendation:

Date of Recommendation: 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.