



Home and Community Based Services (HCBS) Final Rule Heightened Scrutiny Evidence Packet

Provider Name: Living The Right Life

Assessment Id: 93

Setting Id: 145

Date of Heightened Scrutiny Assessment: 2/14/2023

Heightened Scrutiny Category

Category 3: Any other settings that have the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Ability to Remediate or Necessity to Transition

Site is able to remediate all items.

General Summary of Site Information

This setting is a private home located in a residential area that provides housing to the general public. The member residing at this setting receives residential and day services in this setting through Living the Right Life. The home has a roomy front yard and fenced back yard and is in a neighborhood with people and families and pets in houses to each side and across the street. The individual served knows and enjoys visiting and interacting with their neighbors of all ages and backgrounds. This setting is located within minutes of grocery stores, restaurants, a library, entertainment, a park, medical providers, and many other conveniences. There are no restrictive structures that would prevent participants served from leaving the property. Participants with this provider can go out into the community whenever they choose, and staff



will provide transportation, or they walk, use public transportation, or get a ride from friends or family. This participant enjoys participating in community events, going to the gym, movies, Walgreens, restaurants, on trips with family or friends, music events, outings to the park in nice weather, and more.

The individual interviewed chose to live on their own after visiting many types of settings, situations, and providers with a family member and their case manager. The participant lets staff know what services are needed and knows what staff are working. The entry door can be locked at any time to allow for privacy as needed. Appropriate staff has access to a key in case of an emergency. Everyone who visits, including staff, are required to knock on the individual's door and wait to be invited in. The setting is accessible for the participant, and they can move about freely. The individual served can decide when and who visits and the duration of their stay, including staff. The member served has their own bedroom, a bathroom, living room, a kitchen, and a laundry room. The bedroom and bathroom doors can be closed and locked to ensure further privacy. The individual has full access to a stocked kitchen where they can choose what they want to eat, where, when and with whom. The kitchen is equipped with full-size cooking appliances that the individual can access whenever desired. The member is free to decorate all areas of their home to their liking. This setting has a washer and dryer that the individual can access to do laundry at any time.

The provider delivering services at this setting supports full access for the individual served to have opportunities to seek employment and work in competitive integrated settings or volunteer out in the community. The member interviewed stated they participate in Day Services that are offered and go out into the community frequently. This individual has a payee that takes care of the rent and bills, but also has a choice in where and how to spend their money. Individuals at this setting can utilize resources to their liking however they see fit. Individuals are provided a lease agreement that protects them from being evicted or forced to move out. All individuals served have their own PCSP that considers their individualized preferences and needs, and they are updated yearly or more frequently as needed.

The Heightened Scrutiny team conducted a virtual assessment, utilizing a laptop with webcam and Microsoft Teams. One member served, and one direct support staff member were interviewed to determine the level of understanding of HCBS and the Final Rule Settings Rule requirements/characteristics. Throughout the interview process it was made apparent these characteristics are taught to those who live and



work there and maintained through quality assurance processes. It was observed that staff are respectful to those who reside at this setting. Interactions throughout the interview process and in general between individuals and staff were interpersonal, genuine and apparent that they regularly interact. It was noticed that residents do not hesitate to speak to necessary parties about anything they would like to do and/or change about current circumstances.

Though this setting has been flagged for having characteristics of isolation, after further review it has been determined that it is independent of any presumptive institutional like characteristics. The setting provides home and community-based services through the implementation of policies and procedures with staff and waiver participants. Individuals who reside at this setting are afforded the same rights, privacy, choices, autonomy and community access as their neighbors and others not being served by Medicaid.

State Requirements for Providers:



Providers are required to comply with Kansas' home and community-based waiver regulations and provider mandates within the regulations, as well as other policies and procedures regularly updated to ensure compliance with home and community-based requirements. Kansas will require providers, based on pending revisions to existing regulations to follow this language. The term "Home and Community-Based Settings" as used in these regulations shall mean a set of qualities, as described in 42 C.F.R. § 441.301 (c) (4), that describe how settings deliver services to ensure the utmost integration into the community. The setting must allow residents full access to the greater community, including the opportunity to seek employment, engage in community life, control personal resources to the same degree of access as individuals not receiving home and community-based services. All HCBS participants will have a person-centered service plan based on the individual's preferences and choice, including a residential setting that is available in a non-disability setting. Settings must ensure an individual's right of privacy, dignity and respect, as well as optimizing, but not regimenting, individual initiative or autonomy in daily living activities, the physical environment and with whom the residents interact with.

If the facility is provider-owned or controlled then, in addition to providing the settings characteristics described above, the facility must provide residents a physical space that can be owned, leased or rented and must provide eviction protections under Kansas Landlord-Tenant law at a minimum. If the Kansas Tenant law does not apply, a written agreement (negotiated service agreement) that contains protections for evictions is required.

Settings must provide residents privacy in sleeping units, including units with entrance doors lockable by residents and with only appropriate staff having keys to their doors. Residents have the freedom to decorate their room as they please and have the freedom to control their schedules and access to food. Residents have the freedom to have visitors at any time and any restrictions must be documented in an approved person-centered plan.



Pre-Assessment Preparation Process with Provider

General heightened scrutiny guidance sessions are available to stakeholders, in addition to specific trainings for settings identified as having the presumptive characteristics of an institution and/or potential isolation to prepare organizations for the assessment. A member of the HCBS Compliance Team contacts the organization's identified persons to schedule an assessment. Depending on the assigned level of heightened scrutiny, a virtual walk-through and interview of management staff might be required. During the site visit outreach, the HCBS Compliance Team Member discusses what level of technology is needed to have the most effective outcome of the time. If a virtual visit is the chosen option, a member of the HCBS Compliance Team will need a walk-through by use of a camera, an internet connection, a way to transfer files, and a method for agency staff and the persons served/guardians to communicate with the Heightened Scrutiny Team Member during interviews via video, telephone, etc.

Interview Standards for Provider and Interviewees

Interview standards are set prior to the assessment and discussed with Providers. A statement is read to the interviewees before each survey to guard against staff influence. HCBS Team Members further advise that no one will be forced to participate in interviews and that they are completed in an hour or less. The following is a list of additional steps taken by the state to mitigate the influence of persons served responses during the heightened scrutiny assessment.

1. The use of a camera is required during the assessment for observations of the surrounding environment and to validate compliance of assessment questions where needed.
2. Requests are made for private interviews with persons served. Exceptions will be given in situations when individuals are extremely nervous or non-verbal. In such cases, additional supports can be provided in the interview room. However, responses from the individual must be taken without interference from the support person. For non-verbal individuals, the interviewer observes non-verbal cues during the meeting to assure the absence of influence.
3. The state uses a two-way communication method via the HCBS Compliance Portal/emails to educate provider staff about the interview and assessment standards. This line of communication allows Providers to raise questions prior to the site visit and to provide any additional evidence documents.
4. State staff do not provide interview questions prior to the site visit. Interviewees are not able to know what will be asked during the assessment to guard against providers and/or supports having the opportunity to prepare an interviewee before the assessment.



Additional Heightened Scrutiny Assessment Standards

In addition to the heightened scrutiny process, providers are required to submit policies and procedures for evaluation by the state through validation and desk reviews outside the heightened scrutiny process. Through the remediation process, the state will review a Provider's current training, policies, manuals, and procedures for HCBS characteristics and requirements. When these requirements are not present or insufficient at the Provider level, they are required to submit a remediation plan with a projected completion date. Providers who go through the heightened scrutiny process are required to comply with all aspects of the settings final rule and prove capability of overcoming the presumptions of institutionalization. Additional documentation reviewed for compliance include a participant's lease/residency agreement or service agreement, provider manuals, policies, handbooks and training processes and documentation.

Remediation Plan				
Please indicate the setting's compliance with the following areas. The provider is responsible for creating a remediation plan for each rule indicated out of compliance and the expected date of that plan's completion.				
Section	Compliant?	Explanation of Compliance and Overview of Remediation Plan	Provider Remediation Plan	Projected Completion Date
		The individual usually goes out in the community with family and friends, or staff when they choose. Staff goes over all the events that are offered in the community at the beginning of every week to engage them in planning and informed of opportunities, and the persons-served let them know what they would like to do. Staff regularly offers and makes the arrangements for them to be able to participate in what they choose. This individual served enjoys participating in community events, going		



<p><u>Inclusion and Community Access</u></p>	<p>Yes</p>	<p>to Walgreens, to the gym, movies, restaurants, on trips with family, music events, outings to parks in nice weather, shopping, and more.</p> <p>The staff interview reported that the individual goes out in the community usually with staff or family and/or friends. The staff member also confirmed that the individual gets to choose what activities they participate in and when they go out in the community which is almost every day. Staff informs the individual what events are happening for the week so the individual can choose what they are interested in and engage in planning what they choose to participate in. Staff indicated that the individual served is educated on using public transportation but chooses not to use it due to anxiety.</p>		
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<p><u>Autonomy and Choice,</u> <u>Setting Selection</u></p>	<p>Yes</p>	<p>The individual interviewed reported that they visited many setting types, situations, and providers and chose to receive services from this provider. The participant also reported that they went over their rights and responsibilities with them and has a person-centered support plan and participated in creating it with a family member, and case manager.</p> <p>The staff interviewed reported that the individual served has a person-centered support plan. The staff confirmed that the choice to receive services from Living the Right Life is the choice of the member and their family/guardian as needed. The staff also stated these plans are reevaluated minimally at least every year or sooner if needed.</p>		
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<p><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></p>	<p>Yes</p>	<p>The individual interviewed reported they feel they have privacy whenever they want and are treated with respect and dignity. This individual stated that staff always knock and wait to be invited in, checks on them, and care about their well-being. They can lock the front door, bedroom door, or bathroom door at any time to have privacy including, on the phone or other devices to communicate with others. The participant added they have complete control over their choices and their choices are respected.</p> <p>The staff member interviewed reported that members served have privacy as much as they desire, or as much as possible for those that have special modifications or circumstances outlined in their PCSP. They always knock and wait to be invited in. Staff reported that the agency has a key to the resident's home in case of an emergency. The staff confirmed that members make their own choices and can change their mind about their choices at any time.</p> <p>All interviews confirmed that the individual is free from restraint, seclusion, and coercion.</p>		
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<p><u>Autonomy and Choice,</u> <u>Planning and Life</u> <u>Choices</u></p>	<p>Yes</p>	<p>The individual interviewed reported that they decide how they spend their day, when to get up or go to bed, what to eat, alone or with others, when and where, their routine, who visits and how long, including staff, when and where they want to go, and with whom. Staff refers to the community activity calendar, participant's requests and interests, and activities that are happening at Day Services to offer choices for individuals to choose from. When they want something to eat, they can access their full kitchen that is in the home and prepare anything that they choose with staff assistance as needed. The participant has a washer and dryer in the home to use at any time. The individual also reported that they have a choice in who comes to their home and how long they stay there, this includes staff. The individual was aware that they have a lease agreement that protects them.</p> <p>The staff interview corroborated this information and added that participants can change their mind about their choices at any time. Everything is always their choice.</p>		
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<p><u>Autonomy and Choice, Choices Regarding Services and Supports</u></p>	<p>Yes</p>	<p>The individual interview made it apparent that they are in control of their choices, and can choose who provides services, where they receive services, and was able to identify a point of contact if there ever came a need to request changes to any services.</p> <p>The staff interviewed reported that the individual is in control of their own choices. Participants can choose their services and who they receive the services from and can change them at any time. The agency holds meetings where they educate the member on the different characteristics of the final rule such as their rights, autonomy and include some role playing to evaluate level of understanding.</p>		
<p><u>Staff Training in HCBS and the Final Rule</u></p>	<p>Yes</p>	<p>The staff interviewed made it apparent that during the initial training period, different characteristics of the final settings rule are discussed. These characteristics include rights, autonomy, and choice. They are required to go through orientation training before they are allowed to serve directly with the individuals served with refreshers every year.</p>		



<p><u>Presumptively Institutional Settings</u></p>	<p>Yes</p>	<p>The setting has been flagged for having characteristics of isolation and meets the definition of a Category 3 Heightened Scrutiny Setting. Though there are presumptions of isolation with the setting, policy and procedure, processes and interviews verify the setting ensures these presumptions are overcome and Final Settings Rule requirements are met. Policies and procedures are unique to the setting and Home and Community Based characteristics.</p> <p>Individuals are active in the planning of their daily lives and afforded many opportunities to be as independent as possible while still having their needs met.</p>		
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<p><u>Settings that Isolate HCBS Beneficiaries</u></p>	<p>Yes</p>	<p>Individual and staff verified policy and procedure is implemented as written to ensure individuals not only actively participate in the daily choices to go into their day/lives, but that staff assist with providing alternative options and work with individuals to accommodate their preferences.</p> <p>It is evident that the setting is person-centered. Those that work here are educated on the resident's rights and personal needs. The resident has control of their choices and is provided all options for consideration when making life choices.</p>		
<p><u>Final Section</u></p>	<p>Yes</p>	<p>The setting does not have the qualities of isolation and does have the qualities of a home and community-based setting.</p>		



Summary

To be completely compliant with the settings rule, the provider is required to be compliant with all the non-heightened scrutiny areas of the self-assessment. However, in addition to the findings documented above, the state was able to verify the following through the HS process.

(a) Paid Employment, Volunteer Opportunities

- (i) Interviews confirmed that residents have access to paid work and/or volunteer work if desired. Staff are readily available to assist with obtaining and accessing opportunities for work on an individualized level.

(b) Access to Additional Education

- (i) Persons-served confirmed that the setting accommodates individual needs in accessing additional education per individuals' interest.

(c) Rights and Access to Vote

- (i) Persons-served are provided training on resident rights including the right to vote. Leading up to election time, staff educate residents on their rights to vote, explanation of the voting process by arranging for an absentee ballot and/or transportation to a voting site. Staff offer residents resources that provide education of candidates.

(d) Access to Funds and Ability to Choose How Spent

- (i) All funds are managed by the individual, their family or a designated payee. They receive their funds and can be spent how they choose.
- (ii) The provider allows for the member to elect to have a trust account. The individual can withdraw funds at their convenience and purchase what they choose.

(e) Restraint and Seclusion

- (i) Persons-served verified that there is no use of restraint or seclusion at this setting.

(f) Dating

- (i) Persons-served are supported in dating if they so choose.

(g) Leasing

- (i) Persons-served are provided with a legal agreement that outlines the regulations for intent to vacate as well as processes required for termination of lease based on the guidance of the Kansas Landlord-Tenant law.

(h) Choice of Provider and Services Provided

- (i) Persons-served confirm that they had a choice in whom provides services and the services received. All interviewees are educated on the steps to make changes to services and/or providers.



Public Comments Summarized

Question 1: Based on the information in this document about this particular setting, what do you agree with? Please feel free to include information about why you agree or how you know these things to be accurate or true.

- 1. Living the Right Life agrees with the commits under general summary of the site information. Person served by Living the Right Life has access to the greater community including opportunities to seek employment, engage in community life, control personal resources to the same degree as individuals not receiving home and community base services. Person served have a land lord tenant relationship. Person served has privacy sleeping unit including private units. With entrance doors lockable by person served with only appropriate staff having keys to door. Person served have freedom to decorate their rooms as they please. Freedom to control their schedule and access to food. Freedom to have visitors anytime.*

Question 2: Based on the information in this document about this particular setting, what do you disagree with? Please feel free to include information about why you disagree or how you know these things to be inaccurate or untrue.

- 1. Comment to see the above comment for question 1.*

Question 3: Please provide any other comments about this setting that could help KDADS determine whether or not they fully comply with the Final Rule.

- 1. No response*

Question 4: If you have any additional questions about the Final Rule, please include them here.

- 1. No response*

State Response to Public Comments

The State would like to thank you for your comments. The setting is categorized as a category 3 heightened scrutiny due the potential of isolation from the greater community. When making these determinations the State references 42 CFR 441.301 (c)(4)(5) which states “any setting that is located in the building that is also a publicly or privately operated facility that provides inpatient institutional treatment or in a building on the grounds of, or immediately adjacent to, a public institution or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community based settings.” The States



interpretation of multiple services being provided at the same location has the effects of isolation from the greater community therefore this setting needed to be further assessed. The State does believe this setting is able to overcome the isolating characteristics and is therefore a home and community-based setting.