



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

**Provider Name: Sheltered Living, Inc.**

**Assessment Id: 213**

**Setting Id: 299**

**Date of Heightened Scrutiny Assessment: 2/2/2023**

## **Heightened Scrutiny Category**

Category 2: Settings on the ground of, or immediately adjacent to, a public institution.

## **Ability to Remediate or Necessity to Transition**

Site is able to remediate all items.

## **General Summary of Site Information**



This setting is a single-family dwelling located in a residential neighborhood that is predominantly resided in by the greater non-disabled community. Setting is across the street from an ICF and is only a few houses away from a service provider that provides HCBS funded services. However, this setting has been determined to not be isolating in nature as the individual has the same access to the community as non-disabled members. Service provider provides residential services under their Independent Living Program to the individual served in their independent home that they share with their significant other. The choice to provide services in this manner was made 2 years ago due to other options not being able to meet the needs of the individual served in a person-centered manner. There are no restrictive structures at this location that would prevent the individual served from leaving the property. The individual served can go out into the community when they choose and have visitors to their home whenever they desire. There are no curfews in place at this setting. Staff call ahead to plan visits with individual-served and then again when they arrive to ensure that the individual is aware that they are there. If individual served requests to not have staff present, staff respects this request and makes arrangements for another day/time as needed. With the exception for transportation to/from work and health appointments the individual served makes their own schedule and transportation plans. This setting is physically accessible to ensure independence when needed. Individual served has access to all areas of the setting and can utilize appliances as desired. Access to food is not restricted and individual can choose their daily routines/activities including when, where, and with whom they eat. This setting supports full access for the individual served to have opportunities to seek employment and work in competitive integrated settings if it were desired by the individual served. Individual at this setting can utilize resources to their liking however they see fit. Individual served has a PCSP that considers individualized preferences and is updated yearly or as needed through a meeting with the individual served, the provider, and the individual's support team (TCM, CC, etc.). The Heightened Scrutiny team conducted a virtual assessment of the setting, utilizing a laptop with webcam and Microsoft Teams. One individual served, one Executive Director, and one direct support staff member were interviewed to determine the level of understanding of HCBS and the Final Rule Settings Rule requirements and/or 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 individual and staff were interpersonal, genuine, and apparent that they regularly interact. It was noticed that individual served does not hesitate to speak to necessary parties about anything they would like to do and/or change about current circumstances. If individual were to want to change anything about their services/setting the team would meet to ensure that changes were discussed and that they were implemented in a manner that would enable the individual served to continue to receive services and supports in a person-centered manner. 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. Individual at this setting are afforded the same rights, privacy, choices, autonomy and community access as their neighbors and others not being served by Medicaid. This setting is not in a gated community and the individual served is able to move about freely.



### **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
<u>Inclusion and Community Access</u>	Yes	Setting is not isolating in nature. Individual-served has access to the greater community the same as non-disabled peers. Individual participates in activities and follows their own daily routine as desired by individual. Individual chooses to receive residential services in their independent home from provider. Individual is able to access the community on their own and controls their own schedule.		



<p><b><u>Autonomy and Choice, Setting Selection</u></b></p>	<p>Yes</p>	<p>Individual chose to receive services in this type of setting after having a negative experience with other service options. Individual and their team meet no less than 1 time yearly to discuss service options. If individual were to desire to move, they would reach out to their TCM and/or the CDDO to discuss service options.</p>		
<p><b><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></b></p>	<p>Yes</p>	<p>Individual's rights to privacy, dignity, respect and freedom from coercion and restraint are well represented in the current setting. Individual has complete control over their routine and daily activities. Provider is respectful of individual's wishes and makes necessary accommodations as needed to ensure that individual's rights are respected and that individual feels loved and safe in their current setting. No evidence of coercion or restraint is identified</p>		



<p><b><u>Autonomy and Choice, Planning and Life Choices</u></b></p>	<p>Yes</p>	<p>Individual chose to receive services in this type of setting after having a negative experience with other service options. Individual and their team meet no less than 1 time yearly to discuss service options. If individual were to desire to move, they would reach out to their TCM and/or the CDDO to discuss service options. Individual makes all choices regarding daily routine, schedule, and life decisions independently. If they want to discuss the details of their options/choices with staff they can. If they were to choose to discuss with staff, staff educate them about their choices/options and allow the individual to make their choice free from influences of staff.</p>		
<p><b><u>Autonomy and Choice, Choices Regarding Services and Supports</u></b></p>	<p>Yes</p>	<p>Individual chose to receive services in this type of setting after having a negative experience with other service options. Individual and their team meet no less than 1 time yearly to discuss service options. If individual were to desire to move, they would reach out to their TCM and/or the CDDO to discuss service options.</p>		



<p><b><u>Staff Training in HCBS and the Final Rule</u></b></p>	<p><b>Yes</b></p>	<p>Provider is well versed in final rule as evident in having policy and procedures in place that protect the individual served rights and ability to make choices freely with dignity and respect. There is not currently a formal Final Rule training for staff, but the current trainings and required overview of policy (s)/procedures capture the components of Final Rule which allows for staff to deliver services in a manner that is compliant with Final Rule requirements.</p>		
<p><b><u>Presumptively Institutional Settings</u></b></p>	<p><b>Yes</b></p>	<p>C2 HS interview was conducted due to setting being located across the street from an ICF. Setting is not isolating of individual as provider ensures that individual has the same access to the community as their non-disabled peers.</p>		
<p><b><u>Settings that Isolate HCBS Beneficiaries</u></b></p>	<p><b>Yes</b></p>	<p>C2 HS interview was conducted due to setting being located across the street from an ICF. Setting is not isolating of individual as provider ensures that individual has the same access to the community as their non-disabled peers.</p>		
<p><b><u>Final Section</u></b></p>	<p><b>Yes</b></p>	<p>The setting does not have the qualities of an institution and does have the qualities of a home and community-based setting.</p>		





## Summary

1) 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***

<public comments will be added after the evidence summary is published for public comment>