



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

**Provider Name: DISABILITY SUPPORTS OF THE GREAT PLAINS INC**

**Assessment Id: 222**

**Setting Id: 308**

**Date of Heightened Scrutiny Assessment: 3/31/2023**

## **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 two-bedroom duplex in a residential area that provides housing to the general public. The member residing at this apartment receives residential services through the Disability Supports of the Great Plains. The setting is located in an area with other duplexes and homes on a street with sidewalks that go all around the neighborhood. The individual served has a small front yard and enjoys going on walks and being out and about visiting with the neighboring individuals, families, and pets. There are no restrictive structures that would prevent the individual served from leaving the property. The individual served can go out into the community when they so choose, and the staff will provide transportation via agency bus or van, or they walk or get a ride with family and friends. The individual served stated they enjoy walking



all around their neighborhood and is very familiar with their neighbors also and likes to walk the five blocks to the Dollar Store and go to the basketball court in back. The person served stated they get out in the community whenever they choose and said they like going bowling, to church on Sundays and Wednesdays, out to eat, to the YMCA, movies, shopping, Swimming, and more.

The individual lives on their own in a two-bedroom apartment where staff interact and assist daily. The participant lets staff know what services are needed and knows what staff are working. The individual's apartment door has a lock on it and can be locked at any time to allow for privacy as needed. Disability Supports of the Great Plains has a key to the apartment 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 apartment is accessible for the participant, and they can move around freely. The individual served can decide when and who visits and the duration of their stay. This apartment consists of two bedrooms, one bathroom, and a personal living space to include a kitchen with dining area, laundry room, and a garage. The bedrooms and bathroom have a door that can be closed for privacy. The individual has full access to a stocked kitchen where they can choose what they want to eat and when. The kitchen is equipped with full-size cooking appliances that the individual can access when desired. The member is free to decorate all areas of their home to their liking. There is a washer and dryer in their apartment that the individual can use at their convenience.

This setting supports full access for the individual served to have opportunities to seek employment and work in competitive integrated settings. This member previously had a job in the community at Tech but does not have one right now. This individual enjoys working in day services and participating in Clay Works which is out in the community. The participant also does not currently volunteer but knows that this is an option. 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 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 goes out in the community walking on their own or with staff using Disability Supports of the Great Plains transportation, or with family and friends when they choose. There is a community calendar with scheduled events that staff regularly offer and makes the arrangements for them to be able to participate if they choose. There are agency activities that the individual can choose to participate in also. This individual goes to Day Services at Disability Supports and Clay Works which		



<p><b><u>Inclusion and Community Access</u></b></p>	<p><b>Yes</b></p>	<p>is out in the community. The individual served stated they enjoy walking all around their neighborhood and is very familiar with their neighbors also and likes to walk the five blocks to the Dollar Store and go to the basketball court in back. The person-served stated they get out in the community whenever they choose and said they like going bowling, to church on Sundays and Wednesdays, out to eat, to the YMCA, movies, shopping, Swimming, and more.</p> <p>The staff interview reported that the individual goes out in the community by walking on their quite a lot and walks daily weather permitting, and uses agency transportation with a staff member if needed, and with family and friends. The staff member also confirmed that the individual gets to choose what activities they participate in and when they work or not at the Day Services or out in the community. Staff will let the individual know what events are happening for the week and ask if they want to sign up for the activities and participate in them.</p>		
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<p><b><u>Autonomy and Choice,</u></b> <b><u>Setting Selection</u></b></p>	<p><b>Yes</b></p>	<p>The individual interviewed reported that they took a visit and took a tour and decided to receive services at Disability Supports of the Great Plains. The participant also reported that they have a person-centered support plan and participated in creating it.</p> <p>The staff interviewed reported that the member has a person-centered support plan and confirmed that the choice to receive services from Disability Supports of the Great Plains is the choice of the member and sometimes they get help from their family/guardian. The staff also stated the plans are reevaluated every year or sooner if needed.</p>		
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<p><b><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></b></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 interact and care about their well-being and are friendly. They can lock the front door at any time to have privacy in the apartment to talk on the phone or communicate with others or go to an area that isn't by other people. The individual reported that staff knock on the door and wait to be invited in or they ring the doorbell. The individual also reports that they are given many options and have complete control over their choices.</p> <p>The staff member interviewed reports that they all have privacy as much as they desire. They always knock and wait to be invited in and give them their space. Staff reported that the agency has a key in case of emergencies.</p>		
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<p><b><u>Autonomy and Choice,</u></b> <b><u>Planning and Life</u></b> <b><u>Choices</u></b></p>	<p><b>Yes</b></p>	<p>The individual interviewed reports that they decide how they spend their day, when to get up or go to bed, to eat, with and when and who to eat with, or where they want to go or who to spend time with. Staff will refer to the community activity calendar, participant's requests, and activities that are happening at Day Services to offer choices for individuals to choose from if they desire. The individual can come and go as they please and does not have a curfew. When they want something to eat, they can access their full kitchen that is in the apartment and prepare anything that they choose. he participant has a washer and dryer in the apartment 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 for the apartment.</p>		
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<p><b><u>Autonomy and Choice, Choices Regarding Services and Supports</u></b></p>	<p>Yes</p>	<p>The individual interview made it apparent that they are in control of their choices and that they 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. They are required to go through orientation training before they are allowed to serve directly with the individuals served with refreshers every. The agency holds Inservice days where they educate the member served 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><b><u>Staff Training in HCBS and the Final Rule</u></b></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.</p>		



<p><b><u>Presumptively Institutional Settings</u></b></p>	<p><b>Yes</b></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 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><b><u>Settings that Isolate HCBS Beneficiaries</u></b></p>	<p><b>Yes</b></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><b><u>Final Section</u></b></p>	<p><b>Yes</b></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***

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