



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

**Provider Name: Multi Community Diversified Services**

**Assessment Id: 289**

**Setting Id: 416**

**Date of Heightened Scrutiny Assessment: 3/17/2023**

## **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 inside an apartment complex that provides housing to the public. The member residing at this complex receives residential services through Multi Community Diversified Services. There are no restrictive structures at the apartment entrances that would prevent the person served from leaving the property. The individual served can go out in the community whenever, and the staff will provide transportation. The person served lives alone in a one-bedroom apartment by choice. Staff check on person served daily, and person served can let staff know what services are needed. The person served apartment door has a lock on it and can be locked at any time to allow for privacy as needed. Multi Community Diversified Services has a key to the apartment in case of an emergency. Everyone who visits, including staff are required to knock on the person served door and wait to be invited in. The apartment is accessible to the person served and they can move around freely. The individual served can decide when and who visits and the duration of their stay. This single occupancy apartment consists of one-bedroom, private bathroom, and personal living space to include a kitchen, and laundry room. The bedroom and bathroom have a door that can be closed for privacy. The kitchen is equipped with full-size cooking appliances that the individual can access when desired. Member served can choose what, when, and with whom to eat with. The member is free to decorate all areas of their home to their liking. There is a washer and dryer in the apartment that person served has full access to use at any time. This setting supports full access for the person served to have opportunities to seek employment and work in competitive integrated settings. Person served works at Pfizer, person served chose this job and does not want a job at Day Services at this time. Person served takes care of rent and bills and has complete control on how to spend money earned. 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 they are updated yearly or as needed. The person served and brother chose to receive services from Multi Community Diversified Services. Person served knows to contact brother and staff if requesting change to program, services and supports. The Heightened Scrutiny team conducted a virtual assessment of the setting, 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 individual residing at this setting. Interactions throughout the interview process and in general between individual and staff were interpersonal, genuine, and apparent that they regularly interact. 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 residing at this setting is 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 person served goes out in the community using Multi Community Diversified Services transportation with a staff member when they choose. Person served mentioned they do not feel isolated from the community outside. Person served has been to the zoo, library, driving around with staff, and other things. There are many agency activities that person served can choose to participate in. Person served works at Pfizer instead of attending Day Services, it was members decision to work there.	N/A	



<p><b><u>Inclusion and Community Access</u></b></p>	<p><b>Yes</b></p>	<p>The staff interview reported that individuals go out in the community by utilizing agency transportation with a staff member if needed. Some individuals walk or get rides with family or friends. Staff member confirmed that individuals are offered choices to participate in community events to ensure that they are integrated into the community and do not experience isolation. Individuals go grocery shopping, attend concerts, go to movies, plays, church, participate in community activities, go to festivals, go to the library, museums, go to a Castle, parades, and baseball games. Staff suggest or recommend that individuals attend Day Services, but they cannot make them attend.</p>		
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<p><b><u>Autonomy and Choice,</u></b> <b><u>Setting Selection</u></b></p>	<p>Yes</p>	<p>The person served interviewed reported that brother along with person served decide to get services from Multi Community Diversified Services. Person served also mentioned knowing having a person-centered support plan and being updated yearly.</p> <p>The staff interviewed reported that individuals have a person-centered support plan. Staff member also confirmed that the choice to receive services from Multi Community Diversified Services is the choice of individual and sometimes guardian has input.</p>	<p>N/A</p>	
		<p>The individual interviewed reported having privacy in their apartment. Person served can lock the door to their sleeping area. Person served does not have their own phone, but MCDS has a phone that person served can take to their room when communicating with others. Person served reported that staff knock on the door and wait to be invited. Person served mentioned this setting is physically accessible for them. Peron served reported being treated with dignity and respect and has complete control over their choices. Person served</p>	<p>N/A</p>	



<p><b><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></b></p>	<p>Yes</p>	<p>also indicated not being forced into making choices that they did not want to make.</p> <p>The staff member interviewed reports that individuals live on their own and allotted all the privacy that they desire. The staff member confirmed that all have a lock to their sleeping area but most of them do not use them. Staff member mentioned staff are to knock and wait to enter an individual's private space. Staff member indicated all settings are physically accessible for individuals. Staff member mentioned to ensure that individuals are treated with respect and dignity staff talk to them the way you would want to be talked to or pull individuals aside if they notice something out of the sort instead of telling them around everyone.</p> <p>All interviews confirmed that the individual is free from restraint, seclusion, and coercion.</p>		
		<p>The person served mentioned making own schedule and having control over their choices. Person served can come and go as they please and does not have a curfew. Person served mentioned</p>	<p>N/A</p>	





**Autonomy and Choice,**  
**Planning and Life**  
**Choices**

Yes

having free access to all areas inside and outside whenever they want. When person served wants something to eat, they can access the full kitchen in the apartment at any time and eat anything they choose that was prepared with the help of staff. Person served mentioned having access to two laundry areas in the apartment complex that can be used any time. The person served also reported that they have a choice in who comes to their home and how long they stay there, this includes staff. The person served was aware of their lease with her apartment complex.

The staff member indicated for the most part individuals get to make their own schedule, setting has guideline that are flexible. There are no restrictions at this setting regarding when individuals can come and go, such as a curfew. Individuals have free access to all areas inside and outside whenever they want. All individuals have their own kitchen. All individuals can access food whenever they want, eat when they want, eat where they want, and can choose who they want to eat with. There are two laundry areas in the complex that



		<p>individuals have access to at any time they choose. All individuals have a lease that protects them from being evicted or forced to move out.</p>		
<p><b><u>Autonomy and Choice, Choices Regarding Services and Supports</u></b></p>	<p><b>Yes</b></p>	<p>The person served interview made it apparent that they had total input into their services and supports. Person served was aware of being able to choose their services and who they receive supports from. Person served knows they can contact brother and staff if they need to request a change to their program, services, or providers.</p> <p>The staff interviewed reported that individuals are in control of their own choices. They can choose their services and who they receive the services from. The agency holds annual options counseling meetings and talk to individuals face to face to educate individuals on the different characteristics of the final rule such as their rights, autonomy, and responsibility.</p>	<p>N/A</p>	



<p><b><u>Staff Training in HCBS and the Final Rule</u></b></p>	<p><b>Yes</b></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>N/A</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. 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>	<p>N/A</p>	



<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>N/A</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>	<p>N/A</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>