

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-14-26  
Baltimore, Maryland 21244-1850



## **Disabled & Elderly Health Programs Group**

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May 16, 2023

Sarah Fertig, Medicaid Director  
State of Kansas, Division of Health Care Finance  
Department of Health and Environment  
1000 SW Jackson, Suite 340  
Topeka, KS 66612

Dear Director Fertig:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from March 13 - 16, 2023. CMS visited several settings in Kansas that were identified by the state and/or stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5) and required a CMS-conducted heightened scrutiny review to determine if they comply with the home and community-based services (HCBS) settings criteria at 42 CFR § 441.301(c)(4).

CMS appreciates the efforts of the state to prepare for our visit to Kansas. We are asking the state to apply remediation strategies addressing the feedback contained in our report to the specific setting(s) as identified. We note that the HCBS settings criteria identified in the report that are followed by an asterisk require the state to go beyond ensuring that the individual setting has completed the necessary actions identified; specifically, complying with person-centered planning requirements requires further direction to and collaboration with the entities responsible for developing and monitoring the person-centered plans and with the HCBS provider community that is responsible for implementing services and achieving the objectives outlined in the plan. In addition, CMS notes that the state's remediation strategies must be applied to all remaining similarly situated settings you have identified as being presumptively institutional that were not included in CMS' site visit to ensure compliance with the settings criteria at 42 CFR § 441.301(c)(4) by the timelines detailed in the ultimately approved Corrective Action Plan (CAP). Finally, the state should ensure issues identified in this report are addressed in the state's overall assessment process of all providers of HCBS in Kansas, to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance.

As described more fully in the attached report, CMS notes below several areas where issues were found to exist across several locations, which raise systemic concerns that must be

addressed by the state. Specifically, the following regulatory criteria located at 42 CFR 441.301(c)(4) were not found to be in practice:

- 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.
- The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.\*
- The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.\*
- The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- The setting facilitates individual choice regarding services and supports and who provides them.
- The unit or dwelling is a specific physical place that be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity. For settings in which landlord tenant laws to not apply, the state must ensure that a lease, residency agreement or other form or written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals sharing units have a choice of roommates in that setting.
- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
- Individuals are able to have visitors of their choosing at any time
- The setting is physically accessible to the individual.
- Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.\*
- Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.

Kansas' Statewide Transition Plan (STP) described strategies to ensure that all providers of Medicaid HCBS have been assessed to meet the regulatory criteria and any needed remediation has been identified. The state's practice for addressing the observations described in the attached report must align with the processes described in the STP and in the state's CAP.

CMS requests that the state provide a written response providing updated information describing how the state will remediate both the process for developing and implementing the person-centered service plan and the individual settings to ensure compliance with all of the settings criteria. CMS also requests a written response on how the state will apply this feedback to the ongoing monitoring of person-centered planning functions and settings in the HCBS delivery system as noted above. CMS requests this information be submitted no later than June 16, 2023.

Upon review of this feedback, please contact Michele MacKenzie at (410) 786-5929 or [michele.mackenzie@cms.hhs.gov](mailto:michele.mackenzie@cms.hhs.gov) if you would like to schedule a follow-up conference call with the CMS team to discuss next steps or request technical assistance.

Thank you for your continued commitment to the state of Kansas' successful delivery of Medicaid-funded HCBS.

Sincerely,

Melissa L. Harris, Deputy Director  
Disabled & Elderly Health Programs Group

Enclosure

**Summary Review by Setting  
Visit Dates: March 13 – 16, 2023**

**Kansas Site Visit Team:**

CMS Representative: Jessica Loehr

ACL Representative: Erica McFadden, Jill Jacobs

New Editions: Vicky Wheeler, Kelly Eifert

Kansas: KDHE: Anne Yeakley, Theron Platt, Deirdre Harmon; KDADS: Kaitlyn England, Seth Kilber, LaTonia Wright

**Introduction:**

The Site Visit Team visited six settings in Kansas: two were assisted living facilities (ALF) with memory care, one was a Home Plus residence with memory care, one was an intellectual/developmental disability (I/DD) sheltered workshop, one was an I/DD residential setting, and one was an I/DD residential and day services campus. The settings visited were identified by the state as presumptively institutional and were chosen based on state and stakeholder feedback. Through discussions with the state on the visits, the team discovered that any residential setting with a memory care component was considered by the state to be presumptively institutional; the state considered the setting to have the effect of isolating Medicaid HCBS beneficiaries from the broader community of people not receiving Medicaid HCBS. The state indicated any setting that did not remediate into full compliance with the regulation by July 1, 2021 was submitted for heightened scrutiny review.

**Summary of Findings:**

Although a distinct review of each setting is included in this report, the table below summarizes the findings for the entirety of the visit to Kansas and identifies systemic issues noted through the review. In addition to the findings below, the team also noted that MCO-developed service plans routinely included minimal services for individuals, were medically focused and generally lacked person-centered information.

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(i)	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.	Lakemary, Omega Senior Living, Comfort Care, The Piper Assisted Living and Memory Care

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Lakemary, Omega Senior Living, Comfort Care, TARC Industries
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Lakemary, Omega Senior Living, Comfort Care, The Piper Assisted Living and Memory Care, GoodLife Innovations
441.301(c)(4)(iv)	The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	Lakemary, Omega Senior Living, The Piper Assisted Living and Memory Care, TARC Industries
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	Lakemary, The Piper Assisted Living and Memory Care, TARC, GoodLife Innovations
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	Omega Senior Living, The Piper Assisted Living and Memory Care
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	Lakemary, Comfort Care

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	Comfort Care, GoodLife Innovations
441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities, and have access to food at any time.	Lakemary, Omega Senior Living
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time	Lakemary, Omega Senior Living, Comfort Care
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	Omega Senior Living, Comfort Care
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	Lakemary, Omega Senior Living, Comfort Care, TARC

Additional Provision	Language	Setting Name
State Medicaid Director Letter #19-001 <sup>1</sup>	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	Lakemary, Omega Senior Living, The Piper Assisted Living and Memory Care, Comfort Care

### Lakemary Campus – Visit March 15, 2023

#### Facility Description:

Lakemary is located in Paola, KS, 30 minutes south of Olathe, KS and approximately 50 minutes south of Kansas City, KS. It is a campus setting serving both adults and children with I/DD that has group homes for adults, a day program for adults, a psychiatric residential treatment facility (PRTF) serving children, and a school for grades K-12. The Administrator indicated, in regard to the adult group homes, that “many of our residents come here from the school when they are around 21 or 22 years old,” so it appears many of the residents move to the adult residential side when they age out of the children’s side. The team toured one group home and the day program.

The home is co-ed and currently has seven residents : six in single rooms and one person in an apartment attached to the home. All of the residents receive Medicaid HCBS. All bedrooms are single rooms with private bathrooms. There are cameras in the common areas of the home. The kitchen has two points of entry: one has a regular door that can be closed and locked; the other entry is blocked by a split half-door that has a foldable top

<sup>1</sup> [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

creating a ledge and has a slide lock to secure the door from the kitchen side. There is a dining area next to the kitchen with one large table and a Geri-chair that is used for one of the residents. One living room is next to the dining area and has a large television, a couch and some chairs. There is another living area with similar furnishings connected to that one by a closed door. These two living areas have minimal furniture with little decoration. There is a laundry room across from the kitchen.

The day services building is located next to the group homes and is walkable from the homes on campus, approximately 50 yards away. It has offices for staff and several different rooms for different groups of people; staff said they were organized as “suites.” The team was shown one large room used for different activities. Another room called “Lifestyles” was described by staff as a space for the “less active” participants. There is an “exercise room” with an older exercise bike and a folded-up treadmill. Finally, in the back of the building is a larger space for the contract work; one space for shredding, another space for putting various hardware kits together, and a small cart that has artificial flowers to be assembled.

### **Site Visit Review Description:**

The team met the staff at one of the group homes. There were six staff present for the visit. No residents were present; staff mentioned that some were at day services and some were at a provider association-led Advocacy Day in Topeka. The team reviewed residents’ support plans completed by Targeted Case Managers (TCMs). These plans are specific to the setting and are not the service plans developed by the MCOs. The plans for all seven individuals included restrictive behavior plans (such as an individual only getting 15 minutes of free time each week). The plans also stated residents needed 1:1 staff support, but that level of support was not observed on the visit. There are individuals who work in the day services facility, but the team was uncertain if the center was licensed for employment services. The plans for the residents indicated they are authorized for day services, not employment services, even though they are engaged in contract work at the day program. The Administrator showed the team their HCBS training and the employee signatures on the training that was completed in March 2023. During the visit, the team interviewed staff and two residents. Both residents had been at the day services building prior to coming back to their home for the interviews. Both residents had been placed at Lakemary; one had lived there since 1984. Both residents indicated that they watch television while at day services. One resident indicated they sometimes put together red flowers or sometimes does shredding. This resident also indicated that sometimes “Grandma” is at day services and they do coloring sheets. Staff later shared there is a foster grandparent program through the local community center. Both residents agreed to show their rooms to the site visit team. The rooms are decorated and furnished to the individuals’ desire and all of the rooms have their own private bathroom. The site visit team observed that there was a sign on the door to the home that said service animals only, however the lease stated that pets were allowed. When the team asked the Administrator about that, she said that must be a mistake about the sign on the door and would look into it.

The team then went next door to the day services building. The staff gave the team a tour of the building, entering through the kitchen and not the front door. Once through the kitchen, the team passed staff offices and was shown the first “suite” which is a large room. No participants were present; staff indicated that the room was empty as many people were at the movies that day. The large room contains several tables for activities and has a large activity calendar on the wall. The calendars were largely blank, including the months of January and February. The calendar for March indicated at the bottom “Resolution: 2 experiences and 1 activity a month.” The calendar had “Suite meetings” listed once a week, which the staff explained were meetings for the participants to get together and decide what to do for the upcoming week. Also noted on March’s calendar was a movie day at the beginning of the month, three days of trivia, and four participants’ birthdays. There is a chair in the middle of the room that staff said one person used to get hot pads put on their shoulders a couple times per week. The next room is the “Lifestyles room;”

approximately 6-8 people were in a small area watching television. Staff noted the weekly schedule for that room typically includes a class on Monday, trivia on Tuesday, crafts on Wednesday, bingo on Thursday, and a movie and popcorn on Friday. However, no activity calendar was posted in this room. Staff then took the team into the next room where a participant took over the tour to show what they did at day services. The participant described the room the team was in as “The room for people ‘who can’t do anything.’” Staff later said this room was for people with more profound disabilities. There were three participants in the room, one sitting on a couch, one walking around the room, and another on the floor between two chairs looking at something on the floor (it appeared to be some type of activity/object). The participant then led the team to the final room in the back of the building where the workspaces were set up. One area was for shredding and one area was used to put together different hardware kits, which the participant demonstrated for the team; the participant also indicated that a small enclave of participants go to Garmin 3 days a week for 3 ½ hours to work. The participant was very knowledgeable of each job available at the setting.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	<p>Staff interviewed said that residents can go into the community when they want and that family are very involved. However, residents interviewed indicated they do not go anywhere or do anything outside of the setting. Residents indicated that staff do all of the shopping and residents are unable to go. Staff noted that Paola just recently lost their taxi service, so transportation is either through the provider or the families. When asked if residents could use Uber or Lyft, staff said, “They don’t do that.”</p> <p>Community access and integration does not appear to occur. While the administration and staff said they had one to two outings per week, the calendars posted demonstrated one per month. The individuals interviewed stated they can’t go out due to COVID. Participants at the day services building do not seem to be provided with many opportunities for competitive integrated employment. Two of the service plans reviewed noted that those residents worked at Walmart. Staff also said other people worked in the community in a kitchen; however, further conversation indicated that it was the kitchen at Lakemary where participants worked. A participant</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>spoke about the contract work done onsite and the four participants that went to Garmin to do enclave work 3 days a week. Staff mentioned one other enclave worksite at a restaurant in Kansas City where participants rolled silverware. One resident interviewed stated that they do some of the contract work at day services, like shredding and putting together flowers, but when asked about a job, they had no idea what they would do or who to talk to about exploring that option.</p> <p>Both residents interviewed, who also attend day services, offered very little information on activities at the day program outside of watching television and the occasional contract work.</p> <p>One resident interviewed indicated that they do have an identification card and money but they are not in their home. They said they thought both their ID and money were at day services and if they want their money, staff get it for them.</p> <p>Lakemary must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Lakemary should develop policies, practices and resources to ensure that individuals have full access to the greater community. Additionally, the setting should ensure that individuals are informed of their choices for competitive, integrated employment, and the ability to control their finances.</p>
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability	The service plans for residents did not indicate how the setting was chosen by the individual. One

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	<p>specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>resident's plan indicated they had been at Lakemary since 1984.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the PCSP must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iii)	<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>One resident interviewed stated that while staff knock before entering the room, the staff do not wait for the resident to give permission to enter.</p> <p>There are cameras present in the home in the common areas, but it was not clear in any documentation provided that residents had knowledge of the cameras or agreed to their presence and use.</p> <p>One resident's plan noted the use of a Geri-chair for this resident to keep them restrained should there be only one staff person at the home and the staff needed to provide assistance to another resident. The plan noted the resident could be in the chair for up to 45 minutes. The plan did not indicate how that timeframe was established, if less intrusive methods had been tried and not worked, or when this restriction would be reviewed again to determine if it could be reduced or eliminated.</p> <p>Lakemary must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint.</p> <p>When the state Medicaid agency allows for restraint or restrictive interventions during the delivery of</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>HCBS, the state must assure that the intervention is based on an individual assessment and documented in the PCSP.</p>
441.301(c)(4)(iv)	<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>The residents’ plans indicated many restrictions on residents’ ability to be alone. The residents indicated they do not engage in many activities at home or at day services. One resident stated they don’t go anywhere because of COVID.</p> <p>The Adult Services Program Handbook for residents states that there is a “Quiet Time” after 10 p.m. in the group homes. It also indicates that if residents only have access to the house phone and do not own a personal cell phone, they must limit their calls to 15 minutes. The handbook also states, “we ask that you only eat in the kitchen or the dining room.”</p> <p>The Handbook contains “LMC Day Services Guidelines” with the following information: “Attendance is important,” “Time off should be requested, when needed,” “We ask that phone calls be limited to breaks, cell phones should be turned off during non-break times,” “Employees should keep areas clean and free of clutter” and other examples. Since the services provided are day services as documented in the plans, and not employment, these guidelines are inappropriate.</p> <p>The Adult Procedure Manual (for employees) notes that part of the Rights of Persons Served is “Reasonable visits with family and friends; and to receive encouragement to continue contact with their family when appropriate.” It is unclear what is meant by “reasonable” and who defines it.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>Lakemary must ensure their model of service delivery aligns with the regulatory criteria to facilitate independence and community integration, and amend practices to ensure that schedules are not regimented and that individuals have the opportunity to set their own schedules and participate in activities of their choosing. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Lakemary must also ensure their model of service delivery facilitates individuals making choices about with whom they interact.</p>
441.301(c)(4)(v)	<p>The setting facilitates individual choice regarding services and supports and who provides them.</p>	<p>The Administrator indicated that “many of our residents come here from the school when they are around 21 or 22 years old,” so it appears many of the residents move to the adult residential side when they age out of the children’s side. It is not clear if choice in provider or setting is offered.</p> <p>Lakemary must ensure their model of service delivery aligns with the regulatory criteria that individuals have access to services and supports that the individual has been assessed to need, and that the individuals have the ability to choose from whom they receive those services and supports.</p>
441.301(c)(4)(vi)(B)(1)	<p>Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>While each resident has their own bedroom and there are locks on the doors, it is unclear if they have keys. The residents interviewed did not have keys to their rooms.</p> <p>Lakemary must ensure that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. Doors should be lockable from both the inside and the outside by the individual.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities, and have access to food at any time.	<p>Residents were not able to go into the kitchen. Staff noted residents can get a snack at any time, but one resident interviewed did not support that statement. They noted that if they wanted a snack, staff will get it for them. Per staff, each resident has their own personal snacks, but they are held in the kitchen and distributed by staff. There was a breakfast menu and a dinner menu posted on the refrigerator; each menu listing one meal option, and only the dinner menu offered a “pick a veggie and fruit” option for each day. It is unclear who picks those options. One resident noted that staff get them up during the week to go to day services, though the resident stated they just watch TV at the Day program. The resident would like to sleep later but is only able to on the weekends. The resident also stated they can cook but staff must be present the entire time. As noted previously, the residents indicate they do not go into the community.</p> <p>Lakemary should revise their method of service delivery to ensure that individuals can control their schedules and activities and have access to food at any time, including outside of scheduled meal times, unless there is a documented reason, described in an individual’s PCSP, for any restrictions.</p>
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	Residents interviewed seemed unsure if they are allowed to have visitors, including overnight. When asked if residents could have overnight guests, the staff member for the house stated they would have to clear it with the therapist first; another staff member interrupted to indicate that residents could have overnight guests. The Adult Services Program Handbook states “Visitors visiting between the hours of 10p.m. to 7 a.m., please make prior arrangements.”

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		Lakemary must ensure their model of service delivery aligns with the regulatory criteria that participants are able to have visitors of their choosing at any time.
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>The service plans reviewed listed many restrictions on all of the residents but did not provide an assessment of how those restrictions came to be necessary or that the individual agreed to the restrictions. Some of the restrictions included restrictions on access to money and the ability to be alone. One plan noted the use of a Geri-chair for a resident to keep the resident restrained should there be only one staff person at the home and the staff needed to provide assistance to another resident. The plan noted the resident could be in the chair for up to 45 minutes. The plan did not indicate how that timeframe was established, if less intrusive methods had been tried and not worked, or when this restriction would be reviewed again to determine if it could be reduced or eliminated. Other restrictions noted in plans included locked outside doors, backyard access locked, locked kitchen and laundry room, and no access to the thermostat. Medications are locked in the residence, and residents' ID cards, SNAP cards, money, and social security cards are locked in the day program. The day program is closed on weekends, and residents need permission approved in advance to access these; the Administrator said it could take "maybe a day." Most residents do not have keys to the home or their rooms. The Administrator said one resident does. Additionally, one resident told us they are not allowed to leave their rooms after bedtime or before wake-up time.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are incorporated into the plan and Lakemary must adhere to the plan.</p> <p>Lakemary should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 <sup>2</sup>	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>While a staff member provided the team with HCBS training documents and signatures of employees indicating participation in the training completed in March 2023, the findings above make it unclear if staff have been trained on the settings criteria.</p> <p>Lakemary should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. As described above in the findings, this training should be incorporated into the daily activities and operations of the setting.</p>

**Omega Senior Living – LakePoint Wichita, Assisted Living and Memory Care – Visit March 13, 2023**

**Facility Description:**

Omega Senior Living LakePoint Wichita is located in Wichita, KS. It is a single-story assisted living facility that also has a memory care unit in the same building. There are also independent living apartments on the same campus with a layout similar to that of a motel. The setting serves 47

<sup>2</sup> [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

people total including 26 Medicaid HCBS recipients. The building has several wings (one assisted living wing and four residential care wings that are like assisted living) and a courtyard. The assisted living hall had recently renovated apartments that included a kitchenette, living space, a bedroom and a full bathroom. Only one HCBS recipient lives in that wing. The majority of HCBS funded residents live in the dorm-like area equipped with half baths. All rooms are single rooms that individuals can furnish and decorate as desired. There are no kitchens in the rooms, but individuals can have mini refrigerators in their rooms. The residents living in the residential care wings have to use a shower room located in the same hall as their room. There is no lock on the shower room door, however there are curtains for privacy. There are two dining areas where individuals can eat their meals and there is no assigned seating. The staff indicated that individuals can eat their meals in their rooms if desired and alternative food choice is available. They said people could pick up the food and bring it back to their room, but there was a \$5 charge if they wanted it delivered. It was noted that there are bright large posters with information for how to contact the Ombudsman. Cats are allowed on this property.

**Site Visit Review Description:**

The team was greeted by the Administrator of the skilled nursing facility. The team reviewed the service plans completed by the MCOs, the “negotiated service agreements” for the residents (the setting’s version of a service plan), staff training material, and the lease agreement. The team interviewed two staff members individually in the room. The Administrator then took the team on a tour of the facility, including the five wings, the two dining areas, and an activity room. The team spoke to a resident that lived in one of the assisted living wings that used the community shower room.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	<p>No community integration was observed. Staff interviewed mentioned that they would like to see individuals go out more. Service plans do not reflect personal interests in activities, whether setting-based or community-based. The plans do not indicate if residents were asked about or expressed interest in opportunities to work or volunteer in the community. The site does have a van, but it is only for medical appointments. Residents who want to go out into the community have to rely on their families for transportation. Those who don’t have families stay at the facility, and staff shared it had been that way since COVID-19.</p> <p>Omega Senior Living must ensure their model of service delivery aligns with the regulatory criteria to support participants’ full access to the greater</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Additionally, the setting should ensure that individuals are informed of their choices for competitive, integrated employment.
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	<p>Service plans did not contain information about setting options, including non-disability specific settings and an option for a private unit in a residential setting.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan (PCSP) must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>Staff said they knock on a resident's door before entering, but if they don't get a response, they would walk in to check on the resident. During the site visit, the Administrator opened up a door and showed the site visit team the inside of a person's room, but the person wasn't there to give permission for entry.</p> <p>Omega Senior Living must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint.</p>
441.301(c)(4)(iv)	The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	The Administrator and staff said the residents can drink alcohol and smoke, but there are barriers to alcohol. To drink alcohol requires a doctor's note to ensure there are no medication contraindication issues. All residents are assumed to have restrictions on alcohol use unless there is a doctor's note

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>documented in the medication administration record (MAR).</p> <p>Omega Senior Living must ensure their model of service delivery aligns with the regulatory criteria to support participants' autonomy in making life choices.</p>
441.301(c)(4)(vi)(A)	<p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>There is a resident agreement in place with terms regarding eviction and resolving grievances through arbitration. However, it also contains a "No tenancy Interest" clause that states "Resident has none of the rights of a tenant under this Agreement, subject to applicable state law."</p> <p>Omega Senior Living should review the existing lease agreement to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.</p>
441.301(c)(4)(vi)(C)	<p>Individuals have the freedom to control their own schedules and activities, and have access to food at any time.</p>	<p>At admission, residents who need assistance with bathing/showering designate the days they wish to have baths/showers and staff provide assistance on those days. If the resident requests more bath/shower days beyond their designated days, staff indicated they try to accommodate the additional request, as staffing allows.</p> <p>Omega Senior Living must ensure their model of service delivery aligns with the regulatory criteria to support participants' ability to control their schedules and activities.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>The lease noted that visitors are allowed during reasonable hours and overnight guests are not permitted; the latter was confirmed by staff.</p> <p>Omega Senior Living must ensure their model of service delivery aligns with the regulatory criteria that participants are able to have visitors of their choosing at any time.</p>
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	<p>The outdoor courtyard area is accessible, and the gazebo is accessible to wheelchairs; however, the exterior doors in the assisted living wing require assistance from staff for wheelchair users to exit due to the heaviness of the door and lack of ADA door openers at these exits. The facility's residency agreement lists a fee for residents to use motorized wheelchairs to ambulate. The Administrator said it's considered a "hazard deposit" to repair presumed damage done by the scooters, but stated the fee is not enforced.</p> <p>Omega Senior Living must ensure that its setting is physically accessible to all individuals residing there.</p>
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>The service plans contained very little information; modifications to additional conditions were not adequately documented.</p> <p>The state Medicaid Agency should ensure that the entities responsible for overseeing the development and implementation of PCSPs are doing so in compliance with regulatory criteria. One function of these plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		Omega Senior Living must adhere to the plan and ensure any modifications of the settings criteria for an individual are documented and implemented in accordance with the setting criteria.

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 <sup>30</sup>	Description of how staff are trained and monitored  role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	The team reviewed the training material for staff and there was no mention of training specifically on HCBS criteria. The staff receive training on Relias. Staff are unaware of the training requirements on the HCBS settings rule.  Omega Senior Living should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.

**Comfort Care Homes, Inc., Home Plus – Visit March 13, 2023**

**Facility Description:**

Comfort Care Homes, Inc. is located Wichita, KS. It is a single-story Home Plus setting with memory care. This home is located in a residential area. It is a five-bedroom three-bathroom house. The setting is coed and serves seven people total including three Medicaid HCBS recipients. The house has the potential to serve eight total people because one room is shared. The Administrator mentioned that all residents have mid to late-stage dementia and all of them have a durable power of attorney (D-POA). The door to the home is locked and alarmed; staff enter a code to allow access. There are cameras in public areas. The entry foyer has a hallway to the right leading to residents’ rooms, to the left is a living room and dining room; straight ahead is a family room with a television and the kitchen is to the left of the living room. There is a piano in the family room that staff said guests will come to play. Beyond the kitchen are two more bedrooms and a doorway that leads to a large backyard. The house has a pet cat. There are five homes in the Wichita area that the provider owns and the nursing staff and Administrator rotate between the homes. Staff indicated there is typically only one staff person at the home. There is a 12-person facility bus staff will use for planned outings with the residents. There is a weekly menu; the staff will make alternative meals for people if requested. There are also snacks available in the kitchen at all times. While the MCO service plans did not have personal information, the provider uses an online tool called Sagely that allows the provider to input

<sup>3</sup> [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

residents’ personal information and social history, track residents’ daily activities, and post pictures. All staff and families have access to the application to stay connected with their family member.

**Site Visit Review Description:**

When the site visit team arrived at the setting, the front door was locked and alarmed; the staff entered a code to let the team in the house and out. The team sat in the living room and reviewed the MCO service plans, the residents’ negotiated service agreements, and the HCBS residency agreement. The team interviewed the Administrator and one DSP. There was a group of residents playing bingo at the dining room table. Other residents were in their rooms or in the family room. After reviewing the documentation, the team asked two residents if they would show their room. They have a large, shared bedroom with their own private bathroom. A third resident showed the team their room; it is a private room but has no attached bathroom. Both rooms are decorated and furnished as the residents desire. The team took a tour of the common areas. After the tour, the Administrator showed the team the Sagely application.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	<p>The administrator said they go on group outings one or two times per week. The current calendar shared with the team did not indicate any outings; all activities are in the home.</p> <p>Comfort Care Homes must ensure their model of service delivery aligns with the regulatory criteria to support participants’ full access to the greater community. Additionally, the setting should not rely on reverse integration activities to bring the community into the setting.</p>
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	<p>MCO service plans did not contain information about setting options, including non-disability specific settings and an option for a private unit in a residential setting.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the PCSP must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>The nurse was working on a laptop in the kitchen with paperwork spread across the counter. Resident files are kept in an overhead cabinet but are not locked, making the information accessible to anyone.</p> <p>Comfort Care Homes must modify their model of service delivery to protect the privacy of residents' health information.</p>
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<p>The residents' rooms don't come with locks. The shared bathroom doors do not have locks on them. The Administrator said the residents can have locks on their doors upon request by resident or the D-POA. The administrator indicated if residents have a locked door, staff must have a key.</p> <p>Comfort Care Homes must ensure that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. Any modifications on the ability of an individual resident to lock their door must be based on an assessed need and documented in the PCSP.</p>
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	<p>Residents do not choose their roommates; the Administrator indicated that they pair individuals. Residents can change rooms if they don't get along with their roommate.</p> <p>Comfort Care Homes must revise its model of service delivery to ensure that individuals sharing units have a choice of roommates</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>The Administrator indicated that residents can have an overnight guest “within reason.” There are posted visiting hours; staff indicated they are not enforced. House rules state visitors are welcome from 10am-8pm and residents may leave the setting for a visit after 9am and must return by 8pm.</p> <p>Comfort Care Homes should revise the visitor policy and practice to ensure that individuals can have visitors of their choice at any time.</p>
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	<p>There is a half-step from the backdoor to the deck to access the backyard; the rest of the home is wheelchair accessible.</p> <p>Comfort Care Homes must ensure that its setting is physically accessible to all individuals residing there.</p>
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>Modifications were not documented in the service plans, such as access to personal resources and not allowing locks on doors.</p> <p>The state Medicaid Agency should ensure the entity responsible for the development of the PCSP should ensure that PCSPs that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the PCSP should ensure that all modifications for a specific individual are incorporated into the plan and Comfort Care Homes must adhere to the plan.</p> <p>Comfort Care Homes should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 <sup>4</sup>	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>The Administrator said training on HCBS was related to charting criteria and requirements for HCBS recipients, not the settings rule. That was verified in the reviewing of the training documentation which did not address HCBS criteria.</p> <p>Comfort Care Homes should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

**The Piper Assisted Living and Memory Care, Visit March 16, 2023**

**Facility Description:**

The Piper Assisted Living and Memory Care is located on the west side of Kansas City, KS, in the middle of a 55+ senior living neighborhood. The neighborhood is not affiliated with the assisted living setting. The Piper is a three-story building that looks like an apartment building. Each floor has two neighborhoods with their own names. The first floor is memory care with two neighborhoods, the second floor is assisted living with two neighborhoods, and the third floor has one neighborhood designated memory care “light” (staff description) and the second neighborhood is designated as physician-directed nursing. The physician-directed neighborhood has a mix of people with a variety of needs including hospice, people who need a Hoyer lift or who use a wheelchair for mobility. There are 111 rooms total in the setting with 115 residents. There are four HCBS recipients that live in this setting, only one of whom lives in assisted living.

On each floor the two neighborhoods are connected at a common area containing elevators and laundry rooms. The laundry rooms are designated by neighborhood to prevent residents’ laundry from getting mixed up. Each neighborhood has a central common area that has a dining room, a living room with couches, other seating, a television, and general sitting area with chairs and tables. The first floor has access to a patio area off the dining room; staff noted it is kept locked but they can unlock it for the residents. The first and third floor common areas also have a smaller private dining area off the general sitting area. The second-floor common areas do not have the additional private dining area but instead use that space as a library with books and puzzles available for the residents. On each floor there are staff offices for the staff coordinator, Activities Director, charge nurse, or physical therapy provider. The first and third floors have 15-second delayed egress doors for all exits on those floors since those floors are designated memory-care.

<sup>4</sup> [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

All living units, regardless of floor, are private units, though married couples do have the option to live together if they choose. All units come with a kitchenette and staff mentioned that most assisted living residents have a washer and dryer in their unit.

**Site Visit Review Description:**

Upon arrival, the team was shown to a community room to review the MCO service plans, the setting’s service plan, the Admission Packet/Resident Agreement, and Settings Rule documentation with employee signatures. Two staff, the Assistant Administrator and the Assistant Director of Health and Wellness, provided the team general background about the setting and the area, and after the team’s document review, they took the team on a tour of the setting. The team started on the first floor and during the tour stopped at the room of an HCBS recipient to see if they would be willing to speak with the team. One of the staff members knocked and then entered the room without waiting for permission to enter. The resident did speak with two of the team members. The resident is happy at the setting and has lots of visitors any time they want. They are not interested in going out into the community. When asked if they have a doctor in the community, they indicated they do and stated that the doctor comes to their residence when they call.

After the interview, the team continued to the common area for this neighborhood. There were some residents in the common area and two were sitting with a staff member in the general sitting area, but did not appear to be engaged in an activity or conversation. The team did speak with the Activities Coordinator for the memory care floors and they provided the team with an activity calendar for the current month. On the second and third floors, the team spoke with Direct Support Providers (DSP) who work in the kitchen and asked about their role, residents’ access to food, and their training. None of the staff indicated they were trained on the HCBS settings criteria; however, the Assistant Administrator indicated that at hire, they walk through a document outlining the settings rule and each employee signs it. While on the tour of the third floor, the team observed two residents sitting in the living room, with music playing on the television. The team observed later on the tour in other neighborhoods some activities around exercise with larger groups of residents.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	The setting relies heavily on reverse integration. The March activities calendars provided to the team, for both the memory care residents and the assisted living residents, showed an outing to a music event, one outing to Wal Mart, and one outing for lunch. All other activities were provided in the setting, including various church services and other community entertainment. A team member asked one of the activities coordinators about going out to do various things, like getting their hair done or a manicure, or going to church; they replied that “we have everything here.”

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>The Admission Packet/Resident Agreement noted that as part of the Inclusive Services and Features, transportation was included for local, scheduled doctors' appointments with 7-day notification and if time available, also for local, scheduled personal activities with 7-day notification. The Admission Packet/Resident Agreement also noted that transportation that is local, but non-scheduled has a fee. During office hours, it is \$25/estimated per hour and \$35/estimated per hour if it is "after hours." The Piper Assisted Living and Memory Care must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored.</p> <p>The Piper Assisted Living and Memory Care should develop policies, practices and resources to ensure that individuals have full access to the greater community. Additionally, the setting should not rely on reverse integration activities to bring the community into the setting.</p>
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>The team observed staff knocking on residents' doors and entering without waiting for permission to enter.</p> <p>The Piper Assisted Living and Memory Care must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint.</p>
441.301(c)(4)(iv)	The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to,	Outings into the community are limited based on the activity calendars provided and are only offered in groups. There was no information posted in the setting or provided in the Admission

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	daily activities, physical environment, and with whom to interact.	<p>Packet/Resident Agreement about options for alternative transportation that residents may use (public transit, ride shares, taxis) if residents wished to go out without scheduling 7 days in advance per setting policy.</p> <p>The Piper Assisted Living and Memory Care must ensure their model of service delivery aligns with the regulatory criteria to facilitate independence and community integration, and ensure that individuals have the opportunity to set their own schedules and participate in activities of their choosing. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Additionally, the setting should not rely on reverse integration activities to bring the community into the setting.</p>
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>The setting's Admission Packet/Resident Agreement states that if a resident chooses to use their own pharmacy over the setting's preferred pharmacy, there is a fee. One place in the document states \$50 weekly; another place states \$150/monthly.</p> <p>The Piper Assisted Living and Memory Care must ensure their model of service delivery aligns with the regulatory criteria that individuals have the ability to choose from whom they receive their services and supports.</p>
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or	There is a resident agreement in place with terms regarding eviction and resolving grievances through arbitration. However, it also contains a "No tenancy Interest" clause that states "it does not give you the rights of a 'tenant' as that term is defined by State Law."

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	The Piper Assisted Living and Memory Care should review the existing lease agreement to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.
441.301(c)(4)(vi)(B)	Each individual has privacy in their sleeping or living unit.	<p>The setting's Admission Packet/Resident Agreement states that "staff will knock on door and wait a few moments for a response," but the team observed staff knocking on resident's doors and entering without waiting for a response or permission to enter.</p> <p>The Piper Assisted Living and Memory Care should ensure that its practices align with its policies to ensure that individuals have privacy in their living units.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 <sup>5</sup>	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>Staff interviewed did not indicate any knowledge on training around the HCBS settings criteria.</p> <p>The Piper Assisted Living and Memory Care should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

<sup>5</sup> [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

## **TARC Industries, I/DD Sheltered Workshop – Visit March 14, 2023**

### **Facility Description:**

TARC Industries is located in an industrial area of south Topeka, KS. It is a sheltered workshop serving people with intellectual and developmental disabilities. The setting serves 92 people total, most of whom are Medicaid HCBS recipients. Staff indicated 87 people participate in work onsite, 39 people participate in community enclave work, and 12 people have competitive integrated employment. Staff shared that 75% of the participants at this setting have guardians. The building has offices and a conference room in the front, a hallway leading to the back with a door to an enclosed courtyard area for people to eat and/or smoke outside, a snack room that sells drinks and snacks and also serves as a break area for participants. In the back is the large workspace divided into four areas: one for mailing work, one for packaging envelopes, and one for working on dog food cans (checking for damage, labeling issues, peeling labels off). The fourth space is behind the work area, separated by a closed door, for shredding. This room contains a large industrial shredding machine and the door to the room indicates limited access to it.

### **Site Visit Review Description:**

The site visit team was met by the setting staff upon entering the building and led to a conference room in the front of the building. Two state staff present and two setting staff were present, the Administrator and the Director. The team reviewed the MCOs service plans, TCM person-centered support plans, and staff training documentation. The person-centered support plans were on a template developed by Kansas Department for Aging and Disability Services (KDADS). The team interviewed the Administrator, the Director and two DSPs. Staff shared that there is a public transit stop at the setting; participants use it to come and go. Staff provide transportation to community enclave participants, but participants with community jobs typically use public transit to get to work. Staff shared that the enclave work is mostly housekeeping or janitorial work; one site is a local dog food plant where participants wash dishes and other tasks. Staff also noted that many participants will utilize a combination of day services and/or the onsite work in addition to competitive employment. Participants are not paid sub-minimum wage at this setting. They either earn minimum wage, \$15.50 per hour, or piece-rate at \$13.25, depending on the work.

The team interviewed two DSPs separately and both shared their work responsibilities include training and overseeing participants' work onsite and providing bathroom and any other needed personal supports to participants. Both DSPs noted they have access to the participants' person-centered support plans to help them learn more about the people they are supporting. They shared the work schedule starts at 8:30 am, provides a 15-minute break at 10:30 am, a 30-minute lunch break at 12:30 pm, another 15-minute break at 2:30 pm; the workday ends at 4 pm. Staff noted that routes start at 3 pm for participants who are taken home by setting staff. Both staff knew to refer people who expressed interest in competitive work to the employment services next door, also operated by TARC. Both DSPs noted that this setting is focused on work; participants interested in community outings during the day access those through TARC's day program.

The team toured the facility, asking additional questions of staff about the participants' onsite work and spoke briefly with some of the participants. One participant working in the mailing area showed a team member how they took a paperclip and put it on some papers already in an envelope in preparation to be mailed. The second work area has participants putting 4-6 mailing envelopes in cellophane; those bundles are put through a machine to be shrink-wrapped and placed in a box for mailing or delivery. One participant who placed the shrink-wrapped bundles in the shipping box stated they are at the setting five days a week. One individual, who works other days at a job in the community, acts as a job coach at TARC assisting another peer with completing their work. Participants in the third area take misaligned labels off dog food cans and place

the cans back in their boxes. The team then went into the shredding area. Upon entry, the noise from the shredding machine was extremely loud. To talk, you have to shout in a person's ear to be heard. There is an industrial shredder in the room, approximately 12 feet high. Workers at the top of the shredder tear apart bound documents that come up on a conveyor belt and feed them into a large shredding machine. The machine produces bales of shredded documents approximately three feet high and four feet long. The room was filled with a cloud of fine dust from the paper; the Director noted it was not usually like that and the workers may have just emptied a bin. Three men were working in there, none of whom had on any protective eye coverings or masks. The men working at the top of the shredder had no safety belts on. One man had on protective ear coverings, and when asked, the Director stated they checked with OSHA and protective ear or eye equipment was not required.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	<p>After speaking with the Administrator, there did not appear to be an emphasis on community employment or pursuit of it, despite the employment services offered next door. One staff member said that people do say they want to work outside of the workshop, but that never works out.</p> <p>The MCO service plans reviewed did not indicate any choice regarding services.</p> <p>TARC Industries must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Additionally, the setting should ensure that individuals are informed of their choices for competitive, integrated employment,</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	<p>It is not clear how individuals choose this setting. Staff indicated that the Community Developmental Disability Organization (CDDO) provides a list of provider options for participants. This was not clearly documented in the plans. Plans also reflect that residents who use TARC for residential services also have TARC for their various day/employment services. It is not clear that residents understand they have a choice of providers and are not obligated to choose TARC.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iv)	The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	<p>The MCO service plans reviewed did not indicate if participants choose in which area to work at the setting or how they can choose when to attend.</p> <p>TARC Industries must ensure their model of service delivery aligns with the regulatory criteria to support participants' autonomy in making choices about daily activities, including which areas of work in which to participate.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>TARC operates Employment Services next door to this setting to assist participants in finding competitive, integrated employment. Direct support staff can refer participants to these services through TARC’s Program Coordinator; it is unclear how a participant would know they could choose a different provider for employment services. Staff indicated many people rotate between the workshop and TARC’s day program. It is unclear how a participant would know they could choose a different provider for day services.</p> <p>TARC Industries must ensure their model of service delivery aligns with the regulatory criteria that individuals have access to services and supports that the individual has been assessed to need, and that the individuals have the ability to choose from whom they receive those services and supports.</p>
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>Restrictions were noted in plans around participant’s diets, but there was no evidence of an assessed need for these restrictions.</p> <p>The state Medicaid Agency should ensure the entity responsible for the development of the person-centered service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are incorporated into the plan and TARC Industries must adhere to the plan.</p>

## **GoodLife Innovations, Residential – Visit March 14, 2023**

### **Facility Description:**

This setting is located in an apartment complex, The Frontier West Lawrence, owned and operated by an independent entity in Lawrence, KS. The apartment complex has approximately 200 units and GoodLife has a master lease for 11 units. The 11 units are 2-bedroom, 2-bathroom units and are spread throughout the eight different buildings in the complex. There are currently 21 HCBS participants. Most residents at this setting are in their 20's and 30's; the range is from 20-70 years old. Each building has an elevator for residents to use to access different floors in addition to the stairs. GoodLife uses another apartment as an on-site office. The complex has a community center, community fitness room and a community pool for any of the complex residents to use. There is a public bus stop at one entrance of the complex that is used by the HCBS recipients. The bedrooms in the apartments each have their own full bathroom. There is a small galley kitchen with a small laundry room at one end. The kitchen is separated from the living area by a high-topped peninsula. The living room space is long and has windows facing out at the end, and off the living space on the left is either a balcony or a sunroom.

### **Site Visit Review Description:**

The site visit team and state staff were met by the setting staff at the complex office and walked to the provider on-site office, located in an apartment. The apartment is only office space; no one lives there. The team met with approximately six provider staff including the president/CEO of the agency. He provided an overview of the agency's history and how they have structured their residential program using staff called "professional neighbors" to provide support on site as needed to the HCBS residents. Staff that live on site do not live with the HCBS residents; they may live in the same building. Staff mentioned the agency presence in the complex helps resolve conflict between GoodLife residents and other residents on issues like noise complaints. GoodLife also uses remote monitoring to provide supports. Each apartment has one camera situated above the peninsula in the kitchen to capture the kitchen and the living area. There are no cameras in the bedrooms or bathrooms; there are sensors in those areas. The view from the camera looks like one is looking through the peephole of a doorway. The current version allows areas like bedrooms, to black out the door and doorways to the bedrooms that are off the living room area. A system upgrade will be implemented soon that will allow people to self-direct the remote supports and turn the cameras off. It comes with a privacy mode that allows individuals to be blurred out, or even just fully pixelated, while cameras are on. The team also reviewed the MCO service plans, the TCM person-centered support plans, and other documentation from the provider, including staff training materials. The staff showed the team that they take one aspect of the rule each month and the staff and residents learn about it. The team split up and met with residents in their apartments. Part of the team met two women living in an apartment furnished in their individual styles; they have two fish and one cat as pets. Part of the team met two men living in another apartment, also furnished and decorated in their style, including a "hobby room." All residents noted they have jobs in the community at different locations. The two women take public transit to their jobs; one of the men walks to work while the other drives himself. GoodLife also has three facility vans to assist residents with transportation. The CEO staff mentioned that about 70% of the residents have jobs; the remaining residents volunteer. One resident noted how this setting helps them be very independent in a variety of areas of life, particularly their medication administration, and provides stable housing for them.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>Staff noted that the default design of this residential model is having cameras and sensors in the apartments. Staff stated that at least 50% of the residents have guardians, so it is unclear if there is a need for cameras and sensors or if it is for the comfort level of the guardians. Staff shared only one person successfully advocated for themselves to have the cameras turned off, and this resident (who has since moved) did not have a guardian.</p> <p>GoodLife Innovations must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint. Remote monitoring, when allowed by a state in the delivery of HCBS, should only be used when necessary and ensure the privacy of all residents.</p>
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>Staff said that residents can choose their provider from whom to receive day supports (should residents have that service), and they said 100% of residents choose them. It is unclear how much information residents receive about their option to choose a different day provider.</p> <p>GoodLife Innovations must ensure their model of service delivery aligns with the regulatory criteria that individuals have access to services and supports that the individual has been assessed to need, and that the individuals have the ability to choose from whom they receive those services and supports.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	<p>Staff stated that roommate choice is facilitated through compatibility matching, but people can also be paired with “offsetting skills” so that collectively the roommates can be more independent. Staff noted they do have visits for potential residents so they can become acquainted, but it is not clear how this option is communicated and how much choice is provided for roommates.</p> <p>GoodLife Innovations must ensure its model of service delivery aligns with the regulatory criteria that individuals sharing units have a choice of roommates.</p>