



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

Provider Name: Colonial Oaks Blackhawk LLC

Assessment Id: 4038

Setting Id: 4507

Date of Heightened Scrutiny Assessment: 6/15/2023

Heightened Scrutiny Category

Category 1: Settings located in a building that is a publicly or privately-operated facility that provides inpatient institutional treatment.

Ability to Remediate or Necessity to Transition

Site is able to remediate all items.

General Summary of Site Information

Locust Grove Village is a continuing care retirement community located in a single-family residential neighborhood that includes independent living retirement apartments, an assisted living center and a skilled nursing center. The assisted living center of Locust Grove Village is the subject of this review. The assisted living facility has 14 apartments, including both studio and one-bedroom options. Currently there are 12 non-HCBS and 2 HCBS individuals residing in the assisted living facility. All of the residents have a private apartment that has an interior and exterior lock on their door that they can lock to have privacy at any time. Every apartment has a mini fridge, microwave, sink and cupboards. There is also a main kitchen that the residents can use at any time. There are three meals prepared daily for the residents. Residents can choose to eat the main entry prepared or they can choose from a list of always available meal options or a salad bar option. Residents can choose to



eat in the main dining room or the privacy of their apartment. They can also choose to go out to eat in the community or to eat with family/friends if they desire. Residents are encouraged to make plans with family and friends to come and visit and take them out in the greater community or to participate in community activities. The facility has several reoccurring activities planned monthly within the community and at the facility. A community activity board is posted in the common area with up-to-date listings of community activities and facility activities. The facility has their own transportation system consisting of a large passenger van and a small bus that is available to residents to assist with access to the greater community. Residents also can access the community freely by walking if they desire, or family members and friends can transport residents to activities as they desire. All residents are free to come and go at their leisure and are encouraged to have visitors. Residents can visit in the privacy of their own apartment or in one of the communal areas in the facility. The main entrance of the facility is locked every night from the outside for safety reasons. This locking mechanism does not prevent the resident from exiting the setting, but does require them to use the buzzer to be let back in. Residents can have visitors at any hour of the day. If a visitor arrives after the facility main door is locked, they can access the building by buzzer and facility staff will verify their information for safety purposes. The facility provides visitor accommodations in an onsite apartment that visitors can access for a fee if desired, or the visitor(s) can stay with the resident in their apartment. Facility apartments are furnished and decorated by the resident per their personal preference. Every apartment has a mini fridge, microwave, sink and cupboards. Apartments each have a private bathroom that is ADA compliant with the necessary adaptive accessories to ensure accessibility for every resident. Everyone is required to knock on the resident's door and wait to be invited in to ensure the resident's privacy is maintained. Only appropriate staff and the resident have keys to the resident(s) apartment. There is a laundry room in the facility that the residents can use at any time or have staff do their laundry for them. Common areas are available in the assisted living facility that allow for socialization and scheduled activities. The Heightened Scrutiny team conducted a face-to-face assessment of this setting to determine the level of understanding of HCBS and Final walkthrough tour of the facility, and interviews with two staff members, one HCBS resident, and the Administrative Director. It was made very apparent during these interviews that these characteristics are written into policy and procedure, taught to those who live in this facility, and are adapted by the staff that work here. It was observed that staff is very respectful to those who reside at this setting. Interactions throughout interviews and in general between individual and staff were very interpersonal, genuine, and apparent that they regularly interact and do not hesitate to speak to necessary parties about anything they would like to do and/or change about current circumstances. Though this setting is attached to a skilled nursing facility, after further review it has been determined that it is independent of any presumptive institutional like characteristics. The setting provides home and community-based services through the implementation of policies and procedures with staff and waiver participants. Individuals who reside at this setting are afforded the same rights, privacy, choices, autonomy and community access as their neighbors and others not being served by Medicaid.

State Requirements for Providers:



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

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

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



Pre-Assessment Preparation Process with Provider

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

Interview Standards for Provider and Interviewees

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

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



Additional Heightened Scrutiny Assessment Standards

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

Remediation Plan				
Please indicate the setting's compliance with the following areas. The provider is responsible for creating a remediation plan for each rule indicated out of compliance and the expected date of that plan's completion.				
Section	Compliant?	Explanation of Compliance and Overview of Remediation Plan	Provider Remediation Plan	Projected Completion Date
		The resident interview made it very apparent that they felt like they can come and go anytime they want to. Resident identifies that while they know they can access the community they choose to only participate in preferred activities at the facility. Resident particularly enjoys going to Walmart shopping trips with her friend and watching TV music groups that come. Resident also confirmed that she can make plans with friends and family if they want to and they can get a ride from		



<p><u>Inclusion and Community Access</u></p>	<p>Yes</p>	<p>family or arrange for transportation from this setting.</p> <p>An activity board with posted community and facility activities that can be utilized by all residents that is posted in the dining room. Resident reported that residents get to choose what activities they would like to participate in and none of them are mandatory. The staff interview confirmed that the residents have several different opportunities for the residents to have access to the greater community. Staff also reported that they have scheduled monthly activities that the residents can choose to participate in that include eating at restaurants, going shopping, trips to nearby communities, other entertainment, and onsite activities. If a resident requires staff assistance on their outings then that can be arranged. All of the residents are free to come and go as they please and this makes it very easy to access the community resources and activities</p>		
		<p>During the resident interview it was identified that the resident made the choice for her to move into the facility due to safety concerns. Before a potential resident chooses Colonial Oaks</p>		



<p><u>Autonomy and Choice,</u> <u>Setting Selection</u></p>	<p>Yes</p>	<p>Blackhawk a tour is set up to meet the potential resident. Then a functional capacity assessment is done to make sure they can accommodate the residents needs in this facility. If they read or see a cognitive deficit then another assessment is done to see what services can be offered at their facility and to see if they are a good fit. If the resident is present then they can choose to move in here or if it is doctor or family recommended then they can also help the resident decide. Once Colonial Oaks is chosen they make sure to meet all of the residents needs with a care plan that is developed by the Director of Nursing through screenings that are done at the initial intake and admissions process. They also sit down with the resident and talk to them about the setting. All HCBS residents also have an MCO developed PCSP that is developed to identify the individual's preferences and personal care needs. This plan is developed annually by the team and utilizes a combination of interviews with the resident and/or DPOA and review of the facility's care plan and assessments.</p>		
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<p><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></p>	<p>Yes</p>	<p>The resident interview made it very apparent that residents are treated with dignity and respect by all staff members. Resident stated that all staff members knock before entering their apartment. Resident can perform all of restroom ADL's independently but is aware that they can ask staff for help whenever needed. Resident also has a lock on the door that can be locked when privacy is desired.</p> <p>The Administrative Director and staff interview also confirmed that they put the residents first and make sure all of their needs are met and they have a choice in everything that they do. Staff's dignified treatment of the residents was made very apparent during the interviews and virtual walk through of the facility. When medical care is being administered to the resident's it is done in the privacy of their own apartment with the door and blinds closed. The resident is able to meet with family and friends in their apartment or in one of the communal areas. A more private room can be made available if needed.</p>		
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<p><u>Autonomy and Choice,</u> <u>Planning and Life</u> <u>Choices</u></p>	<p>Yes</p>	<p>During the resident interview it was confirmed that there are no activities they are required to participate in. Resident can choose all of the activities and events that they would like to participate in or not participate in. Resident can call friends and family to make plans and is able to come and go as desired. An activity calendar is posted in the dining room for all residents and visitors to see. The staff also remind residents every day of what activity is planned in case they want to go. Residents feel like the staff are very respectful of their choices. The staff and Administrative Director interviews made it very apparent that the resident's needs and choices are always put first. Facility has quarterly Residential Counseling Meetings where residents'</p>		
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<p><u>Autonomy and Choice, Choices Regarding Services and Supports</u></p>	<p>Yes</p>	<p>Resident interviewed has a DPOA that assists with choice to reside at the facility. Resident would prefer to be at home, but understands it is not safe for her and is happy with Colonial Oaks as the next best option. Daily routine support decisions are made solely by the resident, and they are happy with the supports that they have currently. All residents currently at the setting have DPOAs to assist with choice.</p>		
<p><u>Staff Training in HCBS and the Final Rule</u></p>	<p>Yes</p>	<p>Through the interview process and the policy and procedures is was made very apparent that Colonial Oaks provides initial training, background checks, on the job training with a staff member, monthly in-services and annual trainings on different topics that are related to the final rule and HCBS services. There are also specific topics that are required trainings by all staff throughout the year. There is currently not a formal training on HCBS Final Rule, but the Administrative Director has meetings with staff discussing how Final Rule & resident rights are related, how to apply Final Rule in the setting, and how to ensure that residents rights are honored and respected.</p>		



<p><u>Presumptively Institutional Settings</u></p>	<p>Yes</p>	<p>The location of this setting is on the grounds of/adjacent to a Memory Unit Facility and meets the definition of Category 1 Heightened Scrutiny Setting. Although there are presumptions due to the location of the setting, the policies and procedures, interviews and processes verify the setting ensures these presumptions are overcome and the Final Rule Setting and Home and Community Based characteristics.</p> <p>Each resident has their own apartment with a living, sleeping and dining area and a private bathroom. All of the apartments have a mini fridge, sink, cupboards and microwave for residents to use any time. All of the residents are encouraged to decorate their apartment and furnish it to make it feel like home. Staff members knock on the resident's door and wait to be invited in to ensure the privacy of the residents. There are several common areas where residents are encouraged to socialize and engage in different activities. Every resident is offered and made aware of their choices and preferences in their area annually and confirm that this setting is their choice.</p>		
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<p><u>Settings that Isolate HCBS Beneficiaries</u></p>	<p>Yes</p>	<p>In every interview the staff, Administrative Director and resident verified that the policy and procedures are implemented as written to ensure every individual not only actively participates in their daily choices in their daily lives, but that staff assist with providing alternative and or additional options to work with individuals to accommodate all of their preferences and needs.</p> <p>It is very evident that this setting is person centered, all staff are educated on how they can ensure individuals have access to the broader community and can participate in all activities of their choice.</p>		
<p><u>Final Section</u></p>	<p>Yes</p>	<p>The setting does not have the qualities of an institution and does have the qualities of a home and community-based setting.</p>		



Summary

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>