



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

**Provider Name: Westy Community Care Home**

**Assessment Id: 359**

**Setting Id: 495**

**Date of Heightened Scrutiny Assessment: 1/27/2023**

## **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**

Westy Community Care Home is an assisted living facility that is attached to a skilled nursing facility owned and operated by the same provider. This setting is located within a residential housing community. There is a gas station across the street and a Dollar General down the street from this facility. Westy Community Care Home have vehicles used for transporting residents to social, medical, and other activities. Some residents choose to be taken to activities by family and friends. Some activities are within walking distance, so a few opt to walk. This facility provides residents with a single occupancy studio apartment, double occupancy apartment, or single occupancy apartment. There are common areas where residents can gather to socialize with assisted living and long-term care residents to complete scheduled activities. There is a dining room where staff will wait on the residents during meals. They have a choice of meals and an option to have it brought to their living area. The main



kitchen is locked for safety reasons, but staff can provide residents with food outside of mealtime if requested. There are several options available from a daily menu, an alternative menu. Residents have around the clock access to a refrigerator that has snacks and drinks available. Residents are encouraged to socialize and have family and friends visit them. They are also encouraged to engage in activities outside of the setting to prevent any feelings of isolation. Staff and family members assist residents to plan and attend community events when they so choose. Residents are free to come and go at their pleasure. The main entrance is locked for safety of the residents, but residents have a key to allow entrance. If they forget their key, they can utilize the keypad for entrance. Everyone residing at Westy Community Care Home have their own private apartment. Each apartment has a private bathroom, bedroom, living room, and kitchenette. The kitchenette has storage, full size refrigerator which allows them to have personal snacks available at any time, and a microwave. All personal living spaces can be decorated to the liking of the resident. This is encouraged to assist in making this setting feel like home. The bathroom is equipped with the necessary adaptive accessories to ensure accessibility. The private dwellings are secured with a door in which the resident has their own key for access. Appropriate staff have access to a key in case of emergency for the safety of the resident. The resident is awarded privacy in their personal apartments as all entering must knock and wait to be invited in. The resident can have the level of privacy desired in their personal spaces to conduct personal business when they use the phone or have visitors. Throughout the assisted living facility, there are two common areas that allow opportunities for socialization. These areas are used for scheduled activities between staff and residents. Residents have opportunities to socialize with members of the greater community through structured activities. These opportunities include scheduled activities with family and friends. Members from the community bring kids in to sing during the holidays, residents get frequent visits from members of the boy/ girl scouts, and member from the zoo brings in animals to show off every couple of months. Residents have free access to a place to do their laundry when they want. The Heightened Scrutiny team conducted a virtual walkthrough of the setting, utilizing a laptop with webcam and Microsoft Teams. One individual served, one staff member and the administrator were interviewed to determine the level of understanding of HCBS and the Final Settings Rule requirements/characteristics. Throughout the interview process it was made apparent these characteristics are taught to those who live and work there and maintained through quality assurance processes. It was observed that staff 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 individual served interview made it clear that there are multiple opportunities to engage in the greater community. Member indicated being transported to activities by son, friends, and family. Member mentioned they can come and go as they please. Member reported not feel isolated from the greater community. Member reported different activities are provided in house that allow for opportunities for socialization. Member goes grocery shopping, out to eat, taken to doctors'		



appointments, and spending time with sons during the holidays.

The administrator and staff interviewed confirmed that individuals can come and go as they please. There are no restrictions on activities outside of the setting. Westy Community Care Home provides transportation to all scheduled activities and assist individuals with transportation to personal activities if they are unable to make their own arrangements. Some activities they are involved in include taking individuals to doctors' appointments, Westy BBQ with various vendors present, going to eat at various restaurants, taking individuals to the library, going grocery shopping at Dollar General or Walmart, attending summer BBQ events, car show, and participating with children during the holidays. They encourage individuals to socialize and not self-isolate.

Staff are trained to look for signs of isolation such as withdrawal and loss of interest. If noticed, staff will address accordingly to help ensure that individuals are socializing and not self-isolating. When behaviors are noticed,

**Inclusion and  
Community Access**

**Yes**



	<p>staff will encourage engagement, converse with the individual to ensure that it is not due to a medical decline, and one-on-one conversations with individual about changes in their interests. If determined that a medical concern is to blame, then the medical staff will evaluate the individual and address concerns.</p>	
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<p><u>Autonomy and Choice.</u> <u>Setting Selection</u></p>	<p>Yes</p>	<p>The individual served interview mentioned the decision to come to Westy Community Care Home was members choice after members house flooded. Member indicated they are very happy here and wasn't aware of person-centered support plan but remembers a person from Home Health came and spoke to member over an hour recently.</p> <p>The administrator and staff member stated that a functional assessment is conducted to ensure that assisted living is the proper level of care needed and then the individual can choose if they want to live at this setting. The resident and family are provided a tour of the setting and the ultimate decision to move in is left to the individual and their family. Once they decide to reside at Westy Community Care Home then the admission process begins that allows the individual to share their needs, wants, desires, preferences, and interests. This information is then written into an individualized plan of care that is available to all staff.</p>		
		<p>The individual served interview mentioned member has all the privacy they need. Member resides in a private</p>		





**Rights of Privacy,**  
**Dignity, Respect, and**  
**Freedom From**  
**Coercion and Restraint**

Yes

apartment and can close the door whenever they wish. Everyone knocks before entering members room and waits for an answer before entering. Member can talk on the phone and make plans with family in the privacy of their home. Member reported being treated with dignity and respect and believe a couple staff are like daughters.

The administrator and staff interviewed agreed that Westy Community Care Homes top priority is the individual being served. There is no restriction to the individuals involvement. The assisted living unit is described as one big family and individuals are treated as such. They are treated with dignity and respect. There is a grievance process in place, in the event of concern.

All interviews confirmed that there is no use of restraint or seclusion at this setting. Individual choice is stressed as being top priority and that all their choices are honored upon decision. All who live and work here engage in meetings and trainings that educate on topics such as resident rights of choice, to be free from restraint and free from



		coercion.		
<p><b><u>Autonomy and Choice,</u></b>  <b><u>Planning and Life</u></b>  <b><u>Choices</u></b></p>	<p><b>Yes</b></p>	<p>The individual served interview made it very clear nobody tells members what to do, member makes own schedule. Individual mentioned there is an activity calendar provided and staff tell them directly what is happening to ensure individuals are integrated into the community and do not experience isolation.</p> <p>The administrator and staff interviewed confirmed that they did not require any individual to partake in any activity at any time. They mentioned that they strongly encourage individuals to engage to decrease the likelihood of feelings of isolation.</p> <p>It was confirmed that there are multiple food options available to them and that they can access food whenever they choose. Individuals also have a kitchenette in their apartments, so they can prepare food anytime they choose. The individuals choose their own daily schedules. There is an activity calendar posted and all individuals are given a copy for the month that include activities for both the long-term care as well as the</p>		



	assisted living. They can engage in any of the activities they choose.	
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<p><b><u>Autonomy and Choice, Choices Regarding Services and Supports</u></b></p>	<p>Yes</p>	<p>The individual served interview made it apparent that member makes all their choices. Member can decide what assistance to receives daily and knows that if something needs to be changed then all member needs to do is talk to any staff member and they will help. Member reported that all the staff are super helpful and that they allow member to make their own choices.</p> <p>The administrator and staff interviewed reported that staff are educated on ways to assist individuals in making informed choices. They will provide the individual with the appropriate information including possible outcomes for multiple scenarios. Leadership stresses the importance of resident rights and that they have the right to choose and for those choices to be honored.</p> <p>All interviewed confirmed that individuals oversee the services they receive. They can determine what assistance they receive, who provides the assistance and if there is a concern with the assistance then they can speak with the staff, and they will work to get the concerns resolved.</p>		
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<p><b><u>Staff Training in HCBS and the Final Rule</u></b></p>	<p>Yes</p>	<p>Through the interview process it was made apparent that upon hire Westy Community Care Home provides staff with training on different topics related to HBCS and the Final Rule. They are trained on policy and procedures, resident rights, and how to read and understand the plan of care. There is initial, monthly, and as needed training.</p>		
<p><b><u>Presumptively Institutional Settings</u></b></p>	<p>Yes</p>	<p>The location of the setting is attached to a skilled nursing facility and meets the definition of a Category 1 Heightened Scrutiny Setting. Though there are presumptions of possible institutional characteristics due to location of the setting, processes and interviews verify the setting ensures these presumptions are overcome and final settings rule requirements are met. This setting acts independently of the skilled nursing facility and has home and community-based characteristics.</p> <p>Individuals are active in the planning of their daily lives and afforded many opportunities to be as independent as possible while still having their needs met.</p>		



<p><b><u>Settings that Isolate HCBS Beneficiaries</u></b></p>	<p><b>Yes</b></p>	<p>Administrator, resident, and staff verified trainings are implemented as taught to ensure individuals not only actively participate in the daily choices to go into their day/lives, but that staff assist with providing additional/alternative options and work with individuals to accommodate their preferences.</p> <p>It is evident that the setting is person-centered, staff are educated on how to ensure individuals have access and access the broader community and participate in activities of their choice.</p>		
<p><b><u>Final Section</u></b></p>	<p><b>Yes</b></p>	<p>The setting does not have the qualities of an institution and does have the qualities of a home and community-based setting.</p>		



## Summary

1) To be completely compliant with the settings rule, the provider is required to be compliant with all the non-heightened scrutiny areas of the self-assessment. However, in addition to the findings documented above, the state was able to verify the following through the HS process.

**(a) Paid Employment, Volunteer Opportunities**

(i) Interviews confirmed that residents have access to paid work and/or volunteer work if desired. Staff are readily available to assist with obtaining and accessing opportunities for work on an individualized level.

**(b) Access to Additional Education**

(i) Persons-served confirmed that the setting accommodates individual needs in accessing additional education per individuals' interest.

**(c) Rights and Access to Vote**

(i) Persons-served are provided training on resident rights including the right to vote. Leading up to election time, staff educate residents on their rights to vote, explanation of the voting process by arranging for an absentee ballot and/or transportation to a voting site. Staff offer residents resources that provide education of candidates.

**(d) Access to Funds and Ability to Choose How Spent**

- (i) All funds are managed by the individual, their family or a designated payee. They receive their funds and can be spent how they choose.
- (ii) The provider allows for the member to elect to have a trust account. The individual can withdraw funds at their convenience and purchase what they choose.

**(e) Restraint and Seclusion**

(i) Persons-served verified that there is no use of restraint or seclusion at this setting.

**(f) Dating**

(i) Persons-served are supported in dating if they so choose.

**(g) Leasing**

(i) Persons-served are provided with a legal agreement that outlines the regulations for intent to vacate as well as processes required for termination of lease based on the guidance of the Kansas Landlord-Tenant law.

**(h) Choice of Provider and Services Provided**

(i) Persons-served confirm that they had a choice in whom provides services and the services received. All interviewees are educated on the steps to make changes to services and/or providers.



***Public Comments Summarized***

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