



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

Provider Name: Helping Hands Community Services LLC

Assessment Id: 4

Setting Id: 7

Date of Heightened Scrutiny Assessment: 3/1/2023

Heightened Scrutiny Category

Category 2: Settings on the ground of, or immediately adjacent to, a public institution.

Ability to Remediate or Necessity to Transition

Site is able to remediate all items.



General Summary of Site Information

The setting is located across the street from an assisted living and nursing home facility which has triggered Category 2 for heightened scrutiny. Residential services are being provided in a private apartment that is integrated within the larger community as anyone including those without disabilities or who do not receive HCBS can apply and live within the complex. The setting is located in a suburban area with access to main streets and public transportation. Individuals pay market rent or can obtain housing assistance through programs accepted by the complex.

The individual lives alone and has a key to their apartment with only their selected staff and family members having a key for emergencies. They have a competitive paid job that is integrated in the community where they greet customers, schedule appointments, scan documents and assists other staff. Individual arranges their own transportation, controls their own lease, finances and access to community activities. They understand that they must attend doctor appointments, BASIS meetings or case management meetings like others and do not feel forced. They have chosen to not volunteer. They are aware they have the right to vote and has done so in the past. They feel they are treated with dignity and respect as everyone talks to them and gets their feedback before making changes to their services and appointments. Individual does laundry on a schedule they have set with family. They have a personal phone and can talk with family and friends when they choose and with privacy in their own home.

KDADS conducted a virtual walkthrough of the setting, utilizing the individual's phone, staff's phone and Microsoft Teams. The individual served and the staff/owner were interviewed to determine their level of understanding of HCBS and the Final Settings Rule requirements/characteristics. The owner is the only staff of the agency and completed the interview parts for staff and the executive director. It was observed that staff is very respectful of the individual that resides at the setting and left the room to allow interactions between the individual served and KDADS. It is evident that the individual served leads their life choices for transportation, services, housing, employment, food, health, communication and community activities.

Though the setting sits directly across the street from an assisted living 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 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 |
|--|------------|--|---------------------------|---------------------------|
| <u>Inclusion and Community Access</u> | Yes | The individual understands and is very independent in making decisions to interact with the community when they choose. They visit with family and others when they want. They have a part-time job in the community and is looking to enroll in classes being offered by the job to increase their changes for full-time employment. Staff reviews and offers opportunities to assist individual access community activities at least weekly. Individual chooses to stay home most of the time but is aware that they can go out and will ask staff for assistance when needed. | | |
| <u>Autonomy and Choice, Setting Selection</u> | Yes | The person-served lives alone in a private apartment they chose after viewing and visiting other living options in the community. The service provider does not own the setting. | | |



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| <p><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></p> | <p>Yes</p> | <p>Individual lives alone and reports nobody bothers them. They have a key to their apartment to use for entry. They can lock doors to apartment, bedroom and bathroom when they want. Only family and their only staff member has keys for emergencies. When staff is present, they knock on doors to announce themselves and waits for permission to enter. Staff will send a text to make individual aware they are coming for the day.</p> <p>Individual understands it is their house and they can do whatever they want in any room they want. There is no evidence or report from them of being restrained against their will. The setting is physically accessible, but individual has voiced due to personal reasons they have applied for an apartment on the first floor. Individual responded staff knocks and waits for permission before they enter their personal space. The visual walk-through confirmed locks on doors and the ability for privacy.</p> | | |
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| <p><u>Autonomy and Choice, Planning and Life Choices</u></p> | <p>Yes</p> | <p>Individual understands and is able to make life choices for their self. Staff gives advice, but they make the final decision on their own and lives with the consequences. They control their own schedule, finances and banking. They can and do pay their own bills each month. They control their own daily routines.</p> <p>Individual can move about their apartment when they want or go out in the community after making transportation arrangements. Individual is able to make transportation arrangements on their own when needed. They lead actions for all life choices. They have a lease with the apartment complex without involvement from the service provider. They understand to contact their case manager, the MCO, the state or the CDDO when they want to make changes.</p> | | |
| <p><u>Autonomy and Choice, Choices Regarding Services and Supports</u></p> | <p>Yes</p> | <p>Individual voiced that they chose the provider after reviewing others. They know to contact the CDDO and their case manager if they want to make a service change. They are currently satisfied with service provide and staff.</p> | | |



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| <p><u>Staff Training in HCBS and the Final Rule</u></p> | <p>No</p> | <p>Staff does not appear to understand HCBS Final Rule regulations and the purpose of the assessment. KDADS discussed with the owner how HCBS/Final Rule education and check points can be explored to remedy this concern for the agency. A remediation plan is being requested for this item. KDADS will require the staff to attend future Final Rule trainings.</p> | | |
| <p><u>Presumptively Institutional Settings</u></p> | <p>Yes</p> | <p>The setting is located across the street from an assisted living facility and nursing home facility which has triggered Category 2 for heightened scrutiny. Residential services are being provided in a private apartment that is integrated within the larger community as anyone including those without disabilities or who do not receive Medicaid HCBS can apply and live within the complex.</p> <p>There is no evidence of institutional like characteristics or association with the assisted living and nursing home facility across the street. The agency evaluated is a separate agency which provides residential services to individuals receiving HCBS.</p> | | |



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| <p><u>Settings that Isolate HCBS Beneficiaries</u></p> | <p>Yes</p> | <p>There are no indicators of setting isolation. The setting is an apartment complex in the greater community that people without disabilities can apply and live in. A review of photos shows access routes to main roads and the greater community. There is no evidence of fences or other structures that would prevent the person-served from leaving the residence if they so choose.</p> <p>Individual voiced that they are given options to access the community for events/activities, but they choose to stay home most of the time. They have a competitive integrated job and uses a taxi service to be transported to work each day. They do not feel isolated and knows they can leave when they want. They visit family each weekend. Individual sometimes hangs out with others to attend events like comic book shows, arcades or to grab a bite to eat.</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

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>