



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

Provider Name: Tri-Valley Developmental Services, Inc.

Assessment Id: 230

Setting Id: 320

Date of Heightened Scrutiny Assessment: 2/2/2023

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

This setting is in south-central Chanute, KS, The Hamptons is an income-based 48-unit, single level, one bedroom home community for seniors and disabled, set across twelve 4-plexes. The Hamptons is located within walking distance of a grocery store, post office and doctor's office with a Walmart Supercenter just a few minutes away by car. Service provider provides residential services under their Independent Living Program to the individual served in their independent home. The choice to provide services in this manner was made approximately less than a year due to other options not being able to meet the needs of the individual served in a person-centered manner. There are no restrictive structures at this location that would prevent the individual served from leaving the property. The individual served can go out into the community when they choose and have visitors to their home whenever they desire. There are no curfews in place at this setting. Staff call ahead to plan visits



with individual-served and then again when they arrive to ensure that the individual served is aware that they are there. If individual served requests to not have staff present, staff respects this request and decides for another day/time as needed. Individual served makes their own schedule and transportation plans utilizing family & friends. Provider will provide transportation as needed with 24-hour notice. This setting is physically accessible to ensure independence when needed. If accommodations were necessary, the provider would work with the apartment complex to ensure that the apartment remains physically accessible. Individual served has access to all areas of the setting and can utilize appliances as desired. Access to food is not restricted and individual can choose their daily routines/activities including when, where, and with whom they eat. This setting supports full access for the individual served to have opportunities to seek employment and work in competitive integrated settings if it were desired by the individual served. Individual at this setting can utilize resources to their liking however they see fit. Individual served has a PCSP that considers individualized preferences and is updated yearly or as needed through a meeting with the individual served, the provider, and the individual's support team. The Heightened Scrutiny team conducted a virtual assessment of the setting, utilizing a laptop with webcam and Microsoft Teams. One individual served, one Executive Director, and one direct support staff member were interviewed to determine the level of understanding of HCBS and the Final Rule Settings Rule requirements and/or characteristics. Throughout the interview process it was made apparent these characteristics are taught to those who live and work there and maintained through quality assurance processes. It was observed that staff are respectful to those who reside at this setting. Interactions throughout the interview process and in general between individual served and staff were interpersonal, genuine, and apparent that they regularly interact. It was noticed that individual served does not hesitate to speak to necessary parties about anything they would like to do and/or change about current circumstances. If individual served were to want to change anything about their services/setting the team would meet to ensure that changes were discussed and that they were implemented in a manner that would enable the individual served to continue to receive services and supports in a person-centered manner. Though this setting has been flagged for having characteristics of isolation, after further review it has been determined that it is independent of any presumptive institutional like characteristics. The setting provides home and community-based services through the implementation of policies and procedures with staff and waiver participants. Individual served at this setting is afforded the same rights, privacy, choices, autonomy and community access as their neighbors and others not being served by Medicaid. This setting is not in a gated community and the individual served is able to move about freely. The interactions throughout the interviews and in general between staff and individual served were very genuine and interpersonal. It was observed during the interviews that all staff are respectful to the resident that lives in the setting. It was made very apparent that the staff and individual interact regularly and do not hesitate to speak to all the necessary parties about things they would like to do/and or change about their current circumstances. Though this setting is on the grounds of/or adjacent to a Skilled Nursing Facility it is independent of any institution and provides Home and Community Based Services through education to all staff and residents as well as implementation of policy and procedure. The resident that lives in this setting is given the same rights and choices as their neighbors and community members and are not isolated from the broader community.



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
		Setting is not isolating in nature. Individual served given the choice to participate in activities or groups, or to access resources in the community. Individual served goes to McDonald's, movies, grocery shopping, and visits family. Individual served has access to the greater community the same as non-disabled peers. Individual served reported not feeling isolated from the community outside. Individual served works at a college three days a week, it was their choice to work there.		



<p><u>Inclusion and Community Access</u></p>	<p>Yes</p>	<p>Executive Director and staff member interview reported individuals are given the choice to participate in activities, or access resources in the community. Individuals go grocery shopping, go to sporting events through the high school, go out to eat, go to movies, attend music theater, go on walks, go to church, attend parades, go to the library to do activities, or whatever member chooses to do. Individuals can get to the activities by way of agency transportation, community members, friends, family, and some walk. Executive Director and staff member interview reported individuals are given a schedule of activities and encouraged to get out into the community to ensure that individuals are integrated into the community and do not experience isolation. Individuals can have competitive, integrated paid jobs in the community or at this setting.</p>		
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<p><u>Autonomy and Choice, Setting Selection</u></p>	<p>Yes</p>	<p>Individual served mentioned they chose to receive services at Tri-Valley Developmental Services. Individual served has not been at this setting long enough to have meeting or check in to update person-centered service plan but is aware of PSCP.</p> <p>Executive Director and staff member interview reported individuals choose to receive services at this setting or a guardian might help them make the decision if individuals are not capable of making the choice. Both Executive Director and staff member interviewed stated every individual receiving Medicaid HCBS have a person-centered plan that is reflective of the individual's personal needs and preferences. PCPS are updated at admissions, annually or when a significant change is noted.</p>		
		<p>Individual served rights to privacy, dignity, respect and freedom from coercion and restraint are well represented in the current setting. Individual served reported having all the privacy they want at this setting. They can lock the door to their sleeping area, has privacy when talking to others on the phone or communicating with others.</p>		



<p><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></p>	<p>Yes</p>	<p>They mentioned staff knock before entering their private space. Indicated this setting is physically accessible and they feel they are treated with dignity and respect here. Individual served reported not feeling forced into making a choice that they did not want to make.</p> <p>The Executive Director and staff member interviewed reports that individuals live on their own and allotted all the privacy that they desire. Both Executive Director and staff member confirmed that all have a lock to their sleeping area and mentioned staff are to knock and wait to enter an individual's private space. Executive Director and staff member indicated all settings are physically accessible for individuals. If adaptive devices are needed, we would assist with getting these. Both mentioned to ensure that individuals are treated with respect and dignity staff and individuals are trained on Right and Responsibilities. Training helps staff understand how to treat individuals.</p> <p>All interviews confirmed that the individual is free from restraint, seclusion, and coercion.</p>		
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Autonomy and Choice,
Planning and Life
Choices

Yes

The person served mentioned making own schedule and having control over their choices. Person served can come and go as they please and does not have a curfew. Person served mentioned having free access to all areas inside and outside whenever they want. When person served wants something to eat, they can access the full kitchen in the apartment at any time and eat anything they choose that was prepared with the help of mother. Person served mentioned having access to a laundry mat in the apartment complex but does laundry at parents' house. The person served also reported that they have a choice in who comes to their home and how long they stay there, this includes staff. The person served was aware of their lease with the apartment complex.

Executive Director and staff member indicated individuals get to make their own schedule. There are no restrictions at this setting regarding when individuals can come and go, such as a curfew. Individuals have free access to all areas inside and outside whenever they want. All individuals have their own kitchen. All individuals can access food whenever



		<p>they want, eat when they want, eat where they want, and can choose who they want to eat with. There is a laundry facility in complex that individuals have access to at any time they choose and two laundry mats within walking distance. All individuals have a lease that protects them from being evicted or forced to move out.</p>		
<p><u>Autonomy and Choice, Choices Regarding Services and Supports</u></p>	<p>Yes</p>	<p>The person served interview made it apparent that they had total input into their services and supports. Person served was aware of being able to choose their services and who they receive supports from. Person served knows they can talk to residential coordinator or staff if they need to request a change to their program, services, or providers.</p> <p>Executive Director and staff member reported that individuals are in control of their own choices. They can choose their services and who they receive the services from. The agency holds annual options counseling meetings and characteristics of the final rule such as their rights, autonomy, and responsibility are discussed.</p>		



<p><u>Staff Training in HCBS and the Final Rule</u></p>	<p>Yes</p>	<p>The staff interviewed made it apparent that during the initial training period different characteristics of the final settings rule are discussed. These characteristics include rights, autonomy, and choice.</p>		
<p><u>Presumptively Institutional Settings</u></p>	<p>Yes</p>	<p>The setting has been flagged for having characteristics of isolation and meets the definition of a Category 3 Heightened Scrutiny Setting. Though there are presumptions of isolation the setting, policy and procedure, processes and interviews verify the setting ensures these presumptions are overcome and Final Settings Rule requirements are met. Policies and procedures are unique to the setting and Home and Community Based characteristics. Individuals are active in the planning of their daily lives and afforded many opportunities to be as independent as possible while still having their needs met.</p>		



<p><u>Settings that Isolate HCBS Beneficiaries</u></p>	<p>Yes</p>	<p>Individual and staff verified policy and procedure is implemented as written to ensure individuals not only actively participate in the daily choices to go into their day/lives, but that staff assist with providing alternative options and work with individuals to accommodate their preferences.</p> <p>It is evident that the setting is person-centered. Those that work here are educated on the resident's rights and personal needs. The resident has control of their choices and is provided all options for consideration when making life choices.</p>		
<p><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>