



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

Provider Name: Brookdale Great Bend

Assessment Id: 4152

Setting Id: 4625

Date of Heightened Scrutiny Assessment: 6/27/2023

Heightened Scrutiny Category

Category 3: Any other settings that have the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Ability to Remediate or Necessity to Transition

Site is able to remediate all items.

General Summary of Site Information

This setting is a residential assisted living facility with a home-like environment that provides services to the frail elderly and/or physically disabled. This home has patios with seating, a large courtyard and garden, a library, multiple sitting areas, living room, tv room with large screen, multiple activity areas, a dining room, a full kitchen, and the individual apartments. There are no restrictive structures at this setting that would prevent individuals served from leaving the property. It is located close to restaurants, healthcare facilities, grocery stores, retail stores and other conveniences.



The provider utilizes the community calendar, newspaper, and resident's interests and suggestions to offer activities and opportunities for members served to experience inclusion and get out into the community. They keep the community and their activity calendars posted and staff verbally informs and offers choices daily for individuals to participate if they choose. The residents currently in this setting are all retired but the provider would facilitate for anyone with the desire and are able to work, volunteer, or go to school in the community. The participant interviewed goes out on walks, but other than occasional appointments, rarely chooses to go on outings to KFC or stores in the community because it is tiring and physically difficult but could at any time should they desire. Residents at this setting access the community with family or friends, agency arranged transportation, provider vehicle, or walking nearby.

The individual interviewed chose to receive services from Brookdale Great Bend because they were all alone and decided to live here after it opened. The Assisted Living facility has entry doors with a doorbell that lock and requires a key or a code to enter. The setting and studio apartments have entry doors that lock, and appropriate staff has access to keys or codes in case of an emergency. The individuals that live in this setting can go into their apartment and close and lock the door for privacy. Residents can also use any unoccupied room in the home for privacy with phone calls or visitors. Each bathroom is equipped with a shower and all adaptive accessories. All who visit including staff, are required to knock prior to entering the member's personal area. The setting is accessible to the persons served and they can freely move about. The individual served can decide when and who visits and the duration of their stay. There is a full kitchen where they can access food at any time, as well as apartment kitchenettes and any food residents may choose to have in their room. Individuals decide what and when they eat, where they eat, and with whom. Staff provides menu options, prepares the meals, assists with meds, laundry, and other activities as needed.

Individuals are supported to be as autonomous and as independent as they desire while still receiving the assistance they need. They choose their schedule, what they want to participate in or not, and how they spend their day. Individuals are free to come and go as they please and do not have a curfew or any restrictions. They choose what services they receive and who provides them and can make changes at any time. The individual can decorate their apartment and the common areas as they choose. They have access to a washer and dryer in the setting to do their own laundry if they like. Every individual has a signed rental agreement that protects them from eviction under the landlord tenant laws. This setting also provides supports for the individuals to have control over their personal resources along with any payee that they may have



and are able to utilize their resources when and how and where they want. Every individual has a person-centered support plan that takes into consideration any individualized needs and preferences. This PCSP is done initially, annually, or earlier as needed with the person served, and their family or guardian (if needed).

The Heightened Scrutiny team conducted an onsite assessment. One member served, and one direct support staff member were interviewed to determine the level of understanding of HCBS and the Final Rule 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 are respectful to those who reside at this setting. Interactions throughout the interview process and in general between individuals and staff were interpersonal, genuine, and apparent that they regularly interact. It was noticed that residents do not hesitate to speak to necessary parties about anything they would like to do and/or change about current circumstances.

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. 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 interviewed shared that they are free to come and go as they please and goes out for walks but otherwise only seldom chooses to go into the community as it is tiring and physically difficult to doctor appointments, KFC, or stores usually in a senior center bus or with staff in their provider vehicle. The provider has activities and events planned every day for them to choose from and they always ask each resident if they would like to participate.		



<p><u>Inclusion and Community Access</u></p>	<p>Yes</p>	<p>The staff interview confirmed that information and added they encourage participants to be involved. They check the newspaper and community calendar and their activities calendar daily and make sure to ask all residents if they want to participate in any events or activities or if they would like to plan anything. Staff also confirmed that individuals served choose what events and activities they participate in or not. The provider keeps the community calendar and their activities posted in the home and residents access the community by walking, going with family or friends, in the provider vehicle or senior center bus other agency arranged transportation. Staff stated that currently all their residents are retired but if someone able was interested in working or going to school in the community, they would facilitate that endeavor with the approval of their support team.</p>		
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<p><u>Autonomy and Choice,</u> <u>Setting Selection</u></p>	<p>Yes</p>	<p>The individual interviewed reported that they chose to receive services at this setting because they were all alone, so they sold their house and land and decided to move in when it opened. The person served also reported that they have a person-centered support plan meeting with their family and provider and participated in creating it.</p> <p>The staff interviewed reported that all members have a person-centered support plan that is created with the resident and/or their guardian as needed when they move in that is updated annually or sooner as needed. Staff reported that the choice to receive services from this provider is by the member and sometimes they get help from their family/guardian. Participants choose what services they receive and who provides them and can make changes at any time.</p>		
		<p>The individual interviewed reported they have privacy and can go to their apartment and close the door, or their bathroom and close the door to have privacy and no one will enter unless they have permission after knocking. The individual said they can go in their</p>		



<p><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></p>	<p>Yes</p>	<p>apartment to have privacy to visit with others or to talk on the phone go into any unoccupied area with visitors and their privacy will be respected by others. The member reported that staff always knocks on the door and waits to be invited in, and reports that they are treated with dignity and respect and have complete control over their choices.</p> <p>The staff member interviewed reports that the individual has an apartment with a locking door that they can go in to have privacy or if they prefer, they can go to any unoccupied area or room like the library, in the setting for privacy with visitors or phone calls. Bathrooms have locking doors as well for privacy. Residents have access to all areas inside or outside of the setting except where medication and chemicals are stored. Staff reported they always knock before entering the member's personal spaces and wait to be invited in before entering. Staff added that appropriate staff has access to a key and would be able to enter to check on the individual for their safety in case of an emergency. The staff confirmed that individuals make all their own choices, and they respect them.</p>		
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		<p>All interviews confirmed that residents are free from restraint, seclusion, and coercion.</p>		
<p><u>Autonomy and Choice,</u> <u>Planning and Life</u> <u>Choices</u></p>	<p>Yes</p>	<p>The individual interviewed stated they decide for themselves how they spend their day. Staff informs them of what activities or events are planned and they choose what to participate in or not. The member served can come and go as they please and is not required to return by any specific time or curfew. When this individual wants something to eat outside of mealtimes, they can access the fully stocked kitchen at any time and has food in their room. They have access to the washer and dryer in their setting to do laundry at any time if they so desire. The individual served reported they decide when and who visits and the duration of their stay. The individual was aware they have a rental agreement that protects them from being forced to move out.</p> <p>The staff interview confirmed this information and added they respect the participant's choices, and make sure their needs are met and accommodate them in being as autonomous and independent as possible.</p>		



<p><u>Autonomy and Choice, Choices Regarding Services and Supports</u></p>	<p>Yes</p>	<p>The individual interviewed made it apparent that they are in control of their choices, their choices are respected, they can choose who provides their services, where they receive services and was able to identify a point of contact if they ever needed to request changes to any services.</p> <p>The staff interviewed reported that the individuals served are in control of their own choices. They can choose their services and who they receive the services from. The provider holds in service meetings where they educate them on the different characteristics of the final rule such as their rights, autonomy and evaluate their level of understanding, and has their rights posted in the setting.</p>		
<p><u>Staff Training in HCBS and the Final Rule</u></p>	<p>Yes</p>	<p>The staff interviewed reported that during the initial onboarding as well as in quarterly and staff meetings when different characteristics of the final settings rule are discussed. These characteristics include rights, autonomy, and choice, ANE, HIPPA and more.</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.</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>		
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<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 isolation 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>