



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

Provider Name: St. Margaret's Mission LLC

Assessment Id: 2839

Setting Id: 3319

Date of Heightened Scrutiny Assessment: 3/14/2023

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

The person served residing at this home receives residential services through St Margaret's Mission. The home is located within a residential neighborhood. There are no restrictive structures at this house entrances that would prevent the individual served from leaving the property. The individual served can go out into the community when they choose, and staff will provide transportation via private van or by way of Sedgwick County Senior public transportation. The individual served participates in community events by attending church, going to the Art Museum, joining family dinners, attending St. Patrick's Day parade, going to doctor's appointments, watching sensory friendly movies, attending concerts, going to nieces and nephews choir concerts, going with nieces and nephews to volleyball and basketball games. The individual lives alone in their own apartment that is attached to private residence. The individual can choose what time the staff arrive and what services the staff are providing. The entry door can be locked at any time to allow for privacy. Appropriate staff has access to a key in case of an emergency. All who visit to include staff, are required to knock on the individual's door. The home is accessible to the resident, and they can move around freely. The individual served can decide when and who visits and the duration of their stay. This single occupancy apartment consists of one bedroom, bathroom, kitchenette, and laundry facility. The bedroom and bathroom doors can be closed and locked to ensure further privacy. The individual has access to a kitchenette where individual can choose what they want to eat, where, when, and with whom. The member is free to decorate all areas of their home to their liking. The setting has a laundry room this is kept locked. The provider delivering services at this setting supports full access for the individual served to have opportunities to seek employment and work in competitive integrated setting or volunteer out in the community. Individual at this setting can utilize resources to their liking however they see fit. Individual is provided a legal agreement that protects them from being evicted or force to move out. Individual has their own PCSP that considers their individualized preferences and needs, and they are updated yearly or as needed. The Heightened Scrutiny team conducted a virtual assessment of the setting, utilizing a laptop with webcam and Microsoft Teams. 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 individual residing at this setting. Interactions throughout the interview process and in general between individual and staff were interpersonal, genuine, and apparent that they regularly interact. 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 residing at this setting is 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
		Individual served is non verbal, parents spoke on behalf of member. Parents mentioned member has non verbal cues as to what is bothering member. Parents indicated individual gets to activities out in the community in members private van or by way of Sedgwick County Senior public transportation. Individual goes to church, Art Museum., family dinners, St Patrick's Day parade, doctors appointments, sensory friendly movies, concerts, nieces and nephews choir concerts, volleyball and basketball games	N/A	



<p><u>Inclusion and Community Access</u></p>	<p>Yes</p>	<p>with nieces and nephews. Parents indicated there are not activities individual is required to attend. They do not believe individual is isolated from the community outside. Parents feel individual does not have the physical and cognitive ability to work out in the community. However, individual does some volunteer work for Catholic Charities and has volunteered at the Lords Diner.</p> <p>The staff interview reported individual served attends soccer, basketball, and volleyball games. goes to church with family, goes to Advent retreat, goes to Botanica, on walks and attends Fall Festival. Member is transported in private van or takes bus home from Catholic Charities. Staff member mentioned individual served is not required to attend any activities. Staff mentioned indicated individual served does not have the capability to work out in the community.</p>		
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<p><u>Autonomy and Choice,</u> <u>Setting Selection</u></p>	<p>Yes</p>	<p>The choice for individual to receive services from St. Margaret's Mission was decided by member parents. They indicated individual did not have the cognitive ability to make decision on their own. Per parents individual has a person-centered plan that takes into account individuals needs and preferences.</p> <p>The staff interview reported parents chose for individual to receive services from St. Margaret's Mission. Staff member agreed that individual served has a person-centered plan that is reflective of their personal needs and preference.</p>	<p>N/A</p>	
		<p>Parents of individual served indicated individual has all the privacy they desire at this setting. Individual has own apartment that is attached to their private residence. Individual has own bedroom bathroom kitchenette, and laundry facility. Parents indicated since individual is non verbal member does not use the phone. There is a lock on the door, but parents mentioned individual is not able to lock due to her physical disability. All knock on individuals door before entering individuals private area. Parents feel this setting is physically</p>	<p>N/A</p>	



<p><u>Rights of Privacy, Dignity, Respect, and Freedom From Coercion and Restraint</u></p>	<p>Yes</p>	<p>accessible for individuals. They indicated individual is treated with dignity and respect here.</p> <p>The staff interview reported individual has all the privacy the desire at this setting. When individual served is getting changed staff makes sure door is closed and windows are covered. If individual served wants to be alone staff clear out of the room and give them space. Staff mentioned door can be locked but individual served is not able to lock them. Staff member reported everyone knocks before entering individuals private space. Individual not capable of decorating sleeping/ living area but family did this for individual served. Staff member mentioned this setting is physically accessible. Staff member indicated individual is treated with respect and dignity by providing individual served their need.</p> <p>All interviews confirmed that the individual is free from restraint, seclusion, and coercion.</p>		
		<p>Parents mentioned individual makes any decision member can verbally tell. Individual can make own decision, they</p>	<p>N/A</p>	



Autonomy and Choice,
Planning and Life
Choices

Yes

indicated individual prefers to have a schedule but individual ultimately makes their own choice. Parents expressed individual has control over their choices since individual gets to do what they want within certain parameters. Parents agreed that individual does not have to return by a certain time when leaving to do something fun or going to appointments. According to parents individual has free access to all areas inside and outside whenever they want, but individual does not have physical ability to get things. They provide member with opportunities for eating, drinking, and snacking. Member does not have access to a place to do laundry since laundry room is kept locked. Individual not physically able to do laundry. Individual is allowed to have visitors of their choosing and whenever they want. Both parents mentioned individual has a legal agreement that protects individual from being evicted or forced to move out.

The staff interview reported individual served has a say in what their day is going to be like. There are not restrictions at this setting regarding when individual can



	<p>come and go, such as a curfew. Staff member mentioned individual has free access to all areas inside and outside whenever they want if it safe. Member served has a kitchenette with snacks and of their favorite food. Individual is on somewhat of a schedule regarding meal times. Laundry room located in bathroom but it is kept locked. According to staff member individual served is allowed to have visitors of their choosing and whenever they want. Staff member did not know if individual served has a legal agreement that protects them from being evicted or forced to move out.</p>	
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<p><u>Autonomy and Choice, Choices Regarding Services and Supports</u></p>	<p>Yes</p>	<p>According to individuals parents individual has a choice in what services they receive and who provides their services. They both know the process in order to request a change to individuals programs, services, providers or activities.</p> <p>The staff member reported if individual is unhappy with who is taking care of them everyone would know. Staff member indicated individuals sister choose the staff who will work with individual, with consideration of what parents think what is best for individual. Staff mentioned individuals parents and sister are the ones to request a change to individuals programs, services, providers, and activities.</p>	<p>N/A</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>N/A</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.. Individual is 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>N/A</p>	
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<p><u>Settings that Isolate HCBS Beneficiaries</u></p>	<p>Yes</p>	<p>Individual parents and staff verified policy and procedure are implemented as written to ensure individual 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 individual 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>N/A</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>	<p>N/A</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>