



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

**Provider Name: Iron Horse Healthcare**

**Assessment Id: 4182**

**Setting Id: 4656**

**Date of Heightened Scrutiny Assessment: 7/5/2023**

## **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**

Healthcare Resort of Leawood Assisted Living of Iron Horse Healthcare, Inc. in Leawood, Kansas has a home-like environment that provides services for the frail elderly and is the entire second floor of the facility that offers skilled nursing on the ground floor. There are no restrictive structures that would prevent the individuals served from leaving the property. The setting has a plenty of parking only a short distance from the entrance and has a circle drive that goes up to the front entrance with a portico roof for convenient, covered drop off and pick up. The exterior has beautifully maintained grounds, patio areas with seating, and wide, sliding front doors that open to a roomy, furnished area ahead and to the left, with a reception counter and staff immediately on the right to provide any assistance. There is also a well-stocked snack counter offering a variety of drinks and an assortment of snacks available for anyone to enjoy. The elevators are visible straight ahead. Administrative



offices, physical therapy, the main kitchen, and skilled nursing are all located on the ground floor.

As mentioned before, Healthcare Resort of Leawood Assisted Living is located on the second floor. It has its own dining room, another fully operational kitchen offering a separate place for meal prep, a bar area on the other side of that kitchen with lounge area and additional seating and activity stations to socialize. They also have a theater room with a huge screen and theater style seats, library, puzzle, games areas with seating, another snack area offering a variety of drinks and assortment of snacks 24 hours a day to choose from, and a laundry room for residents to use at any time. They have a community board and activity board by their dining room that provides news and information that includes calendars of upcoming events and activities both in the setting as well as out in the community. The wellness director has an office at one corner of the apartment halls and there is another staff office at the opposite corner to be easily assessable for residents should they need anything.

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 to offer choices daily for individuals to participate in if they so choose. The residents currently in this setting are all retired but the provider would facilitate for anyone with the desire to work or go to school in the community, and they currently have two residents that choose to volunteer in the broader community. One enjoys serving at Catholic Charities Thrift Store and the other at a church. The participant interviewed stated they typically prefer staying on property because they have rich social conveniences and experiences and good friends right there but occasionally will go out in the community with family or friends, or to restaurants, appointments, shopping, to see Christmas lights, and so on despite it being physically challenging for them in their current condition. Residents at this setting access the community with family or friends, provider vehicle or agency arranged transportation, KC Ride or other public transportation, or walking nearby.

The individual interviewed stated they evaluated several options and visited before choosing to live and receive services from this provider after being released from a rehabilitation facility. The apartment units have lockable doors and residents have their own key, and appropriate



staff have access to a key in case of an emergency. Individuals served can come and go at their own discretion and can have visitors of their choosing at any time. The individuals that live in this setting can go into their apartment and close and lock their door for privacy or are welcome to use any unoccupied areas in the setting with phone calls or visitors as well. 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, including staff. 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 receiving assisted living services 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 served all have a badge to access the elevators and doors anytime they desire and 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 lease agreement that protects them from eviction. 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 of the setting. 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 and onsite observations, 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 and throughout the visit 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
		The setting is not isolating in nature. All assisted Living residents have their own badge to freely access the elevator and doors to come and go at their own discretion at any time. Individuals served are given the choice to participate in activities or groups, or to access resources in the broader community. The individual served interviewed stated they typically prefer to stay there because they are a musician, and likes to play their instruments, and also because they have enjoyable conveniences and		



**Inclusion and  
Community Access**

**Yes**

experiences right there and good friends. They elaborated that it is physically difficult at times for them to go out in their current condition but does visit family and friends, go to restaurants, appointments, shopping, ball games, to see Christmas lights, errands, and so on when they so choose. Individuals served have access to the greater community the same as non-disabled peers. Individual served reported not feeling isolated from the community outside.

Executive Director and staff member interview reported all individuals in the assisted living have their own badge to freely access the elevators and doors as they please, and are given the choice to participate in activities, or access resources out in the community. Individuals go grocery shopping, go to sporting events, go out to eat, go to movies, attend music and 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 with friends or family, public or agency transportation, and some walk. Executive Director and staff member interview reported individuals





	<p>participate in the planning 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 are supported to have competitive, integrated paid jobs, pursue education, or volunteer in the community or at this setting if persons-served so choose.</p>	
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<p><b><u>Autonomy and Choice,</u></b> <b><u>Setting Selection</u></b></p>	<p><b>Yes</b></p>	<p>Individual served stated they chose to receive services from this provider after evaluating other options and visiting, and stated they have a PCSP that includes their preferences and needs and goals, and that they participated in creating it. The individual interviewed stated they have full control over their services, schedules, and decisions.</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 apartment, has</p>		



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

Yes

privacy when talking to others on the phone or communicating with others. They mentioned staff are caring and friendly and knock before entering their private space. The individual served also stated this setting is physically accessible for them in their wheelchair and they feel they are treated with dignity and respect here. The Individual served reported they are in complete control over their decisions and do not feel forced into making any choices that they do not want.

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 apartments 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 any additional adaptive devices are needed, they would assist with getting them. Both mentioned to ensure that individuals are treated with respect and dignity, staff and individuals are trained on Right and Responsibilities.



	<p>Training helps staff understand how to treat individuals.</p> <p>All interviews and onsite observations confirmed that the individual is free from restraint, seclusion, and coercion and that this setting.</p>		
	<p>The person served stated they decide their own schedule and have control over their choices. Individuals served all have a badge to access the elevator and doors and can come and go as they please and without any restrictions or curfew. The person served mentioned having free access to all areas inside, downstairs, and outside whenever they want. When person served wants something to eat, they can have their choice in meals in the dining room or on their own, snacks that are available at any time, access the Assisted Living's full kitchen, or their own apartment kitchenette and eat anything they choose. The individual stated they choose to have their laundry done by staff but have free access to the laundry room to do their own laundry at any time if they so desired. The person served also reported that they have a choice in who visits, and how long they stay, which includes staff. The person served was</p>		



**Autonomy and Choice,**  
**Planning and Life**  
**Choices**

Yes

aware they have a lease that protects them.

Executive Director and staff member indicated individuals get to make their own schedule. All Assisted Living residents have their own badges to freely access the elevators and doors to come and go freely, and 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 access to food at any time with their choice in meals in the dining room or on their own 3 times daily, snack stations with an assortment of snacks and drinks that are kept stocked, and available to them at all times, and their own kitchenette in their apartments with any food they choose to keep. All individuals can access food whenever they want, eat when they want, eat where they want, and can choose who they want to eat with, or alone. All persons-served have access at any time to the laundry room to do their own laundry with or without staff assistance if they so desire or the choice in having staff do their laundry for them.



	<p>All individuals have a lease that protects them from being evicted or forced to move out.</p>		
	<p>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 and Projected Completion Date.          Inclusion and Community Access          Yes / No The setting is not isolating in nature. All assisted Living residents have their own badge to freely access the elevator and doors to come and go at their own discretion at any time.          Individuals served are given the choice to participate in activities or groups, or to access resources in the broader community. The individual served interviewed stated they typically prefer to stay there because they are a musician, and likes to play their instruments, and also because they have enjoyable conveniences and experiences right there and good friends. They</p>		



elaborated that it is physically difficult at times for them to go out in their current condition but does visit family and friends, go to restaurants, appointments, shopping, ball games, to see Christmas lights, errands, and so on when they so choose. Individuals served have access to the greater community the same as non-disabled peers. Individual served reported not feeling isolated from the community outside.

Executive Director and staff member interview reported all individuals in the assisted living have their own badge to freely access the elevators and doors as they please, and are given the choice to participate in activities, or access resources out in the community. Individuals go grocery shopping, go to sporting events, go out to eat, go to movies, attend music and 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 with friends or family, public or agency transportation, and some walk. Executive Director and staff member interview reported individuals participate in the planning 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 are supported to have competitive, integrated paid jobs, pursue education, or volunteer in the community or at this setting if persons-served so choose.

N/A

Autonomy and Choice, Setting Selection  
Yes / No Individual served stated they chose to receive services from this provider after evaluating other options and visiting, and stated they have a PCSP that includes their preferences and needs and goals, and that they participated in creating it. The individual interviewed stated they have full control over their services, schedules, and decisions.

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





**Autonomy and Choice,**  
**Choices Regarding**  
**Services and Supports**

**Yes**

personal needs and preferences. PCPS are updated at admissions, annually or when a significant change is noted.

N/A

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

Yes / No 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 apartment, has privacy when talking to others on the phone or communicating with others. They mentioned staff are caring and friendly and knock before entering their private space. The individual served also stated this setting is physically accessible for them in their wheelchair and they feel they are treated with dignity and respect here. The Individual served reported they are in complete control over their decisions and do not feel forced into making any choices that they do not want.

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 apartments 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 any additional adaptive devices are needed, they would assist with getting them. 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.

All interviews and onsite observations confirmed that the individual is free from restraint, seclusion, and coercion and that this setting.

N/A

Autonomy and Choice, Planning and Life Choices

Yes / No The person served stated they decide their own schedule and have control over their choices. Individuals served all have a badge to access the elevator and doors and can come and go as they please and without any



restrictions or curfew. The person served mentioned having free access to all areas inside, downstairs, and outside whenever they want. When person served wants something to eat, they can have their choice in meals in the dining room or on their own, snacks that are available at any time, access the Assisted Living's full kitchen, or their own apartment kitchenette and eat anything they choose. The individual stated they choose to have their laundry done by staff but have free access to the laundry room to do their own laundry at any time if they so desired. The person served also reported that they have a choice in who visits, and how long they stay, which includes staff. The person served was aware they have a lease that protects them.

Executive Director and staff member indicated individuals get to make their own schedule. All Assisted Living residents have their own badges to freely access the elevators and doors to come and go freely, and 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 access to food at any time with their choice in meals in the dining room or on their own 3 times daily, snack stations with an assortment of snacks and drinks that are kept stocked, and available to them at all times, and their own kitchenette in their apartments with any food they choose to keep. All individuals can access food whenever they want, eat when they want, eat where they want, and can choose who they want to eat with, or alone. All persons-served have access at any time to the laundry room to do their own laundry with or without staff assistance if they so desire or the choice in having staff do their laundry for them. All individuals have a lease that protects them from being evicted or forced to move out.

N/A

Autonomy and Choice, Choices Regarding Services and Supports

Yes / No 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



		<p>stated they can tell any staff if they want to make any changes 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><b><u>Staff Training in HCBS and the Final Rule</u></b></p>	<p><b>Yes</b></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><b><u>Presumptively Institutional Settings</u></b></p>	<p><b>Yes</b></p>	<p>The setting has been flagged for having characteristics of isolation and meets the definition of a Category 1 Heightened Scrutiny Setting. Though there are presumptions of isolation the setting, policy and procedure, processes, interviews, and onsite observations 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>		
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<p><b><u>Settings that Isolate HCBS Beneficiaries</u></b></p>	<p><b>Yes</b></p>	<p>Individual, executive director, and staff interviews and onsite observations 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><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

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***

There were no public comments received for this summary.