



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

**Provider Name: Sunflower Diversified Services, Inc**

**Assessment Id: 3955**

**Setting Id: 4434**

**Date of Heightened Scrutiny Assessment: 3/16/2023**

## **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**

Sunflower Diversified Cherry Village Apt #47 is a single residence apartment that is adjacent to a skilled nursing facility. This setting is in an apartment building and does not look like a facility amongst other apartment buildings and is located by residential homes, apartments, and a skilled nursing facility. Each person served has their own private apartment that has a bedroom, bathroom, kitchen and living room that provides privacy for the person served. Sunflower Diversified has their own transportation system and all person served that reside at this setting can utilize and staff are trained to assist with arranging transportation on an individual basis, as needed, or requested. Person served can decide with family or friends to get a ride or use the public transportation system as well. All person served are free to come and go as they please and this makes it very easy to access the greater community resources and activities. Interviews verified that person served fully participate in choosing their daily activities in the greater community and work at attaining any goals they may have. It was made very apparent through interview and observation that person served knows how and who to ask when they express a desire to do an activity of their choosing. It was also observed that person served has a very good personal relationship with their staff and are very open when speaking to them and that helps facilitate their autonomy and choice. Throughout the entire assessment it was very easy to see that the person served was comfortable speaking openly and not being coerced in any way. There were interviews conducted for this setting and it consisted of one person served, the Executive Director and one staff member to determine their level of understanding of HCBS and the Final Settings Rule requirements/characteristics. The interviews were done by using a laptop and Microsoft Teams. Throughout the interview process it was made apparent these characteristics are taught to those who live and work there, written in policy and procedure and maintained through quality assurance processes. The interactions throughout the interviews and in general between staff and person served were very genuine and interpersonal. It was observed during the interviews that all staff are respectful to the person who live at this setting. It was made very apparent that the staff and person served 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 person served as well as implementation of policy and procedure. The person served 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 person served interview made it apparent that they could come and go anytime they want and get out in the community. The person served also confirmed the opportunity to make plans with family and friends. Person served utilizes Sunflower Diversified transportation and public transportation. Sunflower Diversified gives every person served a form on a weekly basis and they can choose what activities they would like to participate in or add activities they would like to do that week or the		



**Inclusion and  
Community Access**

**Yes**

upcoming week. The person served has participated in Rec classes, swimming on Tuesday and Thursday, attends church on Sunday, taking walks with boyfriend, going grocery shopping at Walmart, attending Advocacy Day in Topeka, going to wrestling shows, movies, going to Dodge mall and being part of Self Advocacy Coalition of Kansas. Person served mentioned not feeling isolated from the community outside. Person served indicated not having a paid job out in the community at this time but if wanted they could. Person served volunteers in church nurse. Mentioned they chose to do this, not told what to do.

The staff and Executive Director interview confirmed that individuals have several different opportunities to access the greater community. They also reported that they have scheduled weekly activities that the individuals can choose to participate in that include eating at restaurants, swimming, shopping, movies, bowling, zoo, bird watching tours at Cheyenne Bottoms, Cosmosphere in Hutchinson, Stenberg Museum in Hays, Lions Clubs, Action Club, going to the



	<p>library, participating in Special Olympics, parades, riding on floats and judge floats, dances, games at local Recreation Center, pancake feeds, church services, wrestling show events and concerts, and attending Advocacy Day in Topeka. Sunflower Diversified also provides several different opportunities for individuals to participate in seasonal celebrations in the community throughout the year. They have their own transportation system that is available daily or the individuals can plan with family or friends to get a ride or use the public transportation system. All the individuals are free to come and go as they please and this makes it very easy to access community resources and activities.</p>	
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<p><b><u>Autonomy and Choice, Setting Selection</u></b></p>	<p>Yes</p>	<p>The person served interview mentioned making the decision to receive services at Sunflower Diversified and all options were given. Supports are provided in a manner consistent with the PCSP for the person served living at this location. Person served was aware of PCSP and mentioned it is updated yearly.</p> <p>The staff and Executive Director interview made it very apparent the individual and/or assistance by guardian choose to receive services at this setting. PCSP are done during initial assessment, annually and if a change is needed to be made. If a change is needed to be made to the PCSP there is a group meeting with staff and person served, they will make sure they have goals and help person served reach them. All individuals that show an interest in having services provided from Sunflower Diversified are given a tour of available apartments and all services available through the agency prior to making the final decision. Ultimately it is the person served that makes the choice to get services from Sunflower Diversified.</p>		
		<p>The person served interviewed reported having privacy in their apartment,</p>		





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

Yes

mentioned significant other will be moving in soon. Person served indicated being able to lock the main door, bedroom, and bathroom door. Mother and significant other have a key and Sunflower has one for emergency purpose. Person served can shut bedroom door for privacy while talking on the phone or communicate with others. Person served reported that staff knock and wait to enter before entering private space. Person served made it clear this apartment is physically accessible for them to get around. Person served reported being treated with dignity and respect and having complete control over choices.

The staff and Executive Director interview reported individuals live alone and have private bedroom that they can go in to have privacy. The staff and Executive Director reported that the agency has a key to the individual's apartment in case of an emergency. The staff and Executive Director confirmed that individuals can make all their own choices. Staff are trained on respect and dignity, and they are not allowed to be left alone until they pass their classes to ensure individuals



	<p>are treated with respect and dignity. To ensure individuals are free from coercion staff make sure others that are around them treat them with respect and they are not treated any different than they would want to be treated.</p> <p>All interviews confirmed that the individual is free from restraint, seclusion, and coercion.</p>		
	<p>During the person served interview it was confirmed person served makes own schedule and has complete control over choices. Person served can do the things they like to do at this setting. Person served can come and go places and does not have to return by a certain time. Person has free access to all areas inside and outside whenever they want. Peron served has free access to food; can have any food they want and eat at any time they want since person served has own kitchen. Peron served has full access to a laundry facility that is within the apartment complex and does own laundry. Person served is allowed to have visitors of their choice anytime they choose and as often as they choose. Person served has a lease or legal agreement the protects them from being</p>		



<p><b><u>Autonomy and Choice,</u></b>  <b><u>Planning and Life</u></b>  <b><u>Choices</u></b></p>	<p><b>Yes</b></p>	<p>evicted or forced to move out.</p> <p>The Executive Director and staff interview confirmed individuals make their own schedule and have complete control over their choices. Staff explain options and choices to individuals and choices are honored. Individuals are given choices, good or bad to help optimize individual initiative, autonomy, and independence in make life choices. Individuals can do the things they like here. 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. Individuals have free access to food; can have any food they want and eat at any time they want since all individuals have their own kitchens. Individuals have free access to a laundry facility this is in the apartment complex. Individuals are allowed to have visitors of their choosing and as often as they choose. Individuals have a lease of other legal agreement that protects them from being evicted or forced to move out.</p>		
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<p><b><u>Autonomy and Choice, Choices Regarding Services and Supports</u></b></p>	<p>Yes</p>	<p>During the person served interview it was very apparent they had a choice in what services they received and who provided the services. The person served knew if they wanted to change services or who provided services they could talk to staff or case manager.</p> <p>The Executive Director and staff interview both agreed individuals have complete input into their services and supports. Staff are assigned to the person served, but they can ask for someone else as their direct support staff. If for some reason the direct support staff does not work out for the person served, then a new DSP will be assigned to them, and all accommodations will be made.</p>		
<p><b><u>Staff Training in HCBS and the Final Rule</u></b></p>	<p>Yes</p>	<p>The Executive Director interview made it very clear that all staff have initial training and orientation, monthly training and as needed. The trainings include policy and procedure, training in HCBS, Resident's Rights &amp; Choices and the Final Rule. The staff interviewed confirmed they have been trained in HCBS and Final Rule.</p>		



<p><b><u>Presumptively Institutional Settings</u></b></p>	<p><b>Yes</b></p>	<p>The location of this setting is adjacent to a Skilled Nursing Facility Institution and meets the definition of Category 2 Heightened Scrutiny Setting. Though there are presumptions due to location of the setting, policy and procedure, processes and interviews verify the setting ensures these presumptions are overcome and the Final Settings Rule requirements are met. Policies and procedures are unique to the setting and Home and Community Based characteristics. The person served is active in planning their daily life 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>The individual, Executive Director and staff verified that all policies and procedures are implemented as written to ensure the individual not only actively participates in their daily choices but assist with providing additional and alternative options. All staff work with the individual to accommodate all their preferences. It is evident that the setting is person-centered, staff are educated on how to ensure individuals have access to the broader community and participate in activities of their choice in the broader community.</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

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***

There were no public comments received for this summary.