

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review Evidentiary Summaries

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Report Summary

Description of assessment:

This Report serves as an update to the original State Transition Plan, approved June 2, 2017, and contains steps Arkansas has taken since the approval of the Arkansas plan. Since that time, Arkansas has identified the applicable waivers relevant to the State Transition Plan, verified the settings potentially at risk, revised state rules and manuals, reviewed and updated certification procedures that could be potentially impacted, and conducted assessment activities. In compliance with the final rule, Arkansas also sought to ensure that provider-owned or controlled home and community-based residential settings follow these requirements:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- The individual has privacy in his/her unit including lockable doors, choice of roommate and freedom to furnish or decorate the unit;
- The individual controls his/her own schedule;
- The individual has access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

On December 12, 2022, DPSQA sent a provider self-assessment survey to Arkansas HCBS

providers that are responsible for complying with the settings rule. The memo reminded Arkansas' residential and non-residential providers of the settings rule, and the importance of completing the survey to determine compliance with the settings rule. DHS surveyed over 100 facilities to ensure they were following the settings rules. Of the facilities surveyed, nineteen (19) of those settings met the criteria for heightened scrutiny. If a facility was found to be non-compliant with the settings rule, they were to complete a Corrective Action Plan within 30 days of receiving the non-compliance notice to address the rule violations found during the site review process.

The Arkansas Department of Human Services conducted HCBS provider training and informational presentations, on topics related to the settings rules throughout 2023. It is now the department's practice to discuss settings rules during the licensure process and when presenting information to HCBS providers.

Overview of Heightened Scrutiny Selection:

Heightened scrutiny is how the federal government makes sure Medicaid HCBS funds only go to settings that are truly community-based, and not to institutional settings. In reviewing Arkansas Medicaid providers, nineteen (19) settings were identified that were presumptively institutional. However, through the surveys conducted DHS believes these Providers have overcome the presumption and actually meet the Setting's Rule requirement for a HCBS setting.

Nineteen (19) settings were identified as heightened scrutiny based on the following three (3) prong approach:

- Prong 1- Whether a setting was potentially in a publicly or privately operated facility that provides inpatient institutional treatment;
- Prong 2- Whether a setting was potentially in a building on the grounds of, or adjacent to, a public institution which could impose institutionalization of beneficiaries due to co-location; and
- Prong 3- Whether a setting possibly had the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Please see table of contents above for facility name, type, and the prong that applies to their facility.

Seventeen (17) of the facilities identified for heightened scrutiny were assisted living facilities. Two (2) of the facilities were Community and Employment Support (CES) waiver group homes.

Three (3) of the facilities identified for heightened scrutiny were found to be non-compliant with HCBS settings rules. Those facilities were:

1. Azalea Commons- Failure to comply with 42 CFR 441.301(c)(4)(vi)(B)(2). Resident survey review revealed at least one (1) resident stated they were not able to choose their roommate. This facility was given notice that a Corrective Action Plan must be submitted and implemented in order to rectify their non-compliance.
2. Massey Avenue Operations- Failure to comply with 42 CFR 441.301(c)(4)(vi)(B)(2). Resident survey review revealed at least one (1) resident stated they were not able to choose their roommate. This facility was given notice that a Corrective Action Plan must be submitted and implemented in order to rectify their non-compliance.
3. United Cerebral Palsy (Fox Meadows) – Failure to comply with 42 CFR § 441.301(c)(4)(vi)(A). The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. The rental Agreement that was on-site did not contain sufficient information to assure rights of member as it relates to eviction. This facility was given notice that a Corrective Action Plan must be submitted and implemented to rectify their

non-compliance.

Azalea Commons

On February 15, 2023 a surveyor from the Office of Community Services with the Division of Provider Services and Quality Assurance of the Arkansas Department of Human Services, conducted a survey of Azalea Commons to determine compliance with settings rules. During the investigation two (2) beneficiaries were interviewed. The residents were asked if they had the ability to choose their roommate. One beneficiary interviewed indicated they did not have a roommate. The other beneficiary interviewed indicated they were not provided with an opportunity to choose their roommate. No other non-compliances were identified during the survey. On March 17, 2023 a letter was emailed to Azalea Commons requesting a Corrective Action Plan for non-compliance with 42 CFR 441.301(c)(4)(vi)(B)(2). Upon questioning of facility staff they indicated that no one has a roommate because all rooms are single occupancy, save one apartment shared by a married couple. This has been the case for nearly 17 years. Azalea Commons did not have double occupancy rooms in 2023 when the initial survey was conducted. Azalea Commons still submitted a plan of correction to explain, and the Division of Provider Services and Quality Assurance is confident that perpetual compliance will continue.

Massey Avenue Operations

On February 10, 2023 a surveyor from the Arkansas Department of Human Services, conducted a survey of Massey Avenue Operations to determine compliance with settings rules. During the investigation three (3) beneficiaries were interviewed. The residents were asked if they had the ability to choose their roommate. One beneficiary interviewed indicated they did not have a roommate. The other two (2) beneficiaries interviewed indicated they were not provided with an opportunity to choose their roommate. They indicated no issues with their roommates; however they were not afforded the choice. No other non-compliances were identified during the survey. On March 17, 2023 a letter was emailed to Massey Avenue Operations requesting a Corrective Action Plan for non-compliance with 42 CFR 441.301(c)(4)(vi)(B)(2). Massey Avenue Operations provided a Corrective Action Plan on April 17, 2023 indicating they had put corrective action in place to ensure that all residents were satisfied with their roommates, including having everyone sign a form indicating they agree with their living and roommate arrangements. Perpetual compliance can be ensured with new facility policies and procedures regarding roommate agreements.

United Cerebral Palsy – Fox Meadows—

On July 26, 2023, a surveyor from the Arkansas Department of Human Services conducted a survey of United Cerebral Palsy to determine compliance with settings rules. During the investigation two (2) beneficiary files were reviewed. Beneficiary records contained leases but there was no “protection from eviction”. No other non-compliances were identified during the survey. On June 21, 2024 a letter was emailed to United Cerebral Palsy requesting a Corrective Action Plan for non-compliance with 42 CFR § 441.301 (c)(4)(vi)(A), 42 CFR § 441.530 (a)(1)(vi)(A), 42 CFR § 441.710 (a)(1)(vi)(A). United Cerebral Palsy provided a Corrective Action Plan on June 28, 2024 indicating they had put corrective action in place to ensure that all beneficiary leases contain setting requirement meeting this measure. Perpetual compliance can be ensured with new residential setting policies and procedures regarding lease agreements in this setting that include protection from eviction.

Details of each heightened scrutiny visit is contained in the following pages

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

Facility Name Azalea Commons		Facility Type Assisted Living Facility (ALF)	
Corporate Name (if applicable) Azalea Commons of Springdale		License/Certification # 37743	County Springdale
Facility Address 2175 Orchard St	City Springdale	State AR	Zip Code 72764
Primary Contact Name: Mike Gross	Primary Contact Direct Phone (incl. area code) 479-750-1511	Primary Contact Email Address:: mike.gross@ssmgrp.com	
Facility Website Address https://ssmgrp.com/communities/arkansas/azalea-commons-of-springdale/			

Reason for Institutional Presumption

- ☒ Prong 1-Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution: Azalea Commons of Springdale
- ☐ Prong 2-Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☐ Prong 3-Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Azalea Commons of Springdale](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Azalea Commons is co-located with another HCBS facility, a Residential Care Facility, however the site does not have any residents at this time, and the facility type does not impose any institutionalization. **This site was found to be out of compliance on two HCBS settings rules unrelated to the co-location concerns, the details of which are outlined below.**

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Azalea Commons is an ALF attached to and operated by Senior Solutions Management Group. Azalea Commons is located in Springdale, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Azalea Commons are from Springdale, an Arkansas community of approximately 87,672 people. There are a number of activities and community programs that are available to the residents of Azalea Commons. At the time of the survey, there were seventy-five (75) residents at Azalea Commons, with forty-two (42) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is ninety (90).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of Azalea Common's promotional online materials confirm that Azalea Commons "... offer[s] seniors a comfortable, family-style environment that promotes independence and privacy. Our all-inclusive senior living community in Springdale, Arkansas, provides around-the-clock health and personal care services to ensure each of our residents' needs are met."
- A calendar/newsletter provides examples of community awareness and engagement with Azalea Commons:
 - A beneficiary questionnaire was developed to solicit responses from family members and residents on their views of Azalea Commons. One beneficiary commented, "I go out with family and go shopping." They also indicated that they enjoy living at the facility so much, "I don't really like to leave the building." Another beneficiary indicated they go shopping and to a local duck pond with their friends.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety."

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Azalea Commons encourages involvement, where possible, with the family members of every resident. Family and residents are sent the monthly newsletter to inform them of activities that are occurring at the facility and in the surrounding community. Residents are free to come and go and attend outings in the community, vacation opportunities with family, dining out with friends and family. Families and friends are encouraged to participate in Azalea Commons activities both in-house and in the greater community.
-

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- Staff will also work closely with family members, friends, and volunteers to arrange transportation for resident appointments in the community. The facility provides transportation into the community.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1 Occupancy Admission Agreement

- m. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Azalea Commons enjoy many options for interaction and access to the greater Springdale community. Although the majority of residents are retired, they are encouraged to continue their community participation as long as they choose.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Azalea Commons confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of admission agreements, and beneficiary surveys, support that Azalea Commons was selected from a choice of setting options.
- Resident annual reviews also documented that this setting continues to be the setting of choice for the individual.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources

available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

1. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Azalea Commons the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Azalea Commons campus that the resident can choose. If they utilize outside services the facility facilitates transportation to and from appointments.
- Azalea Commons residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements.
- *Program Statement:* Azalea Commons purpose is "...We partner with our assisted living residents and their families to create individualized care plans to support them to their highest level of independence. When you choose Azalea Commons of Springdale, we'll take care of the work while you or your loved one's time is spent enjoying their favorite pastimes and discovering new interests or hobbies."
- A review of five (5) beneficiary surveys indicate the facility provides transportation options for community outings of the resident's choice.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, keep a car at the facility, have visitors at any time, and participate in activities of their choosing.
 - One person-centered plan review highlighted a resident's grandchild stays overnight sometimes.
 - Azalea Commons offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

[A review of Azalea Commons](#)

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

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☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have their grandson overnight in their apartment.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Admission Agreement describes that each resident has three meals a day, snacks anytime, and access to food as they desire. Each resident of Azalea Commons can have a nutritional program and diet developed for them and every effort will be made to meet the individual needs of the resident. Per their promotional website, "Nutritious Meals & Snacks with Alternative Options and Dietitian Oversight"

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

700

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social,

political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

600 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Azalea Commons have an individualized *Admission Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Azalea Commons's *Admission Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☐ Met ☐ Unmet ☒ Not Applicable

Azalea Commons is not co-located with an institutional setting. There is a Residential Care Facility (RCF) on the same property, however the RCF is an HCBS facility as well, therefore there are no institutionalization concerns.

The facility has a unit for specialized care that is separate and distinct from the rest of the Azalea Commons facility.

“REFLECTIONS

- Supports Residents Requiring a Higher Level of Physical Care
- Private Dining and Activities Area
- Private Outdoor Courtyard
- Higher Staff to Resident Ratio
- More Secure Environment”

Photos are present on the facility website that demonstrate a home-like environment and are individually decorated. The lounge, activity areas, and dining areas are distinct to assist residents in navigating the facility and distinguishing between provided services of the Reflections side of the facility.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Azalea Commons has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☐ Met ☒ Unmet ☐ Not Applicable

Resident survey review revealed at least one resident stated they were not able to choose their roommate. This facility was given notice that a Corrective Action Plan must be submitted and implemented in order to rectify their non-compliance with 42 CFR 441.301(c)(4)(vi)(B)(2)

Upon questioning of facility staff they indicated that there are no double occupancy units. The only unit that is double occupancy is shared by a married couple. All rooms have been single occupancy for over 17 years.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

600 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Azalea Commons *Bill of Rights* confirms that there is a written agreement in place for each HCBS resident that outlines room, board, grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☐ Met ☐ Unmet ☒ Not Applicable

Azalea Commons is not co-located with an institutional setting. There is a Residential Care Facility (RCF) on the same property, however the RCF is an HCBS facility as well, therefore there are no institutionalization concerns.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that *Azalea Commons of Springdale Assisted Living Facility* continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Massey Avenue Operations		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Mtn View Residential Home – A Waters Community, LLC		<i>License/Certification #</i> 32538	<i>County</i> Stone
<i>Facility Address</i> 414 Massey Avenue	<i>City</i> Mountain View	<i>State</i> AR	<i>Zip Code</i> 72560
<i>Primary Contact Name:</i> Kathy Hart	<i>Primary Contact Direct Phone (incl. area code)</i> 870-269-5845	<i>Primary Contact Email Address::</i> administator@blossomsatmountainviewalf.com	

Facility Website Address: none

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution: Massey Avenue Operations
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Massey Avenue Operations](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Massey Avenue Operations is co-located with another HCBS facility, a Residential Care Facility, however the site does not have any residents at this time, and the facility type does not impose any institutionalization. **This site was found to be out of compliance on two HCBS settings rules unrelated to the isolation concerns outline in prong 3, the details of which are outlined below.**

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Massey Avenue Operations is an ALF attached to and operated by Mountain View Residential Operations. Massey Avenue Operations is located in Mountain View, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Massey Avenue Operations are from the surrounding Mountain View area, an Arkansas community of approximately 81,059 people. There are a number of activities and community programs that are available to the residents of Massey Avenue Operations. At the time of the survey, there were seventeen (17) residents at Massey Avenue Operations, with seven (7) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is thirty-two (32).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys confirm that Massey Avenue Operations have "...a calendar posted on the bulletin board with the dates and times of activities."
 - Further review of beneficiary surveys confirm that residents can come and go as they please.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Massey Avenue Operations encourages involvement, where possible, with the family members of every resident. One resident indicates they spend time with their niece regularly. Residents are free to come and go and attend outings in the community, vacation opportunities with family, dining out with friends and family.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- Staff will also work closely with family members, friends, and volunteers to arrange transportation for resident appointments in the community. The facility provides transportation into the community.
- The facility does not have transportation but works closely with families and friends of residents to coordinate transportation for individuals. Mountain View is a rural area and public transportation is difficult to come by. Medicaid does provide transportation in the area for medical purposes. The administrator indicated "If they need to go somewhere but do not have a car then we give provisional transportation."

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1 Occupancy Admission Agreement

- m. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Massey Avenue Operations enjoy many options for interaction and access to the greater Mountain View community. Although the majority of residents are retired, they are encouraged to continue their community participation as long as they choose. Administrator indicated "We have some that volunteer at the hospital and that go to the community center."

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to "Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits." "Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;" "Be allowed to manage his or her financial affairs." https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Massey Avenue Operations confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> "We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports."

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Massey Avenue Operations was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

2. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Massey Avenue Operations the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Massey Avenue Operations campus that the resident can choose. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments.
- Massey Avenue Operations residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements. One beneficiary indicated they do not decorate their apartment, but this was by persona choice, not facility policy.
- A review of three (3) beneficiary surveys indicate the facility makes every attempt to coordinate transportation for community outings of the resident's choice.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Massey Avenue Operations offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
 - Massey Avenue Operations has a pool therapy room on site for resident use as well.
 - Administrator also indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities. The meals are scheduled, but someone is available on site 24/7 to prepare food when requested.
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten and will be promulgated before the end of 2025.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Massey Avenue Operations

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have family visit them in their apartment.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Admission Agreement describes that each resident has three meals a day, snacks anytime, and access to food as they desire.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

701

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

601 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for

which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Massey Avenue Operations have an individualized *Admission Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Massey Avenue Operations' *Admission Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Massey Avenue Operations is not co-located with an institutional setting. There is a Specialized Nursing Facility (SNF) directly across the street, however the SNF has separate operating procedures and policies and therefore there is no overlap in policies or risk to those in the ALF, when it comes to potential impositions of the SNF policies.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Massey Avenue Operations has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☐ Met ☒ Unmet ☐ Not Applicable

Resident survey review revealed at least one resident stated they were not able to choose their roommate. This facility was given notice that a Corrective Action Plan must be submitted and implemented in order to rectify their non-compliance with 42 CFR 441.301(c)(4)(vi)(B)(2)

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates, “Yes, we have occupancy agreements.”

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

604 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Massey Avenue Operations beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Massey Avenue Operations is co-located with an institutional setting. There is a Specialized Nursing Facility (SNF) directly across the street that is owned by the same company, however the SNF has completely separate financial and operational procedures and therefore institutionalization is not a concern. Administrator indicated, "The Blossoms is a separate operation and they do not do any activities together with us nor the same programs."

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Massey Avenue Operations continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> West Dixon ALF Operating LLC		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> West Dixon Assisted Living – A Waters Community, LLC		<i>License/Certification #</i> 32490	<i>County</i> Pulaski
<i>Facility Address</i> 2821 W. Dixon Road	<i>City</i> Little Rock	<i>State</i> AR	<i>Zip Code</i> 72206
<i>Primary Contact Name:</i> Kimi Matthews	<i>Primary Contact Direct Phone (incl. area code)</i> 501-888-4080	<i>Primary Contact Email Address::</i> KMatthews@blossomsatwestdixonalf.com	
Facility Website Address: https://blossomsrnc.com/life-at-the-blossoms/			

Reason for Institutional Presumption

- ☒ Prong 1-Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution: West Dixon ALF Operating LLC
- ☒ Prong 2-Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution: West Dixon ALF Operating LLC
- ☐ Prong 3-Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas [assisted living facility](#) (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [West Dixon ALF Operating LLC](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. [West Dixon ALF Operating LLC](#) is co-located with a specialized nursing facility, however the site does not impose any institutionalization due to building design and separation of residents, as well as standing policies.

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

West Dixon ALF Operating LLC is an ALF attached to and operated by A Waters Community, LLC. West Dixon ALF Operating LLC is located in Little Rock, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at West Dixon ALF Operating LLC are from the surrounding Little Rock area, an Arkansas community of approximately 202,864 people. There are a number of activities and community programs that are available to the residents of West Dixon ALF Operating LLC. At the time of the survey, there were thirteen (13) residents at West Dixon ALF Operating LLC, with seven (7) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is thirty-two (32).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary survey confirms that residents can come and go as they please.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at West Dixon ALF Operating LLC encourages involvement, where possible, with the family members of every resident.
 - Per their website “At The Blossoms [at West Dixon], we believe engagement in activities beyond routine care is a critical component to your loved one’s recovery. To that end, we provide our residents with a daily schedule of organized recreational and educational activities, along with a host of other weekly and monthly events.”
-

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- Staff work closely with family members, friends, and volunteers to arrange transportation for resident appointments in the community. The facility provides transportation into the community.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

604.1 Occupancy Admission Agreement

- n. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a

criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Residents at The Blossoms at West Dixon enjoy many options for interaction and access to the greater Little Rock community. Although the majority of residents are retired, they are encouraged to continue their community participation as long as they choose.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at The Blossoms at West Dixon ALF Operating LLC confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys support that West Dixon ALF Operating LLC was selected from a choice of setting options.
 - Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.
-

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

3. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At West Dixon ALF Operating, LLC the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the West Dixon ALF Operating LLC campus, according to their website, that the resident can choose. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments, or provides transportation.
- West Dixon ALF Operating, LLC residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements.
- A review of one (1) beneficiary survey indicate the facility makes every attempt to coordinate transportation for community outings of the resident's choice.
- A review of West Dixon website states, "We believe our facilities shouldn't just be a place to recover, but a place to proudly call home, regardless of the length of your stay. Although specific amenities may differ from facility to facility, our homes boast a wide array of amenities to help make your stay as pleasant as possible. Bright, airy rooms provide plenty of personal space, while large, open common areas offer an inviting place for socializing. Our residents enjoy 3 sumptuous, gourmet-style meals daily, prepared by our chef under the direction of a registered dietitian."

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Administrator also indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities.
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten and will be promulgated before the end of 2025.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of West Dixon ALF Operating, LLC

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

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☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

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☒ Met ☐ Unmet ☐ Not Applicable

Admission Agreement describes that each resident has three meals a day, snacks anytime, and access to food as they desire.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

702

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

602 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for

which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Per the administrator, residents at West Dixon ALF Operating, LLC have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☐ Met ☒ Unmet ☐ Not Applicable

West Dixon ALF Operating, LLC is co-located with an institutional setting. There is a Specialized Nursing Facility (SNF) attached to West Dixon ALF Operating, LLC, however the SNF has separate operating procedures and policies and therefore there is no overlap in policies or risk to those in the ALF, when it comes to potential impositions of the SNF policies.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are private and are not shared with a roommate. Unit apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiaries have private rooms. None of the rooms are double-occupancy.
- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

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Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of West Dixon ALF Operating, LLC has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

Resident survey indicate that facility is in compliance with 42 CFR 441.301(c)(4)(vi)(B)(2), as all units are private and not double-occupancy.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to, “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates, “Yes, we have occupancy agreements.”

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

605 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of West Dixon ALF Operating, LLC beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

West Dixon ALF Operating, LLC is co-located with an institutional setting. There is a Specialized Nursing Facility (SNF) attached to the ALF that is owned by the same company, however the SNF has completely separate financial and operational procedures and therefore institutionalization is not a concern.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

• A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements. Policies and procedures and trainings for the HCBS versus the SNF are different and therefore the risk for institutionalization is reduced.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that West Dixon ALF Operating, LLC continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule

Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Brookdale Chenal Heights		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Brookdale Chenal Heights		<i>License/Certification #</i> 33028	<i>County</i> Pulaski
<i>Facility Address</i> 1 Chenal Heights Dr.	<i>City</i> Little Rock	<i>State</i> AR	<i>Zip Code</i> 72223
<i>Primary Contact Name:</i> Jay Bianco	<i>Primary Contact Direct Phone (incl. area code)</i> 501-846-3544	<i>Primary Contact Email Address::</i> jbianco@brookdale.com	
Facility Website Address: https://www.brookdale.com/en/communities/brookdale-chenal-heights.html?cid=yext			

Reason for Institutional Presumption

- ☐ Prong 1- Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☒ Prong 2-Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution: Brookdale Chenal Heights
- ☐ Prong 3- Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that Brookdale Chenal Heights has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Brookdale Chenal Heights is co-located with a specialized nursing facility (SNF) that is across the street [Hickory Heights Health and Rehabilitation Center], however the facility does not impose any institutionalization on Brookdale Chenal Heights as the two facilities are owned by separate organizations, the two facilities do not have co-mingled activities, nor do they share personnel. The facility does have a locked memory care unit (Alzheimer's Special Care Unit [ASCU]), but individuals served in the memory care unit are still encouraged to maintain as much of their independence as possible, based on the recommendations of their personal care plan. Their website indicates, "Our memory care program features a person-centered approach that's designed to help your loved one feel a sense of belonging and purpose, while still preserving their sense of self. One way we accomplish this is through a commitment to consistent care assignments of the same associates to your loved one whenever possible. Featuring a secure environment, our memory care communities have the same look and function as a private home. Seniors are able to participate in our daily path of engagement, which encourages their current skills through research-based activities.." [This site was found to be in compliance as a result of the site and beneficiary surveys conducted.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Brookdale Chenal Heights is an ALF attached to and operated by Brookdale Senior Living, Inc.. Brookdale Chenal Heights is located in Little Rock, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Brookdale Chenal Heights are from the surrounding Little Rock area, an Arkansas community of approximately 202,864 people; the State's capital. There are a number of activities and community programs that are available to the residents of Brookdale Chenal Heights, and the facility ensures that community activities/outings are offered and encouraged. At the time of the survey, there were sixty-five (65) residents at Brookdale Chenal Heights, with twenty-one (21) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is ninety-eight (98).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys confirm that Brookdale Chenal Heights have “Calendars of events, flyers, and notes are provided to the residents to provide them with info about community events.”
 - Further review of beneficiary surveys confirm that residents can come and go as they please.
 - Interview with administrator indicates that the ASCU and the neighboring facility do not have overlapping services, and do not share personnel. The ASCU has separate policies and procedures from that of the ALF portion of the facility. The neighboring SNF does not participate in any activities with Brookdale Chenal Heights.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: “The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety.” (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: “Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility.” ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Brookdale Chenal Heights encourages involvement, where possible, with the family members of every resident. One resident indicates they spend time with their family regularly. Residents are free to come and go and attend outings in the community, dining out with friends and family, and have visitors to their apartments regularly.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individuals go to off site locations at their leisure via transportation provided by the facility.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility provides transportation to residents, into the community for shopping, worship, and community events.
- Staff will also work closely with family members, to arrange transportation for resident appointments in the community. The facility provides transportation into the community.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

605.1 Occupancy Admission Agreement

- o. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Brookdale Chenal Heights confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Brookdale Chenal Heights was selected from a choice of setting options. One resident indicated, “My family and I chose this place together.”
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of facility website indicates, "Brookdale caregivers are available to provide assistance with daily living, balancing independence with assistance while delivering service with compassion, understanding, and respect."

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

4. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Brookdale Chenal Heights the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Brookdale Chenal Heights campus that the resident can choose. If they utilize outside services the facility facilitates transportation.
- Brookdale Chenal Heights residents are able to contract with home health and other third-party service providers as well.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements. One beneficiary indicated they decorated their apartment with the help of family and friends.
- A review of two (2) beneficiary surveys indicate the facility provides the bill of rights to the clients, and it is posted on the walls of the facility in public spaces.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Brookdale Chenal Heights offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, what they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
 - Administrator also indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities. The meals are scheduled, but they can request food 24/7.
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten..

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Brookdale Chenal Heights

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

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☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have family visit them in their apartment.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

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☒ Met ☐ Unmet ☐ Not Applicable

Interview with administrator indicates the residents are able to eat 24/7, as there are staff available to cook them meals and snacks at all times. There are also switch outs for meal items based on personal preference.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

703

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

603 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Brookdale Chenal Heights have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Brookdale Chenal Heights' *Occupancy Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Brookdale Chenal Heights is not co-located with an institutional setting. There is a Specialized Nursing Facility (SNF) directly next door, however the SNF has separate operating procedures and policies and therefore there is no overlap in policies or risk to those in the ALF, when it comes to potential impositions of the SNF policies. This is the same for the ASCU unit which is a part of the Brookdale Chenal Heights campus. The ASCU has separate policies and procedures and the ALF residents are not subject to the same rules.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- There are no double occupancy rooms, and therefore residents have full privacy in their apartments.
- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

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Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

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- Beneficiary surveys confirmed that all rooms have locks on their doors and a keys and key codes is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Brookdale Chenal Heights has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☐ Met ☐ Unmet ☒ Not Applicable

This rule is not applicable to Brookdale Chenal Heights, as residents have private living units and do not have roommates.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates, “Yes, we have occupancy agreements.”

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

606 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Brookdale Chenal Heights beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Brookdale Chenal Heights is co-located with an institutional setting. There is a Specialized Nursing Facility (SNF) next door that is owned by a different company. The SNF has completely separate financial and operational procedures and therefore institutionalization is not a concern. Administrator indicated, “Hickory Heights is a totally different company and facility.”

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.
☐ There is no sharing of employees between the ASCU side of the facility and the ALF side during shifts.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas’s Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Brookdale Chenal Heights continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state’s long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas’s aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including “... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more.”

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule

Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Countryside Assisted Living		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Countryside Assisted Living		<i>License/Certification #</i> 32508	<i>County</i> Stone
<i>Facility Address</i> 722 Phillips Place	<i>City</i> Huntsville	<i>State</i> AR	<i>Zip Code</i> 32508
<i>Primary Contact Name:</i> Tara Box	<i>Primary Contact Direct Phone (incl. area code)</i> 479-738-1500		<i>Primary Contact Email Address::</i> tara@countrysideassistedliving.com
Facility Website Address: Countryside Assisted Living			

Reason for Institutional Presumption

- ☐ Prong 1 Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution: Countryside Assisted Living
- ☒ Prong 2 Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☐ Prong 3 Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Countryside Assisted Living](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Countryside Assisted Living does have an Alzheimer's Special Care Unit [ASCU] located on the same campus, however the ASCU is located in a separate building, and does not impose any institutionalization. The website indicates, "This inviting community is made up of two neighborhoods, one caters to assisted living and the other to memory care. Our staff provides professional care to residents with a wide range of needs, from those who require a little extra help with daily activities, to those living with greater memory impairment. Countryside at Huntsville is a family-centered environment. We celebrate every holiday together and invite non-resident family members to attend. We take day trips to art exhibits at Crystal Bridges or to see the Christmas lights in Branson. Everyone works together to make sure all are happy and cared for." [This site was not found to be out of compliance with any HCBS regulations.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Countryside Assisted Living is an ALF operated by Countryside Assisted Living Corp. Countryside Assisted Living is located in Huntsville, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Countryside Assisted Living are from the surrounding Huntsville area, an Arkansas community of approximately 2,880 people. There are a number of activities and community programs that are available to the residents of Countryside Assisted Living. At the time of the survey, there were one hundred five (105) residents at Countryside Assisted Living, with forty-nine (49) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is one hundred six (106).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the site survey confirms that Countryside Assisted Living has "...a board with activities listed."
 - Further review of beneficiary surveys confirm that residents can come and go as they please.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Countryside Assisted Living encourages involvement, where possible, with the family members of every resident. One resident indicates they spend time with their niece regularly. Residents are free to come and go and attend outings in the community, vacation opportunities with family, dining out with friends and family.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- Staff will also work closely with family members, friends, and volunteers to arrange transportation for resident appointments in the community. The facility provides transportation into the community.
- The facility does not have transportation but works closely with families and friends of residents to coordinate transportation for individuals. Countryside Assisted Living is a rural area and public transportation is difficult to come by. Medicaid does provide transportation in the area for medical purposes. The administrator indicated "If they need to go somewhere but do not have a car then we give provisional transportation."

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m) Occupancy Admission Agreement

- n. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a

criminal record check;

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- Staff work closely with family members, friends, and volunteers to arrange transportation for resident appointments in the community. The facility provides transportation into the community when necessary, including facility outings and group activities.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m) Occupancy Admission Agreement

- o. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Countryside Assisted Living enjoy many options for interaction and access to the greater Countryside Assisted Living community. Although the majority of residents are retired, they are encouraged to continue their community participation as long as they choose.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Countryside Assisted Living confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy. Site survey including interview with administrator also indicate beneficiaries have the ability to control their own resources both independently and with assistance from the facility.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Countryside Assisted Living was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting. Several primary care provider offices are located directly across the street and very nearby.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

5. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Countryside Assisted Living the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Countryside Assisted Living campus that the resident can choose. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments, or provides transportation to the appointments.
- Countryside Assisted Living residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements.
- A review of five (5) beneficiary surveys indicate the facility makes every attempt to coordinate transportation for community outings of the resident's choice.
- There are flyers and posters for residents to decide what community activities they would like to attend. And the facility provides transportation to those activities.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
- Countryside Assisted Living offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
- Administrator also indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities. The meals are scheduled, but someone is available on site to prepare food when requested.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Countryside Assisted Living

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

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Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have their grandson overnight in their apartment.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Admission Agreement describes that each resident has three meals a day, snacks anytime, and access to food as they desire. Each resident of Countryside Assisted Living can have a nutritional program and diet developed for them and every effort will be made to meet the individual needs of the resident. Per their promotional website, "Nutritious Meals & Snacks with Alternative Options and Dietitian Oversight"

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

604 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Countryside Assisted Living have an individualized *Admission Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Countryside Assisted Living *Admission Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Beneficiaries indicated they have a lease agreement with the facility.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Countryside Assisted Living is not co-located with an institutional setting.

Photos are present on the facility website that demonstrate a home-like environment and apartments are individually decorated. The ASCU is in a completely separate building and the personnel are separate as well. This prevents institutionalization.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

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- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Countryside Assisted Living has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

Resident survey review indicated residents can choose roommate if they choose to share their apartment. However, the facility does not have any double occupancy apartments.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

601 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Azalea Commons *Bill of Rights* confirms that there is a written agreement in place for each HCBS resident that outlines room, board, grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Countryside Assisted Living is not co-located with an institutional setting. There is an ASCU on the same campus, however it is located in a separate building with separate policies and procedures, and separate staff.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that *Azalea Commons of Springdale Assisted Living Facility* continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Daltons Place at Star City		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Lincoln County Assisted Living DBA Dalton's Place at Star City		<i>License/Certification #</i> 32462	<i>County</i> Lincoln
<i>Facility Address</i> 142 Teva St	<i>City</i> Star City	<i>State</i> AR	<i>Zip Code</i> 71667
<i>Primary Contact Name:</i> Gena Loftin	<i>Primary Contact Direct Phone (incl. area code)</i> 870-628-3033		<i>Primary Contact Email Address:</i> gena@daltonsplaceatstarcity.com

Facility Website Address: https://daltonsplaceatstarcity.com/life_at_dalton/

Reason for Institutional Presumption

- ☐ Prong 1- Settings in a publicly or privately operated facility that provides inpatient institutional treatment.
- ☐ Prong 2- Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Prong 3- Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services. Name of institution: Daltons Place at Star City

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Daltons Place at Star City](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. [Daltons Place at Star City](#) is not co-located with an institution and the facility type and services provided do not impose any institutionalization. [This site was not out of compliance with HCBS settings rules.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Daltons Place at Star City is an ALF and rehab facility attached to and operated by Lincoln County Assisted Living. Daltons Place at Star City is located in Star City, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Daltons Place at Star City are from the surrounding Star City area, an Arkansas community of approximately 2,124 people. There are a number of activities and community programs that are available to the residents of Daltons Place at Star City. The facility encourages independence by providing transportation into the community and facilitating involvement in community activities. At the time of the survey, there were forty-three (43) residents at Daltons Place at Star City, with eighteen (18) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is fifty-three (53).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of facility surveys of administrator and staff confirm that Daltons Place at Star City has "...A calendar of community events and activities are posted on bulletin board, written notes handed out, and verbal communication of those events/activities. Some of the events include parade, church service, bowling, movies, and senior day at the fair."
- Further review of beneficiary surveys confirm that residents can come and go as they please.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety."

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Daltons Place at Star City encourages involvement, where possible, with the family members of every resident. Residents indicate they spend time in the community regularly.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- Staff will also work closely with family members, friends, and volunteers to arrange transportation for resident appointments in the community. The facility provides transportation into the community.
- When the facility does not have transportation available they work closely with families and friends of residents to coordinate transportation for individuals. Star City is a rural area and public transportation is difficult to come by. Medicaid does provide transportation in the area for medical purposes. The administrator indicated “If they need to go somewhere but do not have a car then we give provisional transportation.”

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m) Occupancy Admission Agreement

- p. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of

certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Daltons Place at Star City enjoy many options for interaction and access to the greater Star City community. Although the majority of residents are retired, they are encouraged to continue their community participation as long as they choose. Administrator indicated “We have some that volunteer at the hospital and that go to the community center.”

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Daltons Place at Star City confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Daltons Place at Star City was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

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Person-Centered Planning:

6. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Daltons Place at Star City the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Massey Avenue Operations campus that the resident can choose. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments.
- Daltons Place at Star City residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements. One beneficiary indicated they do not decorate their apartment, but this was by persona choice, not facility policy.
- A review of five (5) beneficiary surveys indicate the facility makes every attempt to coordinate transportation for community outings of the resident's choice.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Daltons Place at Star City offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
 - Administrator also indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities. The meals are scheduled, but someone is available on site 24/7 to prepare food when requested.
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Dalton's Place at Star City

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

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☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have family visit them in their apartment.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Admission Agreement describes that each resident has three meals a day, snacks anytime, and access to food as they desire.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

705

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

605 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for

which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Dalton's Place at Star City have an individualized *Admission Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Dalton's Place at Star City's *Admission Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Dalton's Place at Star City is not co-located with an institutional setting. There is a rehab facility/wing on the Dalton's Place at Star City property, however that area has separate policies and policies, and the policies of that area do not impose on the ALF portion of the facility.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Daltons Place at Star City has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

Resident survey review indicated there are no double occupancy rooms.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates there are occupancy agreements.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

602 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Daltons Place at Star City beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Daltons Place at Star City is not co-located with an institutional setting.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Dalton's Place at Star City continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule

Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Stonebridge of Conway		<i>Facility Type</i> Assisted Living Facility (ALF) Level II	
<i>Corporate Name (if applicable)</i> Lierman Family Co XV LLC		<i>License/Certification #</i> 32476	<i>County</i> Faulkner
<i>Facility Address</i> 1306 S Donaghey Ave	<i>City</i> Conway	<i>State</i> AR	<i>Zip Code</i> 72034
<i>Primary Contact Name:</i> Duchess Esser	<i>Primary Contact Direct Phone (incl. area code)</i> 501-327-3030		<i>Primary Contact Email Address:</i> Duchess.Esser@sbseniorliving.com

Facility Website Address: <https://stonebridgeseniorliving.com/location/conway/>

Reason for Institutional Presumption

- ☐ Prong 1- Settings in a publicly or privately operated facility that provides inpatient institutional treatment.
- ☐ Prong 2- Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Prong 3- Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Name of institution: Stonebridge of Conway

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Stonebridge of Conway](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. [Stonebridge of Conway](#) is not co-located with an institution and the facility type and services provided do not impose any institutionalization. [This site was not out of compliance with HCBS settings rules.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Stonebridge of Conway is an ALF II facility attached to and operated by Eldercare of Arkansas. Stonebridge of Conway is located in Conway, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Stonebridge of Conway are from the surrounding Conway area, an Arkansas community of approximately 67,617 people. There are a number of activities and community programs that are available to the residents of Stonebridge of Conway. The facility encourages independence by providing transportation into the community and facilitating involvement in community activities. At the time of the survey, there were seventy-three (73) residents at Stonebridge of Conway, with twelve (12) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is eighty (80).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of facility survey confirms that Stone Bridge Conway have a bulletin board where residents are notified of community events so they can participate.
 - Further review of beneficiary surreys confirm that residents can come and go as they please.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Stone Bridge Conway encourages involvement, where possible, with the family members of every resident. Residents indicate they attend community events often and the facility facilitates community involvement.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individuals go to off site locations at their leisure via transportation provided by the facility.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility provides transportation to residents, into the community for shopping, worship, and community events.
- Staff will also work closely with family members, to arrange transportation for resident appointments in the community. The facility provides transportation into the community.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1 (m) Occupancy Admission Agreement

- p. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Stone Bridge Conway confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy. Residents can choose to allow the facility to assist them in managing their resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

-
- A review of beneficiary surveys, support that Stone Bridge Conway was selected from a choice of setting options.
 - Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.
-

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of facility website indicates, "Stone Bridge Conway offers community-style senior living in Conway, AR, with freedom of choice and the comforts of home in a safe, secure environment."

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

7. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Stonebridge of Conway the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Stonebridge of Conway campus that the resident can choose. If they utilize outside services the facility facilitates transportation.
- Stonebridge of Conway residents are able to contract with home health and other third-party service providers as well.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements. One beneficiary indicated they decorated their apartment with the help of family and friends.
- A review of five (5) beneficiary surveys indicate the facility provides the bill of rights to the clients, and it is posted on the walls of the facility in public spaces.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Stonebridge of Conway offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, what they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
 - Administrator also indicated that the residents can choose their schedule and have the ability to determine when, what, and where they eat and what they do, and the schedule of their activities.
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Stonebridge of Conway

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have family visit them in their apartment.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Interview with administrator indicates the residents are able to eat 24/7, as there are staff available to cook them meals and snacks at all times. There are also switch outs for meal items based on personal preference.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

706

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

606 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Stonebridge of Conway have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Brookdale Chenal Heights' *Occupancy Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Stonebridge of Conway is not co-located with an institutional setting. There is a pregnancy clinic nearby, but the two facilities are operated completely separately as they do not share management or activities.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- There are no double occupancy rooms, and therefore residents have full privacy in their apartments.
- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

- Beneficiary surveys confirmed that all rooms have locks on their doors and a keys and key codes is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Stonebridge of Conway has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☐ Met ☐ Unmet ☒ Not Applicable

This rule is not applicable to Stonebridge of Conway, as residents have private living units and do not have roommates. No double occupancy.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates they do have occupancy agreements.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

607 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Stonebridge of Conway beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Stonebridge of Conway is co-located with an institutional setting. There is a pregnancy clinic nearby, but the two facilities are completely separate and owned by different agencies and do not share policies, practices, or activities.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.
- ☐

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Stonebridge of Conway continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (RCF)

**Heightened Scrutiny Review – Community-Based Residential Facility
(RCF)**

<i>Facility Name</i> Fairweather Manor		<i>Facility Type</i> Residential Care Facility (RCF)	
<i>Corporate Name (if applicable)</i> Counseling Clinic, Inc		<i>License/Certification #</i> 32512	<i>County</i> Garland
<i>Facility Address</i> 320 Wittington Ave	<i>City</i> Hot Springs	<i>State</i> AR	<i>Zip Code</i> 71901
<i>Primary Contact Name:</i> Lisa Ashley	<i>Primary Contact Direct Phone (incl. area code)</i> 501-623-3477	<i>Primary Contact Email Address::</i> Lisaashley@sgt.org	
Facility Website Address: none			

Reason for Institutional Presumption

- ☐ Prong 1 Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution: Fairweather Manor
- ☐ Prong 2 Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Prong 3 Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver

Name of institution: Fairweather Manor

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that Fairweather Manor has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Fairweather Manor is not co-located with an institution and the facility type and services provided do not impose any institutionalization, nor does the setting have the affect of isolating beneficiaries from the broader community. This site was not out of compliance with HCBS settings rules.

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable

state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Fairweather Manor is a Residential Care Facility (RCF) attached to and operated by Counseling Clinic, Inc.. Fairweather Manor is located in Hot Springs, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This RCF option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Fairweather Manor are from the surrounding Hot Springs area, an Arkansas community of approximately 38,109 people. There are a number of activities and community programs that are available to the residents of Fairweather Manor. The facility encourages independence by providing transportation into the community and facilitating involvement in community activities. At the time of the survey, there were nineteen (19) residents at Fairweather Manor, with nineteen (19) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is twenty-three (23).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of facility survey confirms that Fairweather Manor have a bulletin board where residents are notified of community events so they can participate.
 - Further review of beneficiary surreys confirm that residents can come and go as they please.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety."

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Fairweather Manor encourages involvement, where possible, with the family members of every resident. Residents indicate they attend community events often and the facility facilitates community involvement. Administrator indicates there is an 8pm curfew per the admission agreement at the facility. This facility is a group home.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individuals go to offsite locations at their leisure via transportation provided by the facility.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility provides transportation to residents, into the community for shopping, worship, and community events.
- Staff will also work closely with family members, to arrange transportation for resident appointments in the community. The facility provides transportation into the community.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m) Occupancy Admission Agreement

- q. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Fairweather Manor confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy. As part of the admission agreement the facility helps the resident manage their resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys support that Fairweather Manor was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Every client at the Fairweather Manor has a personalized care plan that is followed to meet the client's individualized needs. These plans are created in conjunction with the beneficiary.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

8. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Fairweather Manor the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers that come to the Fairweather Manor campus that the resident can choose. If they utilize outside services the facility facilitates transportation.
- Fairweather Manor residents are able to contract with home health and other third-party service providers as well, if needed.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements. One beneficiary indicated they decorated their apartment with the help of family and friends.
- A review of two (2) beneficiary surveys indicate the facility provides the bill of rights to the clients, and it is posted on the walls of the facility in public spaces.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
- Fairweather Manor offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, what they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
- Administrator also indicated that the residents can choose their schedule and have the ability to determine when, what, and where they eat, what they do, and the schedule of their activities.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

- A review of Fairweather Manor

- ☐ Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews and administrator interview indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

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☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time before 8pm. There is an 8pm curfew per the care plan.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Interview with administrator indicates the residents are able to eat 24/7, as there are staff available to cook them meals and snacks at all times. There are also switch outs for meal items based on personal preference.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

607 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Fairweather Manor have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Fairweather Manor's *Occupancy Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Fairweather Manor is not co-located with an institutional setting. There are no institutional facilities located nearby.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that bathrooms have locks.
- HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

- Privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Fairweather has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

Residents are able to choose their own roommate. There are also several private rooms available at the facility.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates they do have occupancy agreements.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

- b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

608 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

- (1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:**
 - (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
 - (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
 - (C) The safety of individuals in the facility is endangered;
 - (D) The health of individuals in the facility would otherwise be endangered;
 - (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
 - (F) The facility ceases to operate;
- (2)**
 - (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
 - (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
 - (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and
- (3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:**
 - (A) The resident must request an appeal;
 - (B) The appeal must be heard; and
 - (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Fairweather Manor beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Fairweather Manor is not co-located with an institutional setting.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Fairweather Manor continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Dalton's Place of Fordyce		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Fordyce Assisted Living Inc. DBA Dalton's Place		<i>License/Certification #</i> 32334	<i>County</i> Garland
<i>Facility Address</i> 1718 Industrial Drive	<i>City</i> Fordyce	<i>State</i> AR	<i>Zip Code</i> 71742
<i>Primary Contact Name:</i> Kim Owens	<i>Primary Contact Direct Phone (incl. area code)</i> 870 890 2408	<i>Primary Contact Email Address::</i> kim@daltonsplaceatfordyce.com	
Facility Website Address: none			

Reason for Institutional Presumption

- ☐ Prong 1 Settings in a publicly or privately operated facility that provides inpatient institutional treatment.
- ☐ Prong 2 Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Prong 3 Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver

Name of institution: [Dalton's Place of Fordyce](#)

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Dalton's Place of Fordyce](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. [Dalton's Place of Fordyce](#) is not co-located with an institution and the facility type and services provided do not impose any institutionalization, nor does the setting have the effect of isolating individuals from the broader community. [This site was not out of compliance with HCBS settings rules.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable

state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Dalton's Place of Fordyce is a Assisted Living Facility (ALF) attached to and operated by 13. Fordyce Assisted Living Inc DBA Dalton's Place. Dalton's Place of Fordyce is located in Fordyce, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This ALF option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Dalton's Place of Fordyce are from the surrounding Fordyce area, an Arkansas community of approximately 3,396 people. There are a number of activities and community programs that are available to the residents of Dalton's Place of Fordyce. The facility encourages independence by providing transportation into the community and facilitating involvement in community activities. At the time of the survey, there were thirty-five (35) residents at Fairweather Manor, with nineteen (19) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is forty (40).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of facility survey confirms that Dalton's Place of Fordyce have a bulletin board where residents are notified of community events so they can participate.
 - Further review of beneficiary surveys confirm that residents can come and go as they please.
 - Administrator indicates that the residents are transported to community events such as the county fair and the senior center.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious

activities within the community, and any activities made available within the facility.” ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Dalton’s Place of Fordyce encourages involvement, where possible, with the family members of every resident. Residents indicate they attend community events often and the facility facilitates community involvement.
- Residents hold council meetings to discuss community events and activities that are upcoming.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individuals go to offsite locations at their leisure via transportation provided by the facility.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility provides transportation to residents, into the community for shopping, worship, and community events.
- Staff will also work closely with family members, to arrange transportation for resident appointments in the community. The facility provides transportation into the community.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m) Occupancy Admission Agreement

- r. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary interviews of residents at Dalton’s Place of Fordyce confirms that residents do have the ability to control their own personal resources. Facility practices as reflected in facility operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

-
- A review of beneficiary surveys support that Dalton’s Place of Fordyce was selected from a choice of setting options.
 - Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources

available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Every client at the Dalton's Place of Fordyce has a personalized care plan that is followed to meet the client's individualized needs. These plans are created in conjunction with the beneficiary. Residents also have occupancy admission agreements with the facility.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

9. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Dalton's Place of Fordyce the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers that come to the Fairweather Manor campus that the resident can choose. If they utilize outside services the facility facilitates transportation.
- Dalton's Place of Fordyce residents are able to contract with home health and other third-party service providers as well, if needed.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements.
- A review of two (2) beneficiary surveys indicate the facility provides the bill of rights to the clients, and it is posted on the walls of the facility in public spaces.
- Beneficiaries have full autonomy as stated in their occupancy admission agreement and confirmed through beneficiary surveys.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
- Dalton's Place of Fordyce offers a *home* to each resident and encourages and supports that each resident has the right to choose when they eat, what they eat, when they sleep, who they visit, who visits them, and what they choose to engage in.
- Administrator also indicated that the residents can choose their schedule and have the ability to determine when, what, and where they eat, what they do, and the schedule of their activities.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

• A review of Fairweather Manor

- ☐ Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews and administrator interview indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a

telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Interview with administrator indicates the residents are able to eat 24/7, as there are staff available to cook them meals and snacks at all times. There are also switch outs for meal items based on personal preference. The residents are not required to eat what is made and other provisions are made when they do not want to eat what has been prepared.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

708

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social,

political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

608 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Dalton's Place of Fordyce have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Dalton's Place of Fordyce's *Occupancy Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Dalton's Place of Fordyce is not co-located with an institutional setting. There are no institutional facilities located nearby.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that bathrooms have locks.
- No double occupancy rooms except for married couples
- HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

- Privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.
- No double occupancy rooms

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Dalton's Place of Fordyce has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

No double occupancy rooms, except for married couples.

The ALF manuals state "If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit."

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates they do have occupancy agreements.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

609 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Dalton's Place of Fordyce beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Dalton's Place of Fordyce is not co-located with an institutional setting.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.
☐

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Dalton's Place of Fordyce continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Indian Rock Village Health Center		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Indian Rock Village, LLC		<i>License/Certification #</i> 32767	<i>County</i> Van Buren
<i>Facility Address</i> 265 Dave Creek Parkway 72088	<i>City</i> Fairfield Bay	<i>State</i> AR	<i>Zip Code</i> 72088
<i>Primary Contact Name:</i> Kathy Crabtree	<i>Primary Contact Direct Phone (incl. area code)</i> 501-884-3210	<i>Primary Contact Email Address::</i> kcrabtree@indainrickvillage.net	
Facility Website Address: https://www.indianrockvillage.com/			

Reason for Institutional Presumption

- ☐ Prong 1- Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution: Indian Rock Village Health Center
- ☐ Prong 2-Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Prong 3- Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Indian Rock Village Health Center](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Indian Rock Village is co-located with a specialized nursing facility (SNF), and a rehabilitation facility on the same campus, however the facility does not impose any institutionalization on [Indian Rock Village Health Center](#) as the different areas have separate policies, procedures, and do not share staff. The facility does not have the effect of isolating individuals from the broader community. [This site was found to be in compliance as a result of the site and beneficiary surveys conducted.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Indian Rock Village Health Center is an ALF attached to and operated by Indian Rock Village, LLC. Indian Rock Village Health Center is located in Fairfield Bay, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Indian Rock Village are from the surrounding Fairfield Bay area, a small Arkansas community of approximately 2,152 people. There are a number of activities and community programs that are available to the residents of Indian Rock Village, and the facility ensures that community activities/outings are offered and encouraged. At the time of the survey, there were sixteen (16) residents at Indian Rock Village, with eleven (11) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is twenty (20).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys confirm that Indian Rock Village has a calendar they provide every month that lists events, and they transport residents into the community to keep them integrated into the community.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Person-centered healthcare services planning for the residents at Indian Rock Village encourages involvement, where possible, with the family members of every resident. One resident indicates they spend time with their family regularly. Residents are free to come and go and attend outings in the community, dining out with friends and family, and have visitors to their apartments regularly.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individuals go to offsite locations at their leisure via transportation provided by the facility. Fairfield Bay is a very small community, so community events are few and far between, but the facility does encourage participation in community events and posts about them on the bulletin board.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility provides transportation to residents, into the community for shopping, worship, fishing, and community events.
- Staff will also work closely with family members, to arrange transportation for resident appointments in the community. The facility provides transportation into the community.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m) Occupancy Admission Agreement

- s. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Administrator indicates that beneficiaries have the ability to control their personal resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Indian Rock Village was selected from a choice of setting options. One resident indicated, “My son and I chose this place together.”
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Review of facility website indicates,

“The right amount of care, when you need it.

Maintain independence by getting just the right amount of assistance with the tasks of daily living in Indian Rock Village’s assisted living.

Services & amenities include:

- Comfortable, private apartment homes, with bathroom designed for accessibility
- Interior and exterior building and grounds maintenance provided
- Full-service dining with chef-prepared menu – under the guiding eye of a nutritionist
- 3 well-balanced meals plus snacks
- Assistance with bathing, dressing, personal hygiene, and mobility
- Weekly linen / laundry services (or as needed)
- Monthly housekeeping service
- 24-hour trained staff and emergency call system
- Medication supervision
- Meal and activity reminders
- Culture of hospitality and resident service
- Social and life-enriching activities
- Scheduled transportation for activities
- Cable TV
- All utilities included except telephone”

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

“ 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;”

“ 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file.”

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Person-Centered Planning:

10. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Indian Rock Village the resident has the right to choose any licensed, certified or registered health care professional. If they utilize outside services the facility provides transportation.
- Indian Rock Village residents are able to contract with home health and other third-party service providers as well.
- Beneficiaries indicated they are transported into the community for doctor visits and visits with other providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Bill of Rights*, and *Occupancy Admission Assessment* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements. One beneficiary indicated they decorated their apartment with the help of family and friends.
- A review of four (4) beneficiary surveys indicate the facility provides the bill of rights to the clients, and it is posted on the walls of the facility in public spaces.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Administrator indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities. The meals are scheduled, but they can request food 24/7.
- Website indicates they have access to snacks at all times and can choose what they eat.
- Beneficiary stated, "yes, there are choices of what to eat. And there are snacks in a basket in the hall. They have set times for meals, but I can eat whenever I want."

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Indian Rock Village

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight

visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

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☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have family visit them and take them places.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

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☒ Met ☐ Unmet ☐ Not Applicable

Interview with administrator indicates the residents are able to eat 24/7, as there are staff available to cook them meals and snacks at all times. There are also switch outs for meal items based on personal preference. Usually there are two choices.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

709

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

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609 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Indian Rock Village have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Indian Rock Village *Occupancy Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Indian Rock Village is not co-located with an institutional setting. There is a Specialized Nursing Facility (SNF), and a rehabilitation wing of the facility, however the SNF has separate operating procedures and policies and therefore there is no overlap in policies or risk to those in the ALF, when it comes to potential impositions of the SNF policies.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- There are no double occupancy rooms, and therefore residents have full privacy in their apartments.
- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirms that each resident is entitled to privacy in their living unit.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

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Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

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- Beneficiary surveys confirmed that all rooms have locks on their doors and keys are given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights* confirm that each resident is entitled to privacy in their living unit.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Indian Rock Village has privacy in his/her sleeping unit, including a lockable door.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☐ Met ☐ Unmet ☒ Not Applicable

This rule is not applicable to Indian Rock Village, as residents have private living units and do not have roommates.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates, “Yes.” When asked if they have occupancy agreements.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

610 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Indian Rock Village beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Indian Rock Village is co-located with other facility types, however "Nursing facility, ALF I and II, and independent living are in the same building but are ran separately." Surveyor did not observe any institutional interconnectedness.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- There is no sharing of employees between the SNF and the ALF side during shifts, per administrator.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Indian Rock Village continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Mercy Crest Retirement Living		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i>		<i>License/Certification #</i> 32177	<i>County</i> Sebastian
<i>Facility Address</i> 1300 Strozier Lane,	<i>City</i> Barling	<i>State</i> AR	<i>Zip Code</i> 72923
<i>Primary Contact Name:</i> Cindy Taylor	<i>Primary Contact Direct Phone (incl. area code)</i> 479-478-3000		<i>Primary Contact Email Address::</i> administrator@mercycrest.com

Facility Website Address: <https://www.mercycrest.com/>

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Mercy Crest Retirement Living](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. [Mercy Crest Retirement Living](#) is not co-located with another facility. [This site was found to be in compliance.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Mercy Crest Retirement Living is an ALF. Mercy Crest is located in Barling, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Mercy Crest are from the surrounding Barling area, an Arkansas community of approximately

4,782 people. There are a number of activities and community programs that are available to the residents of Mercy Crest. At the time of the survey, there were ninety-four (94) residents at Massey Avenue Operations, with thirty-one (31) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is one hundred and two (102).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the Mercy Crest website confirms that Mercy Crest has a calendar posted on the website with the dates and times of activities.
- Per the website, “Mercy Crest, as an Assisted Living facility, is much more of a community. Our facility provides extensive recreational activities for our residents. There are many common living spaces for socializing and outdoor areas to bird watch, garden, and enjoy fresh air. We also offer transportation to doctor’s appointments for our residents.”

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: “The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident’s health and safety.” (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: “Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility.” ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Mercy Crest provides transportation into the community for activities. <https://www.mercycrest.com/care/>
- Per the Occupancy Agreement, “The facility will offer a program of planned activities, opportunities for community participation and services designed to meet your physical, social and spiritual needs.” <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

Beneficiary surveys indicated, “Beneficiary stated and reviewer observed a bulletin board on site. Additionally, the facility has a channel on the television that displays activity information.” <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

“The facility will offer a program of planned activities, opportunities for community participation and services designed to meet your physical, social and spiritual needs.”

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility does have transportation and works closely with families and friends of residents to coordinate transportation for individuals.
- Per the occupancy agreement, “Transportation: The facility will make arrangements for or provide transportation (for a fee) to you in order to meet your necessary medical and dental needs. All appointments not scheduled by facility will be the responsibility of the resident. It is the responsibility of the responsible party to attend the doctor or dentist appointments with any Resident who is cognitively unable to attend these appointments alone. **The facility will also provide regularly scheduled transportation services for use by residents for shopping and other outings.** All other transportation is your responsibility.” “The facility will offer a program of planned activities, opportunities for community participation and services designed to meet your physical, social and spiritual needs.” <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>
- Administrator indicates, “Administrator indicates that they offer off-site trips such as fishing trips or attending plays. Many beneficiaries also go places with friends and/or family.”

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1 (m) Occupancy Admission Agreement

m. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record

check;

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Mercy Crest have an occupancy agreement with facility. See occupancy agreement at <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Occupancy agreement indicates, “**All residents are allowed to manage their own financial affairs.** The resident may authorize another person to manage his/her money in writing. The resident may choose the manner in which his/her money is managed, including a money management program, representative payee program, financial power of attorney, trust or similar method, as described by the resident. The facility does not require that residents deposit funds with the facility. The facility administrator, resident liaison or other designee will maintain the management of personal allowance accounts. The administrator is ultimately responsible for all resident personal allowance accounts.

The facility will provide for the safekeeping and accountability of resident funds and hold harmless and indemnify the resident from any loss of or theft of funds in accordance with the following:

- A. Each resident has the opportunity to place personal funds into an account, and there will be no fee charged by the facility for maintaining the account;
 - B. Residents receiving SSI or Medicaid Living Choices Waiver services are entitled to retain an amount from their income for personal needs consistent with federal and state requirements;
 - C. The facility will hold personal funds in trust for the sole use of the resident and such funds will not be commingled with funds of the facility or used for any purpose other than for the benefit of the resident;
 - D. The personal funds shall be used at the discretion of the resident or his/her responsible party;
 - E. The resident may terminate his/her facility-maintained account and receive the current balance within seven (7) calendar days of termination;
 - F. The facility will maintain individual records for each resident who has an account that shows all debits and credits to the account and that maintains a running, current balance;
 - G. The facility will document all personal transactions and maintain all paid bills, vouchers and other appropriate payment receipt documentation in the manner prescribed by state regulations or by law;
 - H. The facility may deposit personal allowance funds in individual or collective interest bearing, federally insured bank accounts. If these accounts are established, the facility will insure that interest from these accounts is distributed equitably to each resident’s account;
 - I. The facility will, quarterly, supply each resident or responsible party who has a personal account with a statement showing all deposits, withdrawals and current balance of the account;
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- J. The facility will provide the Office of Long Term Care access to required resident financial records upon request;
- K. Residents shall have access to his/her personal allowance account during the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday;
- L. The facility will not make any charge to the resident for supplies or services that the facility is by law, regulation or agreement required to provide under the basic charge;
- M. A written consent of the resident or his/her responsible party will be obtained and kept in the resident's record for any services or supplies provided by the facility beyond those that are required to be included in the basic charge;
- N. Whenever a resident authorizes the facility to exercise control over his/her personal allowance, such authorization must be in writing and signed by the resident or his/her responsible party and the facility administrator or designee.
- O. Any waiver of the right to a personal allowance by a resident entitled to the allowance is void; The personal allowance will, at the discretion of the resident, be used in obtaining clothing, personal hygiene items and other supplies, services, entertainment or transportation for personal use not otherwise provided by the facility pursuant to the occupancy admission agreement or required by regulation;
- P. The facility will not demand, require or contract for payment of all or any part of the resident's personal allowance in satisfaction of the facility rate for supplies and services;
- Q. The facility will not charge the resident additional amounts for supplies and/or services that the facility is by law, regulation or agreement required to provide under the basic charge;
- R. Services or supplies provided by the facility beyond those that are required to be included in the basic charge will be charged to the resident only with the specific written consent of the resident or guardian;
- S. The resident will be furnished in advance of the provision of the supplies or services with an itemized statement setting forth the charges for services or supplies provided by the facility;
- T. Whenever a resident authorizes the facility to exercise control over his/her personal allowance, such authorization will be in writing and signed by the parties to be charged. Any such money will not be commingled with the funds or become an asset of the facility or the person receiving the same, but will be segregated and recorded on the facility's financial records as independent accounts.

Transfer of resident funds shall meet the following:

- A. At time of discharge from the facility, the resident or his/her responsible party will be provided a final accounting of the resident's personal account and issued the outstanding balance within seven (7) calendar days of the date of discharge. If the resident is being transferred to another facility or health care facility, the resident or responsible party will be given an opportunity to authorize transfer of the balance to a resident account at the receiving facility;
- B. Upon death of a resident, a final statement of the account will be made, and all remaining funds will be transferred to the resident's estate applicable to state laws;
- C. If the facility changes ownership, the existing owner will provide the new owner with a written statement of all resident personal funds. The statement will verify that the balance being transferred in each resident's account is true and accurate as of the date of transfer. The facility will maintain inventory and security of all monies, property or things of value that the facility agrees to store for the resident outside of the resident's apartment or living unit.

If the facility maintains anything of value for the resident, it shall be done with written, voluntary authorization from the resident or his/ her responsible party. If a responsible party or payee fails to pay for charges or to provide for the resident's personal needs, the facility shall notify the Department of Human Services, Division of Aging and Adult Services, Adult Protective Services." <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Mercy Crest was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* “Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.
- Administrator interview indicates that beneficiaries are free to choose providers outside the facility and the facility does provide transportation.
- Occupancy agreement indicates that beneficiaries are able to choose providers outside the facility, "Transportation: The facility will make arrangements for or provide transportation (for a fee) to you in order to meet your necessary medical and dental needs. All appointments not scheduled by facility will be the responsibility of the resident. It is the responsibility of the responsible party to attend the doctor or dentist appointments with any Resident who is cognitively unable to attend these appointments alone. The facility will also provide regularly scheduled transportation services for use by residents for shopping and other outings. All other transportation is your responsibility." <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

11. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Mercy Crest the resident has the right to choose any licensed, certified or registered health care professional. There are healthcare and medical providers at the Massey Avenue Operations campus that the resident can choose. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments.
- Mercy Crest residents are able to contract with home health and other third-party service providers.
- Per the occupancy agreement the beneficiaries can choose any medical provider. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

Per the occupancy agreement the beneficiaries have autonomy to make life decisions regarding medical care, activities, physical environment, schedule, food, finances, and more. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the *Occupancy Agreement* supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities, décor, and living arrangements. One beneficiary indicated they do not decorate their apartment, but this was by personal choice, not facility policy. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>
- A review of five (5) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident's choice.
- The occupancy agreement also indicates transportation is provided. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:
601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Administrator also indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities. The meals are scheduled, but someone is available on site 24/7 to prepare food when requested. Snacks are also provided.
 - Occupancy agreement also confirms above. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Mercy Crest

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews, beneficiary interviews, and the occupancy agreement, indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time, with one beneficiary indicating they frequently have family visit them in their apartment.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Occupancy Agreement describes that each resident has three meals a day, snacks anytime, and access to food as they desire. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

710

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

610 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Mercy Crest have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services. Mercy Crest's *Occupancy Agreement* confirms that the setting complies with all applicable laws, including the Fair Housing Act.

<https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Mercy Crest is not co-located with an institutional setting. Surveyor indicates there is only one facility located on the property and there are no other facilities located nearby.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Resident rights in the occupancy agreement also include the right to privacy. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

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T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I &II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- The *Bill of Rights in the occupancy agreement* confirm that each resident is entitled to privacy in their living unit. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Mercy Crest has privacy in his/her sleeping unit, including a lockable door. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Beneficiaries indicate they have locking doors on their units.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

None of the residents share a room, currently.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

Administrator indicates, “Yes, we have occupancy agreements.” <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

- b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

604 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

- (1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:**
 - (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
 - (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
 - (C) The safety of individuals in the facility is endangered;
 - (D) The health of individuals in the facility would otherwise be endangered;
 - (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
 - (F) The facility ceases to operate;
- (2)**
 - (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
 - (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
 - (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and
- (3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:**
 - (A) The resident must request an appeal;
 - (B) The appeal must be heard; and
 - (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

A review of Mercy Crest beneficiary surveys confirms there are written agreements in place for each HCBS resident that outlines room, board, and grievance procedures, according to state laws. <https://www.mercycrest.com/wp-content/uploads/2018/01/Assisted-Living-Occupancy-Agreement.pdf>

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Mercy Crest is not co-located with an institutional setting. There are no other facilities on the property.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the plan indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Mercy Crest continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

DEPARTMENT OF HUMAN SERVICES

Division of Provider Services and Quality Assurance
(04/2024)

STATE OF ARKANSAS

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Peachtree Assisted Living (Peachtree Mena, LLC)		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Peachtree Mena, LLC		<i>License/Certification #</i> 32278	<i>County</i> Polk
<i>Facility Address</i> 1803 Cordie Drive	<i>City</i> Mena	<i>State</i> AR	<i>Zip Code</i> 71953
<i>Primary Contact Name:</i> Janice McFadden	<i>Primary Contact Direct Phone (incl. area code)</i> 479-394-2600		<i>Primary Contact Email Address::</i> janice@peachtreemena.com
Facility Website Address: https://peachtreemena.com/			

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Peachtree Assisted Living](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. [Peachtree Assisted Living](#) is not co-located with another facility. The setting does not have the effect of isolating individuals from the broader community. [This site was found to be in compliance.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

[Peachtree Assisted Living](#) is an ALF. [Peachtree](#) is located in Mena, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of

daily living assistance. The majority of the residents at Mercy Crest are from the surrounding Mena area, an Arkansas community of approximately 5,558 people. There are a number of activities and community programs that are available to the residents of Peachtree Assisted Living. At the time of the survey, there were forty-five (45) residents at Peachtree Assisted Living, with eighteen (18) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is seventy (70).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the Peachtree's website confirms that Peachtree Assisted Living has a calendar posted on the website with the dates and times of activities.
- A review of the Peachtree website confirms that they do participate in community events and travel into the community often.
<https://peachtreemena.com/>

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Peachtree provides transportation into the community for activities. <https://peachtreemena.com/>

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend. Beneficiary surveys indicated,

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility does have transportation and works closely with families and friends of residents to coordinate transportation for individuals.
- Per the beneficiary surveys, the facility has a bus and provides transportation into the community.
- Administrator indicates transportation is provided.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1 (m.)Occupancy Admission Agreement

- m. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Peachtree have an occupancy agreement with facility.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary surveys indicate that the residents have the ability to control their own resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Peachtree was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.
- Administrator interview indicates that beneficiaries are free to choose providers outside the facility and the facility does provide transportation.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

12. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Peachtree the resident has the right to choose any licensed, certified or registered health care professional.. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments, and via their own bus.
- Peachtree residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of five (5) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident's choice.
- Administrator indicated the beneficiaries are able to control their own schedule.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
- Administrator also indicated that the residents can choose their schedule and have the ability to determine when and where they eat and what they do, and the schedule of their activities. The meals are scheduled, but someone is available on site 24/7 to prepare food when requested. Snacks are also provided.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Peachtree

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews, beneficiary interviews, and the occupancy agreement, indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a

telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Wesbite describes that each resident has three meals a day, snacks anytime, and access to food as they desire. <https://peachtreemena.com/assisted-living/>

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

711

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

611 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for

which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Peachtree have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Peachtree is not co-located with an institutional setting. Surveyor indicates there is only one facility located on the property and there are no other facilities located nearby.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are not shared with a roommate. Unit bedrooms have locking doors, and apartments have locking doors.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Peachtree has privacy in his/her sleeping unit, including a lockable door. Units are not shared unless the occupants are married.

Beneficiaries indicate they have locking doors on their units.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

None of the residents share a room, currently.

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

604 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;

- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiaries indicate they know the process for grievances and issues.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Peachtree is not co-located with an institutional setting. There are no other facilities on the property.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of policies and procedures indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that [Peachtree](#) continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Prestige Assisted Living		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Holiday Island Operations DBA		<i>License/Certification #</i> 32435	<i>County</i> Carroll
<i>Facility Address</i> 89 Hillside Drive	<i>City</i> Holiday Island	<i>State</i> AR	<i>Zip Code</i> 72631
<i>Primary Contact Name:</i> Carrie Brazauskas	<i>Primary Contact Direct Phone (incl. area code)</i> 479-253-6553	<i>Primary Contact Email Address::</i> executivedirector@prestigeassistedliving.com	

Facility Website Address: <https://prestigeassistedliving.com/>

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that [Prestige Assisted Living](#) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. The facility does not have the effect of isolating individuals from the broader community. [Prestige Assisted Living](#) is not co-located with another facility. [This site was found to be in compliance.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

[Prestige Assisted Living](#) is an ALF. [Peachtree](#) is located in Holiday Island, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of

daily living assistance. The majority of the residents at Prestige Assisted Living are from the surrounding Holiday Island area, an Arkansas community of approximately 2,533 people. There are a number of activities and community programs that are available to the residents of Prestige Assisted Living. At the time of the survey, there were forty-five (45) residents at Prestige Assisted Living, with eighteen (18) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is seventy (70).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the Prestige Assisted Living website confirms that Prestige Assisted Living has a calendar posted on the website with the dates and times of activities.
- A review of the Prestige website confirms that they do participate in community events and travel into the community often.
<https://prestigeassistedliving.com/>
- Per the website “Our Mission is to offer our residents a homelike atmosphere which allows them to be as independent as possible in a safe and healthy environment.”

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: “The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident’s health and safety.” (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: “Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility.” ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Peachtree provides transportation into the community for activities. <https://prestigeassistedliving.com/>
- There is an observable board in the front of the facility that informs beneficiaries of local events they can attend in the community.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend. Beneficiary surveys indicated,

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility does have transportation and works closely with families and friends of residents to coordinate transportation for individuals.
- Per the beneficiary surveys, the facility has a bus and provides transportation into the community.
- Administrator indicates transportation is provided.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1 (m.)Occupancy Admission Agreement

- m. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Per administrator, residents at Prestige Assisted Living have an occupancy agreement with facility.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary surveys indicate that the residents have the ability to control their own resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Peachtree was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.
- Administrator interview indicates that beneficiaries are free to choose providers outside the facility and the facility does provide transportation.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

13. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Prestige Assisted Living the resident has the right to choose any licensed, certified or registered health care professional.. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments, and via their own bus.
- Prestige residents are able to contract with home health and other third-party service providers.
- The facility has a residence counsel that meets every first Friday of the month to discuss topics important to the residents.

<https://prestigeassistedliving.com/day-in-the-life/>

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of five (5) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident's choice.
- Administrator indicated the beneficiaries are able to control their own schedule.
- The facility has a residence counsel that meets the first Friday of every month to discuss issues important to the residents.
<https://prestigeassistedliving.com/day-in-the-life/>

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Residents indicated they have a choice in what they eat and have options if they do not want to eat what was prepared. They also indicated they have access to snacks.
 - Facility mission: "Our Mission is to offer our residents a homelike atmosphere which allows them to be as independent as possible in a safe and healthy environment."
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Prestige

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews, beneficiary interviews, and the occupancy agreement, indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Residents indicate they can eat any time they want.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

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SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

n. ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Prestige have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Prestige is not co-located with an institutional setting. Surveyor indicates there is only one facility located on the property and there are no other facilities located nearby.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are not shared with a roommate, unless authorized by the persona centered care plan. Unit bedrooms have locking doors, and apartments have locking doors. Only a couple individuals at the facility have chosen to have roommates.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Prestige has privacy in his/her sleeping unit, including a lockable door. Units are not shared unless the occupants are married, or individuals have agreed to live together as a part of their person-centered care plan.

Beneficiaries indicate they have locking doors on their units.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

604 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:

- (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
- (ii) A final determination shall be rendered within seven (7) days following the hearing; and
- (3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:
 - (A) The resident must request an appeal;
 - (B) The appeal must be heard; and
 - (C) The earliest date a transfer would be allowed if the decision is against the resident.
- (b) A request for a hearing shall stay a transfer pending a final determination.
- (c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.
- (d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.**
- (e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiaries indicate they know the process for grievances and issues.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Prestige is not co-located with an institutional setting. There are no other facilities on the property.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

• A review of policies and procedures indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Prestige continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of

Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Providence Senior Care		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> PROVIDENCE PCC OF SEARCY, LLC.		<i>License/Certification #</i> 32531	<i>County</i> White
<i>Facility Address</i> 3014 E Moore Ave	<i>City</i> Searcy	<i>State</i> AR	<i>Zip Code</i> 72143
<i>Primary Contact Name:</i> Malissa Ellis	<i>Primary Contact Direct Phone (incl. area code)</i> 501-268-4169		<i>Primary Contact Email Address::</i> mellis@provmanage.com

Facility Website Address: <https://www.providence.care/senior-living/ar/searcy/e-moore-ave/>

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that Providence Senior Care has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Providence Senior Care is not co-located with another facility. The setting does not have the effect of isolating individuals from the broader community. [This site was found to be in compliance.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Providence Senior Care is an ALF. Providence Senior Care is located in Searcy, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and

security of daily living assistance. The majority of the residents at Providence Senior Care are from the surrounding Searcy area, an Arkansas community of approximately 76,822 people. There are a number of activities and community programs that are available to the residents of Prestige Assisted Living. At the time of the survey, there were fifty-nine (59) residents at Providence Senior Care, with four (4) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is sixty-eight (68).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the Providence Senior Care website confirms that Providence Senior Care has a bulletin board with activities listed and a newsletter that informs beneficiaries of activities they can participate in, in the community.
- A review of the Providence Senior Care confirms that they do participate in community events and travel into the community often.
<https://www.providence.care/senior-living/ar/searcy/e-moore-ave/services-amenities>
- Per the website “Residents of our Assisted Living and Memory Care neighborhoods will appreciate individualized care plans designed to support them to their highest level of independence.”

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: “The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident’s health and safety.” (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: “Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility.” ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Providence provides transportation into the community for activities. <https://www.providence.care/senior-living/ar/searcy/e-moore-ave/services-amenities>
- There is an observable board in the front of the facility that informs beneficiaries of local events they can attend in the community.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

Beneficiary surveys indicated, that individuals do attend activities in the community and are provided transportation to do so.

Per beneficiary “ We get a calendar with activities on it in the facility. They also have a bulletin board.”

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility does have transportation and works closely with families and friends of residents to coordinate transportation for individuals.
- Per the beneficiary surveys, the facility has a bus and provides transportation into the community.
- Administrator indicates transportation is provided.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1 (m.)Occupancy Admission Agreement

- m. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Per administrator, beneficiaries at Providence senior Care, have an occupancy agreement with facility.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary surveys indicate that the residents have the ability to control their own resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

-
- A review of beneficiary surveys, support that Providence was selected from a choice of setting options.
 - Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.
- Administrator interview indicates that beneficiaries are free to choose providers outside the facility and the facility does provide transportation.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

14. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Providence Senior Care the resident has the right to choose any licensed, certified or registered health care professional.. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments, and via their own bus.
- Providence Senior Care residents are able to contract with home health and other third-party service providers.
- The facility has a residence counsel that meets every first Friday of the month to discuss topics important to the residents. <https://www.providence.care/senior-living/ar/searcy/e-moore-ave/assisted-living>

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of four (4) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident's choice.
- Administrator indicated the beneficiaries are able to control their own schedule.
- Beneficiary indicated "I can do what I want."

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Residents indicated they have a choice in what they eat and have options if they do not want to eat what was prepared. They also indicated they have access to snacks.
 - Facility statement: A family-owned boutique-style senior living community, Providence Assisted Living offers seniors in Searcy, Arkansas, a caring, encouraging, and supportive environment to celebrate their golden years. Independent Living residents will love our worry-free lifestyle, while residents of our Assisted Living and Memory Care neighborhoods will appreciate individualized care plans designed to support them to their highest level of
-

independence.”

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Providence

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews, beneficiary interviews, and the occupancy agreement, indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

☒ Met ☐ Unmet ☐ Not Applicable

Residents indicate they can eat any time they want. The facility website indicates that meals are restaurant style where beneficiaries order their food from a menu.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

713

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

n. ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Prestige have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Providence is not co-located with an institutional setting. Surveyor indicates there is only one facility located on the property and there are no other facilities located nearby. There is however a Memory Care unit on the same property. However, this memory care unit is separate and distinct from the Assisted Living areas of the facility and has separate policies and procedures.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are not shared with a roommate, unless authorized by the persona centered care plan. Unit bedrooms have locking doors, and apartments have locking doors. Only a couple individuals at the facility have chosen to have roommates.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.

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T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and <https://humanservices.arkansas.gov/wp->

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.
-

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Prestige has privacy in his/her sleeping unit, including a lockable door. Units are not shared unless the occupants are married.

Beneficiaries indicate they have locking doors on their units.

- Beneficiaries indicated there are no double occupancy rooms.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

604 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiaries indicate they know the process for grievances and issues, and with whom they would speak if there were any issues.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Providence is not co-located with an institutional setting. There are no other facilities on the property. There is a memory care unit on the same property but the memory care unit has separate policies and procedures from the assisted living facility portion of the property.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of policies and procedures indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Providence Senior Care continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Stone Bridge Senior Living- Heber Springs		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> ELDERCARE OF ARKANSAS INC DBA STONEBRIDGE OF HEBER SPRINGS		<i>License/Certification #</i> 32653	<i>County</i> Cleburne
<i>Facility Address</i> 401 Southridge Parkway	<i>City</i> Heber Springs	<i>State</i> AR	<i>Zip Code</i> 72543
<i>Primary Contact Name:</i> Catherine Morris	<i>Primary Contact Direct Phone (incl. area code)</i> 870-838-0033	<i>Primary Contact Email Address::</i> Catherine.Morris@sbseniorliving.com	

Facility Website Address: <https://stonebridgeseniorliving.com/location/heber-springs/>

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that Stone Bridge Senior Living- Heber Springs has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Stone Bridge Senior Living- Heber Springs is not co-located with another facility. The setting does not have the effect of isolating individuals from the broader community. [This site was found to be in compliance.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Stone Bridge Senior Living- Heber Springs is an ALF. Stone Bridge Senior Living- Heber Springs is located in Heber Springs, Arkansas, and is attached to the

Eldercare system of ALFs in the State of Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Stonebridge Senior Living- Heber Springs are from the surrounding Heber Springs area, an Arkansas community of approximately 7,201 people. There are a number of activities and community programs that are available to the residents of Stone Bridge Senior Living- Heber Springs. At the time of the survey, there were thirty-six (36) residents at Providence Senior Care, with twenty (20) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is sixty (60).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the Stone Bridge Senior Living- Heber Springs website confirms that Stone Bridge Senior Living- Heber Springs has a bulletin board with activities listed and a newsletter that informs beneficiaries of activities they can participate in, in the community.
- A review of the Stone Bridge Senior Living- Heber Springs confirms that they do participate in community events and travel into the community often.
- Beneficiaries still hunt in the community and go fishing.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Stone Bridge Senior Living- Heber Springs beneficiary surveys indicated residents go on fishing trips and hunting trips.
- There is an observable board in the front of the facility that informs beneficiaries of local events they can attend in the community.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

Beneficiary surveys indicated, that individuals do attend activities in the community and are provided transportation to do so.

Per beneficiary there is a bulletin board with info about community events. One beneficiary said he still goes hunting and fishing in the community.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility does have transportation and works closely with families and friends of residents to coordinate transportation for individuals.
- Per the beneficiary surveys, the facility has transportation into the community.
- Administrator indicates transportation is provided.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m.)Occupancy Admission Agreement

- m. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Per administrator, beneficiaries at Stone Bridge Senior Living- Heber Springs, have an occupancy agreement with facility.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary surveys indicate that the residents have the ability to control their own resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

-
- A review of beneficiary surveys, support that Stone Bridge Senior Living- Heber Springs was selected from a choice of setting options.
 - Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.
 - Beneficiary survey: A beneficiary indicated they used to work at the facility many years ago. They always said that if they ever could not live alone, this is where they would want to live.”
-

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.
- Administrator interview indicates that beneficiaries are free to choose providers outside the facility and the facility does provide transportation.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

15. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Stone Bridge Senior Living- Heber Springs the resident has the right to choose any licensed, certified or registered health care professional.. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments, and via their own bus.
- Stone Bridge Senior Living- Heber Springs residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of five (5) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident's choice.
- Administrator indicated the beneficiaries are able to control their own schedule.
- Beneficiary indicated "handbook is provided" telling them their rights and the rules of the facility.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
 - Residents indicated they have a choice in what they eat and have options if they do not want to eat what was prepared. They also indicated they have access to snacks.
 - Facility statement: Our Assisted Living care offers a full-service **independent living experience**. Professional medical assistance is provided for residents who may need assistance with activities such as eating, dressing, transferring, walking, bathing and other toiletries.
-

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Stone Bridge Senior Living- Heber Springs

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews, beneficiary interviews, and the occupancy agreement, indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

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☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

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☒ Met ☐ Unmet ☐ Not Applicable

Residents indicate they can eat any time they want. The facility website indicates that meals are restaurant style where beneficiaries order their food from a menu.

The menu is posted and they do have alternatives, and can prepare their own meals in their rooms.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

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SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social,

political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

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n. ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Stone Bridge Senior Living- Heber Springs have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services.

Administrator indicated there are occupancy agreements.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Stone Bridge of Heber Springs is not co-located with an institutional setting. Surveyor indicates there is only one facility located on the property.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are not shared with a roommate, unless authorized by the persona centered care plan. Unit bedrooms have locking doors, and apartments have locking doors. Only a couple individuals at the facility have chosen to have roommates.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.
- Staff knock before entering beneficiary homes, per beneficiaries.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and

access to resident councils;
https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.
-

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Stone Bridge Senior Living- Heber Springs has privacy in his/her sleeping unit, including a lockable door. Units are not shared unless the occupants are married.

Beneficiaries indicate they have locking doors on their units.

- Beneficiaries indicated there are no double occupancy rooms.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are

able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

605 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiaries indicate they know the process for grievances and issues, and with whom they would speak if there were any issues.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Stone Bridge of Heber Springs is not co-located with an institutional setting. There are no other facilities on the property.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of policies and procedures indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Beneficiary indicated during interview: Per beneficiary “I used to work here years ago, and said that if I got to where I could not live alone this is where I wanted to be.”

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas’s Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that [Stone Bridge of Heber Springs](#) continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state’s long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas’s aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including “... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more.”

EVIDENTIARY ASSESSMENT AND SUMMARY

Home and Community-Based Services (HCBS) Settings Rule Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Legacy Heights Retirement Center		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i> Van Buren Legacy, LLC		<i>License/Certification #</i> 32236	<i>County</i> Crawford
<i>Facility Address</i> 1012 Fayetteville Road	<i>City</i> Van Buren	<i>State</i> AR	<i>Zip Code</i> 72956
<i>Primary Contact Name:</i> Ladonna Syrock	<i>Primary Contact Direct Phone (incl. area code)</i> 479-474-7233	<i>Primary Contact Email Address::</i> ladonna@memorylandvb.com	

Facility Website Address: <https://legacyheights.org/>

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that Legacy Heights Retirement Center has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Legacy Heights Retirement Center is not co-located with another facility and does not have the effect of isolating individuals from the broader community. [This site was found to be in compliance.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Legacy Heights Retirement Center is an ALF. Legacy Heights Retirement Center is located in Van Buren, Arkansas, and is attached to the Van Buren Legacy LLC. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an

active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Legacy Heights Retirement Center are from the surrounding Van Buren area, an Arkansas community of approximately 23,755 people. There are a number of activities and community programs that are available to the residents of Legacy Heights Retirement Center. At the time of the survey, there were twenty-nine (29) residents at Providence Senior Care, with ten (10) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is forty (40).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the Legacy Heights Retirement Center beneficiary surveys confirms that Legacy Heights Retirement Center has a bulletin board with activities listed and a newsletter that informs beneficiaries of activities they can participate in, in the community.
- Observation of the Legacy Heights Retirement Center confirms that they do participate in community events and travel into the community often.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety." (Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Legacy Heights Retirement Center beneficiary surveys indicated residents go into the community to participate in community events.
- There is an observable board in the front of the facility that informs beneficiaries of local events they can attend in the community.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend.

Beneficiary surveys indicated, that individuals do attend activities in the community and are provided transportation to do so.

Per beneficiary they are verbally told info about community events.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility works closely with families and friends of residents to coordinate transportation for individuals.
- Administrator indicates transportation is provided.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m.)Occupancy Admission Agreement

- o. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Per administrator, beneficiaries at Legacy Heights, have an occupancy agreement with facility.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary surveys indicate that the residents have the ability to control their own resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Legacy Heights was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources

available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.
- Administrator interview indicates that beneficiaries are free to choose providers outside the facility and the facility does arrange transportation.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

16. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Legacy Heights the resident has the right to choose any licensed, certified or registered health care professional.. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments.
- Legacy Heights residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of two (2) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident's choice.
- Administrator indicated the beneficiaries are able to control their own schedule.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
- Residents indicated they have a choice in what they eat and have options if they do not want to eat what was prepared. They also indicated they have access to snacks.
- Facility statement: "Legacy Heights is an upscale, all-inclusive retirement community that provides cooked meals, weekly housekeeping, paid utilities & more, all offered alongside the **freedom of independent living.**"

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Legacy Heights

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews, beneficiary interviews, and the occupancy agreement, indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a

telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Beneficiaries indicated they do not have telephones in their rooms, however there is a public telephone they do have access to per surveyor.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Residents indicate they can eat any time they want. The facility website indicates that meals are restaurant style where beneficiaries order their food from a menu.

The menu is posted and they do have alternatives, and can prepare their own meals in their rooms.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

715

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social,

political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

p. ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Legacy Heights Retirement Center have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services.

Administrator indicated there are occupancy agreements.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Legacy Heights Retirement Center is not co-located with an institutional setting. Surveyor indicates there is only one facility located on the property.

Administrator indicates there is no other facility located nearby.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are not shared with a roommate, unless authorized by the persona centered care plan. Unit bedrooms have locking doors, and apartments have locking doors. Only a couple individuals at the facility have chosen to have roommates.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.
- Staff knock before entering beneficiary homes, per one beneficiary. Another beneficiary indicated they do not knock, however surveyor observed that they did knock when they entered during the interview, and this beneficiary provided several conflicting statements throughout the interview due to confusion caused by their dementia diagnosis.

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Assisted Living Facility Manual I &II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:**Assisted Living Facility Manual I &II**

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Legacy Heights Retirement Center has privacy in his/her sleeping unit, including a lockable door. Units are not shared unless the occupants are married.

Beneficiaries indicate they have locking doors on their units.

- Beneficiaries indicated there are no double occupancy rooms.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

The ALF manuals state “If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit.”

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

606 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiaries indicate they know the process for grievances and issues, and with whom they would speak if there were any issues.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Legacy Heights Retirement Center is not co-located with an institutional setting. There are no other facilities on the property. There is, however, a memory care unit as part of the facility. The memory care unit has separate policies and procedures.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of policies and procedures indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas's Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Legacy Heights Retirement Center continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state's long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas's aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including "... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more."

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Community-Based Residential Facility (ALF)

<i>Facility Name</i> Windsor Cottage, LTD		<i>Facility Type</i> Assisted Living Facility (ALF)	
<i>Corporate Name (if applicable)</i>		<i>License/Certification #</i> 32371	<i>County</i> Miller
<i>Facility Address</i> 4110 Jefferson Avenue AR	<i>City</i> Texarkana	<i>State</i> AR	<i>Zip Code</i> 71854
<i>Primary Contact Name:</i> Ryan Powell	<i>Primary Contact Direct Phone (incl. area code)</i> 870 773 0417	<i>Primary Contact Email Address::</i> office@windsorcottage.org	
Facility Website Address: https://windsorcottageassistedliving.com/			

Reason for Institutional Presumption

- ☐ Settings in a publicly or privately operated facility that provides inpatient institutional treatment. Name of institution:
- ☐ Settings in a building on the grounds of, or adjacent to, a public institution. Name of institution:
- ☒ Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

Arkansas State Standards and Regulations:

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas assisted living facility (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Provider Services and Quality Assurance (DPSQA) conducts a heightened scrutiny review.

DHS believes that Windsor Cottage has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below. Windsor Cottage is not co-located with another facility, and does not have the effect of isolating individuals from the broader community. [This site was found to be in compliance.](#)

To reinforce the extent to which Arkansas's licensing and certification regulations and standards align with and reinforce the HCBS settings rule, the applicable state standard or regulation is included, where applicable, with the compliance review summary below.

Facility Summary

Windsor Cottage is an ALF. Windsor Cottage is located in Texarkana, Arkansas. The facility is designed to maximize independence while ensuring privacy and security for their residents. This assisted living option allows tenants to maintain an active and independent lifestyle while having the benefit and security of daily living assistance. The majority of the residents at Windsor Cottage are from the surrounding Texarkana area, an Arkansas community of approximately 29,387 people. There are a number of activities and community programs that are available to the residents of Windsor Cottage. At the time of the survey, there were

twenty-two (22) residents at Providence Senior Care, with six (6) of those residents being supported with HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is forty-two (42).

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of the Windsor Cottage beneficiary surveys confirms that Windsor Cottage has a bulletin board with activities listed that informs beneficiaries of activities they can participate in, in the community.
- Observation of the Windsor Cottage confirms that they do participate in community events and travel into the community often.
- Administrator indicated that the beneficiaries participate in senior day in the community.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas State Standards and Regulations:

Purpose: "The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II [and Level I] assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self- direction and personal decision-making while protecting resident's health and safety."

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

General Requirement Concerning Residents: "Ensure that residents are afforded the opportunity to participate in social, recreational, vocational, and religious activities within the community, and any activities made available within the facility." ([505 GENERAL REQUIREMENTS CONCERNING RESIDENTS \(j\)](#))

☒ Met ☐ Unmet ☐ Not Applicable

- Windsor Cottage beneficiary surveys indicated residents go into the community to participate in community events
- There is an observable board in the front of the facility that informs beneficiaries of local events they can attend in the community.

Activities are individualized or include more than just setting-based group activities

☒ Met ☐ Unmet ☐ Not Applicable

A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend. Beneficiary surveys indicated, that individuals do attend activities in the community and are provided transportation to do so. Per beneficiary they are verbally told info about community events.

The setting supports access to community activities through its own transportation or coordination of transportation options.

☒ Met ☐ Unmet ☐ Not Applicable

- The facility works closely with families and friends of residents to coordinate transportation for individuals.
- Administrator indicates transportation is provided.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

Compliance within Arkansas State Standards and Regulations: No resident is required to work for the facility, but they do have the option of doing so.

603.1(m.)Occupancy Admission Agreement

- q. A statement that a resident may not be required to perform services for the assisted living facility except as provided for in the occupancy admission agreement or a subsequent written agreement. A resident and the assisted living facility may agree in writing that a resident will perform certain activities or services in the facility if the resident volunteers or is compensated at or above prevailing rates in the community. If a resident is compensated for performance of certain activities to which the resident and the facility agree, the resident shall have to undergo a criminal record check;

☒ Met ☐ Unmet ☐ Not Applicable

Per administrator, beneficiaries at Windsor Cottage have an occupancy agreement with facility.

Individuals are able to control their personal resources.

Compliance within Arkansas State Standards and Regulations:

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary surveys indicate that the residents have the ability to control their own resources.

Choice, Independence, and Person-Centered Planning

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Standards and Regulations:

Arkansas has protections in place for Medicaid waiver participants which ensure they understand their choices. DHS waiver participating facilities are responsible for discussing choice of service settings with the waiver participant and family/representative to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. The DHS Options Counseling program has been in place for over a decade. Options Counseling provides residents of ALF II facilities the ability to choose to return to community living. DHS Community Resource Specialists of the Options Counseling team, visit individuals that indicate an interest in leaving the facility and discuss options available for social and physical supports that can help them return to independent community living.

Additionally, Arkansas DHS has resources in place through *Choices in Living Resource Center*: <https://humanservices.arkansas.gov/divisions-shared-services/provider-services-quality-assurance/choices-in-living-resource-center/> “We know that navigating the maze of long-term care programs and services is not easy. Our program specialists will help you learn about your options and provide the information you need to make the best decisions. You can also visit the following web page for more web links to various resources for long-term services and supports.”

☒ Met ☐ Unmet ☐ Not Applicable

- A review of beneficiary surveys, support that Windsor Cottage was selected from a choice of setting options.
- Beneficiary Survey reviews also documented that this setting continues to be the setting of choice for the individuals.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources

available for room and board. [42 CFR § 441.301(c)(4)(ii)]

Compliance within Arkansas State Rules:

603.1 *Arkansas's Resident's Bill of Rights* "Q. Participate in the development of the individual direct care services and health care services plan portions of his or her occupancy admission agreement that describes the resident's direct care services and how the needs will be met;

701.1.6 The resident or his or her responsible party shall participate in and, if the resident or his or her responsible party agrees, family members shall be invited to participate in, the development of the resident direct care services plan portion of the occupancy admission agreement. Participation shall be documented in the resident's record.

(Summarized from https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

☒ Met ☐ Unmet ☐ Not Applicable

- Review of beneficiary surveys regarding individual direct care services and health care services plans indicate that settings options are a part of the health care service plan. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting.
- Administrator interview indicates that beneficiaries are free to choose providers outside the facility and the facility does arrange transportation.

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)].

Compliance within State Standards:

No later than the 30th day after admission, the ALF shall provide written information regarding services available and the charges for those services to each resident or the resident's legal representative.

" 603.1 Residents' Bill of Rights

AA. Be informed by the assisted living facility no later than the 30th day after admission:

(i.) whether the resident is entitled to benefits under Medicare or Medicaid, and

(ii.) which items and services are covered by these benefits, including items or services for which the resident may not be separately charged;"

" 702.1 HEALTH CARE SERVICES and HEALTH CARE SERVICES PLAN

... f. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. A facility may make a selection of a treating physician or advance practice nurse or pharmacy only when the resident or his or her responsible party is fully informed of his or her right of choice and waives that right in writing. The facility shall maintain any written waivers in the resident's file."

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Person-Centered Planning:

17. Residents or their responsible parties shall be permitted free choice of physician or advance practice nurse and of pharmacy. (702.1 (f))

☒ Met ☐ Unmet ☐ Not Applicable

- At Windsor Cottage the resident has the right to choose any licensed, certified or registered health care professional.. If they utilize outside services the facility facilitates transportation through Medicaid to and from appointments.
- The facility does provide transportation into the community, per beneficiaries.
- Windsor Cottage residents are able to contract with home health and other third-party service providers.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

Compliance within Arkansas State Standards and Regulations:

603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of two (2) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident's choice.
- The facility does provide transportation into the community, per beneficiaries.
- Administrator indicated the beneficiaries are able to control their own schedule.
- Admin: They inform residents to contact the administrator if they believe their rights have been violated or any other concerns he/she might have.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

Compliance within Arkansas State Standards and Regulations:

Person-Centered Planning:

601.2 Pre-Admission Evaluation

Each applicant shall receive an initial evaluation completed by the facility prior to admission to determine whether the resident's needs can be met by the assisted living facility, and the resident's needs are not greater than the facility is licensed to provide.

Rights: 603.1 Residents' Bill of Rights 2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers, wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
- Residents indicated they have a choice in what they eat and have options if they do not want to eat what was prepared. They also indicated they have access to snacks.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)]

Compliance within State Standards:

Arkansas HCBS-CES
Waiver

Rights: 603.1 Residents' Bill of Rights

2. A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and regulations of this state and the United States except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. The resident or his or her representative's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action and written proof that the resident or his or her representative is making an informed decision, free from coercion, and that the refusal of the resident or his or her representative to enter into a compliance agreement with the facility, or to revise the compliance agreement or to comply with the terms of the compliance agreement may result in discharge from the facility;

200 PURPOSE

The purpose of these rules and regulations is to establish standards for Level II assisted living facilities that provide services in a homelike environment for elderly and disabled persons. Level II assisted living facilities ensure that residents receive supportive health and social services as they are needed to enable them to maintain their individuality, privacy, dignity, and independence, in the highest degree possible in an apartment-style living unit. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation. The environment promotes resident self-direction and personal decision-making while protecting resident's health and safety.

NOTE: The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility manuals could be clearer in reflecting language indicating residents will be free from restraint. This is being addressed in the next published version of the manuals which is being rewritten.

State law regarding restraint in long-term care facilities.

(14) (A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B) (i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(Arkansas Code § 20-10-1204)

☒ Met ☐ Unmet ☐ Not Applicable

A review of Windsor Cottage

- Ensured each of the requirements of the HCBS Settings Rule 42 CFR § 441.301(c)(4)(iii) were met. These requirements were confirmed through staff interviews, beneficiary interviews, and the occupancy agreement, indicating the facility clearly complies with all applicable federal, state and local laws regarding abuse/neglect, etc.
- An Occupancy Agreement is in place to cover tenant and landlord responsibilities.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

Compliance within Arkansas State Standards and Regulations:

(Arkansas Code § 20-10-1204)

(16)

(A) (i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act

regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

Assisted Living Facility Manual I & II

Bill of rights

L. Be allowed to communicate, including personal visitation with any person of the resident's choice, including family members, representatives of advocacy groups, and community service organizations;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiary Surveys: Beneficiaries indicate they are free to have visitors at any time.

Beneficiaries indicated they do not have telephones in their rooms, however there is a public telephone they do have access to per surveyor.

Individuals have access to food at any time.

Compliance within Arkansas State Standards and Regulations:

700.3.2 As part of the basic charge, each assisted living facility must make available food for three (3) balanced meals, as specified in Section 601.3 (a)(6), and make between-meal snacks available. Potable water and other drinking fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and no more than seven (7) hours between lunch and the evening meal. Variations from these stated parameters may be permitted at the written request of the resident or his or her representative or as directed by the resident's personal physician or advance practice nurse in writing. The facility shall retain documentation stating the reason for the variance.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

☒ Met ☐ Unmet ☐ Not Applicable

Residents indicate they can eat any time they want. The facility website indicates that meals are restaurant style where beneficiaries order their food from a menu.

Admin: If residents chooses not to eat at mealtime, their tray of food is taken to their room at eat at their discretion. If residents choose not to eat the planned meal, they will be offered and alternative.

Beneficiary surveys: Residents indicate they have access to snacks and can choose alternatives to what is served on the menu if they do not want what is being served.

Individuals occupy the setting under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. [42 CFR § 441.301(c)(4)(vi)(A)]

Compliance within Arkansas State Standards and Regulations:

716

SERVICES

An assisted living facility shall provide, make available, coordinate, or contract for services that meet the care needs identified in the direct care services and health care services plan portions of residents' **occupancy admission agreements**, to meet unscheduled care needs of residents, and to make emergency assistance available 24 hours a day, all in a manner that does not pose an undue hardship on residents. An assisted living facility shall respond to changes in residents' needs for services by revising the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and, if necessary, by adjusting its staffing plan or contracting for services from other providers. If non-residents utilize services of the assisted living facility, it must occur in a manner that does not unduly disturb residents or deprive residents of timely access to services.

Services are provided according to the direct care services or health care services plan portions of residents' occupancy admission agreements, or both, and may include, but are not limited to, homemaker, attendant care, and medication oversight to the extent permitted under State law. Services include 24-hour available staff to respond to residents' needs in a way that promotes maximum dignity and independence and provides supervision, safety and security. Other individuals or agencies may furnish care directly or under arrangements with the assisted living facility. Such care shall be supplemental to the services provided by the assisted living facility and does not supplant, nor may be substituted for, the requirements of service provisions by the facility.

Services are furnished to a person who resides in his or her own apartment or unit that may include dually occupied units when both occupants consent to the arrangement. Each apartment or unit shall be of adequate size and configuration to permit residents to perform, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storage of clothing and other personal possessions; doing personal correspondence and paperwork and entertaining visitors. Care provision and service delivery must be resident-driven to the maximum extent possible and treat each person with dignity and respect. Care must be furnished in a way that fosters the independence of each resident.

Occasional or intermittent guidance, direction or monitoring, or assistance with activities of daily living and social activities and transportation or travel, as defined in these regulations, for residents to keep appointments for medical, dental, social, political or other services or activities shall be made available to residents.

The resident may be assisted in making arrangements to secure community based health or other professional services, examinations and reports needed to maintain or document the maintenance of the resident's health, safety and welfare.

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

r. ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following circumstances for which the written notice need not be furnished:

- (A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for

which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Residents at Windsor Cottage have an individualized *Occupancy Agreement* which outlines the services provided to the resident, such as room, board, rates and personal services.

Administrator indicated there are occupancy agreements. An Occupancy Agreement is in place to cover tenant and landlord responsibilities.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☒ Met ☐ Unmet ☐ Not Applicable

Windsor Cottage is not co-located with an institutional setting. Surveyor indicates there is only one facility located on the property. Administrator indicates there is no other facility located nearby.

Each individual has privacy in their sleeping or living unit.

Compliance within Arkansas State Standards and Regulations:

Resident units are not shared with a roommate, unless authorized by the persona centered care plan. Unit bedrooms have locking doors, and apartments have locking doors. Only a couple individuals at the facility have chosen to have roommates.

☒ Met ☐ Unmet ☐ Not Applicable

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.
- All apartments are single unless it's a married couple or same sex siblings and both choose to live together.

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy

would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;
https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Compliance within Arkansas State Standards:

Assisted Living Facility Manual I & II

T. Have privacy while attending to personal needs, and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. The right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils;

https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf)

- Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS privacy and lock policies are part of the HCBS staff training.
- Beneficiaries indicated there are no double occupancy rooms.

☒ Met ☐ Unmet ☐ Not Applicable

Each resident of Windsor Heights has privacy in his/her sleeping unit, including a lockable door. Units are not shared unless the occupants are married. Beneficiaries indicate they have locking doors on their units.

- Beneficiaries indicated there are no double occupancy rooms.

Individuals sharing units have a choice of roommates in that setting.

Compliance within Arkansas State Standards and Regulations:

☒ Met ☐ Unmet ☐ Not Applicable

- All apartments are single unless it's a married couple or same sex siblings and both choose to live together.

The ALF manuals state "If married, have the right to share an apartment or unit with his or her spouse even if the spouse is not receiving services through the assisted living facility. In the case of two consenting adults, if one or both is receiving services through the assisted living facility, the couple shall have the right to share an apartment or unit."

The state of Arkansas acknowledges that the current public facing versions of the Assisted Living Facility Manuals could be clearer to indicate that residents are able to choose their own roommate. This is being addressed in the next published version of the manuals which is currently being rewritten.

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

☒ Met ☐ Unmet ☐ Not Applicable

Every resident in a community-based assisted living facility has the right to “Be allowed to retain and use personal possessions, including, but not limited to, clothing and furnishings, as space permits.” “Be allowed to retain and use personal property in his or her immediate living quarters and shall have a lockable apartment or unit door;” “Be allowed to manage his or her financial affairs.” https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-1_01012024_.pdf and https://humanservices.arkansas.gov/wp-content/uploads/Assisted-Living-Facilities-Level-2_01012024_.pdf

Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

☒ Met ☐ Unmet ☐ Not Applicable

The setting is physically accessible to residents, per surveyor.

Compliance within Arkansas State Standards and Regulations:

901.4 PLANS AND SPECIFICATIONS

“...The facility shall develop and shall comply with a written evacuation plan approved by the local fire marshal. All new construction shall be readily accessible and useable by persons with physical disabilities including persons who use wheelchairs. All construction shall comply with the requirements of the ADA.”

901.5 CODES AND STANDARDS

b. The American Disabilities Act specifications for making buildings and facilities accessible to and usable by the physically handicapped shall apply to all facilities;

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services: The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws. The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)].

Compliance within Arkansas State Standards and Regulations:

607 ADMISSION, DISCHARGE AND TRANSFER

Ark. Code Ann. § 20-10-1005 provides for involuntary and voluntary discharges. These regulations are supplemental to the statute and if in conflict, the statute governs.

Arkansas Code § 20-10-1005. Procedure for transfer or discharge of residents — Violations.

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- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or
- (F) The facility ceases to operate;

(2)

- (A) An appeals process for residents objecting to an involuntary transfer or discharge that places the burden of proof for justification of the transfer or discharge on the facility.
- (B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.
- (C) Unless otherwise agreed to by the parties:
 - (i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and
 - (ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeals process to be followed by the resident and the time periods in which:

- (A) The resident must request an appeal;
- (B) The appeal must be heard; and
- (C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the department shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

☒ Met ☐ Unmet ☐ Not Applicable

Beneficiaries indicate they know the process for grievances and issues, and with whom they would speak if there were any issues.

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community–based setting, such as minimal administrative and financial interconnectedness.

☒ Met ☐ Unmet ☐ Not Applicable

Windsor Cottage is not co-located with an institutional setting. There are no other facilities on the property. There is, however, a memory care unit as part of the facility. The memory care unit has separate policies and procedures.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☒ Met ☐ Unmet ☐ Not Applicable

- A review of policies and procedures indicates that all staff take the mandatory in-service and new employee trainings and meet the annual continuing education requirements.

Admin: In-service provided every two weeks. New staff and volunteers are required to attend training before starting to work.

Please note that these findings are preliminary only and must receive final approval from CMS.

In accordance with federal requirements, all compliance results will be made public by DHS. The decision will appear on the subsequent upload of facility information to DHS websites, including the [DPSQA Provider Search webpage](#).

Ongoing Compliance

Arkansas’s Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Windsor Cottage continues to meet the requirements of the HCBS Settings Rule. The DHS Office of Community Services has incorporated the HCBS settings rule into its current assisted living survey process and activities.

When residents are in an HCBS waiver program, care coordinators are required to have ongoing contact, including face-to-face visits, at which time any areas of concern would be identified and addressed. Each participant in a Medicaid home and community-based waiver program is further protected through the state’s long-term care [ombudsman program](#), which has regular access to the assisted living setting. The [Area Agencies on Aging](#) advocate for the interests of Arkansas’s aging consumers, informs those consumers of their rights and educates the public about health care systems and long-term care delivery systems including “... information about programs to help you like meals-on-wheels, senior centers, transportation options, and much more.”

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-(HCBS) Settings Rule
Heightened Scrutiny Review – Arkansas CES Waiver AR 0188

HCBS Program Name Florentz Estates		Facility Type HCBS Supervised Living	
Corporate Name (if applicable) Independent Living Services		License/Certification # 125877767	County Faulkner
Facility Address 1125 Addybrook Lane	City Conway	State Arkansas	Zip Code 72032
Primary Contact Name Elissa Douglas	Primary Contact Direct Phone (include area code) (501) 327-5234 Ext. 302	Primary Contact Email Address elissa@indliving.org	
Facility Website Address https://www.indliving.org/about-us			

Reason for Institutional Presumption

- ☐ Prong 1: Settings in a publicly or privately operated facility that provides inpatient institutional treatment. [Click or tap here to enter text.](#)
- X Prong 2: Settings on the grounds of, or adjacent to, a public institution. Name of institution: Conway Human Development Center
- ☐ Prong 3: Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas CES Waiver Program (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Developmental Disabilities Services (DDS) conducts a heightened scrutiny review.

DDS believes that Independent Living Services-Florentz Estates has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below.

To reinforce the extent to which Arkansas's licensing and certification regulations and Provider-led Arkansas Shared Saving Entity (PASSE) agreement align with and reinforce the HCBS settings rule, the applicable referenced section is included, within the compliance review summary. The documents in their entirety may be located at the following: CES Waiver (0188) https://humanservices.arkansas.gov/wp-content/uploads/Waiver_CES_AR0188.pdf . PASSE agreement <https://humanservices.arkansas.gov/wp-content/uploads/PASSE-Agreement-2023-FINAL.pdf>

Facility Summary

Florentz Estates offers supportive living in a supervised living apartment with on-site management. The apartments are fully self-contained and designed to maximize independence while ensuring health and safety of the individuals who live there. The apartments are located within a residential community and is within walking distance of shopping and recreation. Public transportation is available through the METRO Connect Conway Microtransit Service.

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

X Met ☐ Unmet ☐ Not Applicable

Compliance with 42 CFR § 441.301(c)(4)(i)] was assessed to address the characteristic of an HCBS physical setting. While Arkansas Independent Living Services (ILS)- Florentz Estates physical structure is built on property owned by the state, it is located within a mixed residential community comprised of single and multi-family dwellings. Entrance to the apartment complex is via public street access. No services or access to services require egress through the state operated facility. The ILS-Florentz Estates are considered a part of the surrounding residential community. Of special note is the retirement celebration that was held at ILS-Florentz Estates Club House for an individual who lives there that was attended by employer, neighbors and greater community.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas CES Waiver and State Standards Provider Led Arkansas Shared Savings Entity (PASSE) Provider Agreement 42 CFR § 441.301 (c)(4)(i), 42 CFR §441.301 (c)(4)(iv), 42 CFR§441.530 (a) (1) (i), 42 CFR § 441.710 (a)(1)(i), 42 CFR§710 (a)(1)(iv), 42 CFR§ 441.725 (a)(8)(b)(1)

The CES Waiver (AR.0188) and proposed Rules for the Division of Developmental Disabilities Services PASSE Provider Agreement establish standards for operational guidance for all Home and Community Based Services currently approved by the Centers for Medicare and Medicaid (CMS). The goal of the CES Waiver is to support individuals with intellectual or developmental disabilities with all major life activities such as living independently, working with appropriate supports and promotes inclusion through community experiences. The CES Waiver requires that each individual receiving HCBS services have a person centered service plan that is based on an assessment that is functional in nature and addresses the person's areas of need including the capacity for independent living inclusive of making choices and decisions, establishing priorities, goals and desired outcomes.

X Met ☐ Unmet ☐ Not Applicable

Through interview with a resident at ILS-Florentz Estates, the individual stated that he was able to access the community for shopping, recreation/socialization and participates in worship at the church of choice. The resident indicated that he is aware of activities in the community and participates freely as desired. Residents particularly enjoyed going out of town to attend the circus at Barton Coliseum.

Activities are individualized or include more than just setting-based group activities.

X Met ☐ Unmet ☐ Not Applicable

An onsite interview and observation was conducted utilizing the Arkansas HCBS Residential Site Review Survey tool. A random sample of residents was pulled in alignment with the sampling protocol as approved under the CES Waiver. Based on interview, the individual has the freedom of implementing his schedule to meet his preferences. He is free to engage with family and friends in preferred activities.

The setting supports access to community activities through its own transportation or coordination of transportation options.

X Met ☐ Unmet ☐ Not Applicable

ILS-Florentz Estates residents have access to METRO Connect-Conway for transportation to shopping, recreation, work etc. In addition, as part of services provided by the parent company, Independent Living Services provides limited transportation as needed. Resident interviewed indicated that he is picked up for worship through the transportation service provided by his church. He indicated that when he wants or needs to go places that transportation is not an issue.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

X Met ☐ Unmet ☐ Not Applicable

Individuals who reside at ILS-Florentz Estates have the opportunity to be employed in competitive integrated settings. Resident interviewed has been employed by CIL for many years and looked forward to retirement.

Compliance within Arkansas CES Waiver AR 0188 and PASSE Provider agreement

The Home and Community-based Waiver for individuals with IDD is part of a hybrid managed care model operated through Managed Care Organizations (MCO). A person-centered service plan process is used in development of the PCSP, and implementation of the plan is monitored through the PASSE. Individuals must have freedom of choice of providers, have choice of residential settings, supported in making life choices inclusive of scheduling activities and assurance that individual rights will be protected. The PASSE provider agreement outlines the requirements of the program in Sections 4.6 Member Protections and 5.3 Person-Centered Services Plan.

4.6 MEMBER PROTECTIONS—RIGHTS AND RESPONSIBILITIES

- 4.6.1 The PASSE must develop and implement policies and procedures, in clear and understandable language, for member's rights and take reasonable action to inform members of their rights by providing copies of policies and procedures and making them available on their website.
- 4.6.2 The PASSE must inform each Member of his or her rights and responsibilities as a member of the PASSE.
- 4.6.3 These rights and responsibilities must include, at a minimum, the right to:
 - a. Receive information on the PASSE.
 - b. To understand their PCSP and to receive the services contained within it.
 - c. Be treated with respect and with due consideration for the dignity and privacy.
 - d. Receive information on available treatment options and alternatives, presented in a manner appropriate to the member's condition and ability to understand.
 - e. Participate in decisions regarding his or her health care, including the right to refuse treatment.
 - f. Be free from any form of restraint or Seclusion used as a means of coercion, discipline, convenience or retaliation.
 - g. Choose a participating provider for any service the member is eligible and authorized to receive under his or her PCSP, including a PCP.
 - h. Execute an advance directive without discrimination in the provision of care or otherwise.
 - i. Request and receive a copy of his or her medical records and request that they be amended or corrected.
 - j. Obtain needed, available and accessible health care services covered under the PASSE.
 - k. Live in an integrated and supported setting in the community and have control over aspects of their lives; and
 - l. Be protected in the community.

4.6.4 The PASSE and its participating providers are prohibited from treating a Member adversely for exercising his or her rights, as outlined above.

4.7 RESTRICTIVE INTERVENTIONS IN AN HCBS SETTING

THE 1915(C) WAIVER THE 1915I STATE PLAN AMENDMENT OUTLINE THE REQUIREMENTS REGARDING RESTRAINTS AND SECLUSION.

4.7.1 PASSEs must have policies that prohibit maltreatment or corporal punishment of members and guarantee an array of rights which includes the right to be free from the use of a physical or chemical restraint, medications, or isolation as punishment for the convenience of the provider except when a physical restraint is necessary for the health and safety of the individual.

4.7.2 The PASSE is responsible for ensuring Risk Mitigation Plans are developed for all members. Risk mitigation plans are not behavior plans but may result in the development of a behavior plan.

4.7.2.1 If a member has a history of low-risk behaviors that could cause harm to himself/herself or the community, a Behavioral Prevention and Intervention Plan must be developed as outlined under the service Prevention, Intervention, and Stabilization in the 1915(c).

4.7.2.2 If a member has a history of high-risk behaviors that could cause harm to himself/herself or the community, a Positive Behavior Support must be developed as outlined under the 1915(c) and the 1915(i).

5.1 PERSON CENTERED SERVICE PLAN (PCSP)

5.1.1 The PASSE is responsible for the creation, monitoring, and updating of the PCSP for all Members of the PASSE. The PCSP must adhere to content requirements as found at 42 CFR § 441.301(c) and 42 CFR § 441.540 in a standardized format for the specific PASSE. The planning process and the PCSP must include, without limitation:

- a. The Member's health information, including:
 - i. Relevant medical and mental health diagnoses;
 - ii. Relevant medical and social history;
 - iii. PCP and primary provider of Behavioral Health or Developmental Disability services;
 - iv. The individual who has legal authority to make decisions on behalf of the Member; and
 - v. Indication of whether or not an advance directive or living will has been created for or by the Member.
- b. Reflect that the setting in which the individual resides is chosen by the individual;

- c. Reflect the Member's strengths and preferences;
 - d. Reflect the clinical and support needs as identified;
 - e. Include individually identified goals and desired outcomes;
 - f. Reflect the services and supports that are important for the Member to meet the needs as identified through an assessment of functional need, including services and supports in the community to avoid placement in an institution;
 - g. Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals and desired outcomes;
 - h. Reflect the risk mitigation plan
 - i. Includes strategies for solving conflict;
 - j. Be finalized and agreed to in writing; and
 - k. Prevent the provision of unnecessary or inappropriate care.
- a. The PCSP must ensure that the Member's needs are being met in a way that is individualized and specific to that member's needs. The PCSP is the fundamental plan for assisting an individual live safely and successfully in his/her own home or community and deference to it must be given by interested parties. It should be designed to meet the individual's goals and objectives for the next twelve (12) months.
 - b. It must reasonably reflect the daily and weekly activities and routine a member chooses that is age and developmentally appropriate. It should also reflect progress towards a future goal. examples include:
 - i. activities to assist an adult with a developmental disability to plan to transition from an elderly parent's home into a community setting.
 - ii. activities to assist DCFS and member's family to achieve the member's permanency plan, through obtaining needed medical services and supports.
 - iii. activities to assist member transition out of residential or institutional setting.

Individuals are able to control their personal resources.

Compliance with Arkansas PASSE Provider Agreement

X Met ☐ Unmet ☐ Not Applicable

Individuals who reside in HCBS residential settings have the right to live in an integrated community setting and have control over aspects of their lives. Per interview and review of records, it is noted that a representative payee is in place. Individual is able to access personal resources to engage in community

activities, shopping, going out to eat with family/friends, and attending events in community (circus).

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)].

Compliance with AR 0188 CES Waiver and PASSE Provider Agreement and 42 CFR § 441301 (c) (4) (ii).

Arkansas has protections in place as outlined below for CES Waiver members to ensure that they understand their choices under the Participant Access and Eligibility in the approved waiver

B-7: Freedom of Choice

***Freedom of Choice.** As provided in 42 CFR §441.302(d), when an individual is determined to be likely to require a level of care for this waiver, the individual or his or her legal representative is:*

informed of any feasible alternatives under the waiver; and

given the choice of either institutional or home and community-based services.

Procedures. Specify the state's procedures for informing eligible individuals (or their legal representatives) of the feasible alternatives available under the waiver and allowing these individuals to choose either institutional or waiver services. Identify the form(s) that are employed to document freedom of choice. The form or forms are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

The DDS Intake and Referral staff is responsible for assisting individuals to understand their options to choose the CES Waiver or placement in an ICF/IID. A staff person communicates with the beneficiary or legal guardian by personal visit, telephone, email or mail. The beneficiary or legal guardian selects either of the options and documents the choice by completing the HCBS Services Choice Form which is maintained as the record of informed choice. Any individual residing in an ICF/IDD can request CES Waiver services at any time by contacting DDS. The choice is also offered at the time of their annual PCSP review. Waiver beneficiaries are mandatorily enrolled in a PASSE. Beneficiaries have a choice of PASSEs. If choice is not made, they are auto-assigned into one of the PASSEs and are allowed to switch to another PASSE within 90 days. PASSEs provide choice of network providers. And, at any time, a beneficiary has the right to change PASSEs for cause as described in 42 CFR 438.56(d)(2). The PASSE Care Coordinator is also responsible for offering members the choice of providers and services in accordance with the member's PCSP. Every year, the beneficiary will have an open enrollment period, where they can change their PASSE for any reason.

X Met ☐ Unmet ☐ Not Applicable

The DHS/DDS Intake and Referral staff, at time of application, offers choice of HCBS or ICF Facility based services. Documentation is maintained in electronic file by state agency. The DHS/DDS conducts a retrospective review of HCBS CES Waiver members on an annual basis utilizing random sample as defined in the approved waiver. As part of the retrospective review of the PCSP and PCSP development process, documentation of choice of provider is reviewed.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)].

The DHS/DDS conducts a retrospective review of HCBS CES Waiver members on an annual basis utilizing random sample as defined in the approved waiver. The PCSP reviewed for this individual indicates that the individual needs and preferences are considered in development of plan.

X Met ☐ Unmet ☐ Not Applicable

Enter Evidence Here

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)]

X Met ☐ Unmet ☐ Not Applicable

ILS-Florentz estates provides residential services only in the complex. All other services/supports are provided in the community and available to the same degree as for any other resident in the community

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

X Met ☐ Unmet ☐ Not Applicable

On-site review and observation was conducted utilizing the Arkansas HCGS Residential Site Review survey. Result of the survey indicate that individuals are able to engage in community activities of choice and are supported to engage in activities in the community.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

X Met ☐ Unmet ☐ Not Applicable

On-site review and observation was conducted utilizing the Arkansas HCBS Residential Site Review Survey. Interview with staff indicated that there are not restriction on individuals schedule. Review of the PCSP indicated no restrictions on freedom to control schedule or activities.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within State Standards through PASSE Provider Agreement and CES Waiver 0188

PASSE Agreement

- 4.7.1 These rights and responsibilities must include, at a minimum, the right to:
- m. Receive information on the PASSE;
 - n. To understand their PCSP and to receive the services contained within it;
 - o. Be treated with respect and with due consideration for the dignity and privacy;
 - p. Receive information on available treatment options and alternatives, presented in a manner appropriate to the member's condition and ability to understand;
 - q. Participate in decisions regarding his or her health care, including the right to refuse treatment;
 - r. Be free from any form of restraint or Seclusion used as a means of coercion, discipline, convenience or retaliation;
 - s. Choose a participating provider for any service the member is eligible and authorized to receive under his or her PCSP, including a PCP;
 - t. Execute an advance directive without discrimination in the provision of care or otherwise;
 - u. Request and receive a copy of his or her medical records and request that they be amended or corrected;
 - v. Obtain needed, available and accessible health care services covered under the PASSE;
 - w. Live in an integrated and supported setting in the community and have control over aspects of their lives; and
 - x. Be protected in the community.

X Met ☐ Unmet ☐ Not Applicable

Compliance with this requirement was measured through interview and observation. The member indicated that he can lock his entry door, close and lock bathroom door and bedroom doors for privacy. Staff knock and wait for permission to enter. While he does not have his own phone, staff advised that member is able to utilize the phone in the management office and can close the door for privacy.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

X Met ☐ Unmet ☐ Not Applicable

Individuals residing at ILS-Florentz Estates are free to have visitors, both in their apartments or common area (community room) in the complex. By interview, member indicated that he has family and friends that visit and that he often visits friends that live in the complex.

Individuals have access to food at any time.

By observation and review of documentation, member's access to food is restricted due to hypertension and obesity. Per physician's note, unlimited access to refrigerator and pantry is restricted and should be locked. At mealtime and upon request of the member, the locks can be removed. By interview with member, it was stated that member does have a choice of what to eat and when he wants.

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services:

- The individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the applicable landlord/tenant laws.
- The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)]

X Met ☐ Unmet ☐ Not Applicable

Lease agreements were available for review. The lease agreement clearly outlines the rights of the individual, financial terms and protections from evictions without notice.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☐ Met ☐ Unmet X Not Applicable

Enter Evidence Here

Each individual has privacy in their sleeping or living unit.

Each apartment at ILS-Florentz Estates is a self-contained apartment unit consisting of open floor plan with fully equipped kitchen, dining area, living area, laundry space, bedroom and ensuite bathroom and closets. Individuals can furnish and decorate as they choose. Apartments are single occupancy with one bedroom. Each bedroom and ensuite bathroom have doors that can be locked for privacy.

X Met ☐ Unmet ☐ Not Applicable

Enter Evidence Here

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

X Met ☐ Unmet ☐ Not Applicable

Individual living units in the apartment complex have lockable doors with the tenant having key to their apartment. While there is staff on-site, staff are required to be granted permission by the resident to enter their apartment. In case of emergencies, there is a secondary key that management can use to open doors.

Individuals sharing units have a choice of roommates in that setting.

☐ Met ☐ Unmet X Not Applicable

Enter Evidence Here

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

Compliance within State Standards

X Met ☐ Unmet ☐ Not Applicable

ILS-Florentz Estates provides furnished kitchen and laundry. All other furnishing and/or décor is at the discretion of the resident.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within State Standards

X Met ☐ Unmet ☐ Not Applicable

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☐ Met ☐ Unmet ☒ Not Applicable

Enter Evidence Here

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☐ Met ☐ Unmet ☒ Not Applicable

Enter Evidence Here

DHS Recommendation

DHS finds that ILS-Florentz Estates possesses the required home and community–based characteristics and overcomes the presumption of having institutional qualities.

Please note that these findings are preliminary only and must receive final approval from CMS.

EVIDENTIARY ASSESSMENT AND SUMMARY
Home and Community-Based Services (HCBS) Settings Rule
Heightened Scrutiny Review – Arkansas CES Waiver AR 0188

HCBS Program Name United Cerebral Palsy-Fox Meadows		Facility Type HCBS Supervised Living	
Corporate Name (if applicable) United Cerebral Palsy of Central Arkansas		License/Certification # 125837767	County Craighead
Facility Address 2819 Fox Meadow	City Jonesboro	State Arkansas	Zip Code 72401
Mailing Address 9720 N Rodney Paraham Road	Little Rock		72227
Primary Contact Name Paul Radar	Primary Contact Direct Phone (include area code) (501) 224-6067	Primary Contact Email Address	
Facility Website Address https://ucpark.org/			

Reason for Institutional Presumption

- ☐ Prong 1: Settings in a publicly or privately operated facility that provides inpatient institutional treatment. [Click or tap here to enter text.](#)
- X Prong 2: Settings on the grounds of, or adjacent to, a public institution. Name of institution: Conway Human Development Center
- ☐ Prong 3: Settings with the effect of isolating individuals from the broader community of individuals not receiving HCBS waiver services.

The Centers for Medicare and Medicaid Services' (CMS) HCBS settings rule assumes that certain settings are not home and community-based. If an Arkansas CES Waiver Program (setting) meets one of the criteria for institutional presumption as defined above, the DHS Division of Developmental Disabilities Services (DDS) conducts a heightened scrutiny review.

DDS believes that United Cerebral Palsy of Central Arkansas Fox Meadows (UCP) has overcome the institutional presumption and meets the criteria of a home and community-based services setting as summarized below.

To reinforce the extent to which Arkansas's licensing and certification regulations and Provider-led Arkansas Shared Saving Entity (PASSE) agreement align with and reinforce the HCBS settings rule, the applicable referenced section is included, within the compliance review summary. The documents in their entirety may be located at the following: CES Waiver (0188) https://humanservices.arkansas.gov/wp-content/uploads/Waiver_CES_AR0188.pdf . PASSE agreement <https://humanservices.arkansas.gov/wp-content/uploads/PASSE-Agreement-2023-FINAL.pdf>.

Facility Summary

UCP Foxmeadows offers supportive living in a supervised living apartment duplex that consists of two separate apartments. The apartments are

fully self-contained and designed to maximize independence while ensuring health and safety of the individuals who live there. The apartments are located within a residential community. Public transportation is available through Jonesboro Economical Transportation (JET), which operates bus routes.

The setting is integrated in and supports full access to the greater community [42 CFR § 441.301(c)(4)(i)].

The community considers the setting a part of their community and does not associate the setting with institutional services.

X Met ☐ Unmet ☐ Not Applicable

Compliance with 42 CFR § 441.301(c)(4)(i)] was assessed to address the characteristic of an HCBS physical setting. While UCP-Foxmeadows physical structure is built on property owned by Jonesboro HDC, it is located within a mixed residential community comprised of single and multi-family dwellings. Entrance to the duplex apartment is via public street access. No services or access to services require egress through the state operated facility.

Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting.

Compliance within Arkansas CES Waiver and State Standards Provider Led Arkansas Shared Savings Entity (PASSE) Provider Agreement 42 CFR § 441.301 (c)(4)(i), 42 CFR §441.301 (c)(4)(iv), 42 CFR§441.530 (a) (1) (i), 42 CFR § 441.710 (a)(1)(i), 42 CFR§710 (a)(1)(iv), 42 CFR§ 441.725 (a)(8)(b)(1)

The CES Waiver (AR.0188) and proposed Rules for the Division of Developmental Disabilities Services PASSE Provider Agreement establish standards for operational guidance for all Home and Community Based Services currently approved by the Centers for Medicare and Medicaid (CMS). The goal of the CES Waiver is to support individuals with intellectual or developmental disabilities with all major life activities such as living independently, working with appropriate supports and promotes inclusion through community experiences. The CES Waiver requires that each individual receiving HCBS services have a person-centered service plan that is based on an assessment that is functional in nature and addresses the person's areas of need including the capacity for independent living inclusive of making choices and decisions, establishing priorities, goals and desired outcomes.

X Met ☐ Unmet ☐ Not Applicable

Through interview with the resident at UCP-Foxmeadows, the individual and staff indicated that he was able to access the community for shopping, and recreation/socialization. Through observation, it was noted that a schedule of events/activities were posted-one of which included an announcement of an upcoming Fish Fry being sponsored by a community group.

Activities are individualized or include more than just setting-based group activities.

X Met ☐ Unmet ☐ Not Applicable

An onsite interview and observation was conducted utilizing the Arkansas HCBS Residential Site Review Survey tool. A random sample of residents was pulled in alignment with the sampling protocol as approved under the CES Waiver. Based on interview with supportive living staff, individual is free to participate in individualized activities. Individual does not like large crowds. Visits with family are facilitated with staff providing transportation for him to visit with family members.

The setting supports access to community activities through its own transportation or coordination of transportation options.

X Met ☐ Unmet ☐ Not met

While public transit is available through JET, individual is transported by staff. Staff indicated that when he wants or needs to go places that transportation is

not an issue.

Individuals, if they choose, have opportunities to seek employment and work in competitive integrated settings.

X Met ☐ Unmet ☐ Not Applicable

Individuals who reside at UCP-Foxmeadows have the opportunity to be employed in competitive integrated settings. A review of the individual's PCSP reflects activities of preference.

Compliance within Arkansas CES Waiver AR 0188 and PASSE Provider agreement

The Home and Community-based Waiver for individuals with IDD is part of a hybrid managed care model operated through Managed Care Organizations (MCO). A person-centered service plan process is used in development of the PCSP, and implementation of the plan is monitored through the PASSE. Individuals must have freedom of choice of providers, have choice of residential settings, supported in making life choices inclusive of scheduling activities and assurance that individual rights will be protected. The PASSE provider agreement outlines the requirements of the program in Sections 4.6 Member Protections and 5.3 Person-Centered Services Plan.

4.6 MEMBER PROTECTIONS—RIGHTS AND RESPONSIBILITIES

- 4.7.2 The PASSE must develop and implement policies and procedures, in clear and understandable language, for member's rights and take reasonable action to inform members of their rights by providing copies of policies and procedures and making them available on their website.
- 4.7.3 The PASSE must inform each Member of his or her rights and responsibilities as a member of the PASSE.
- 4.7.4 These rights and responsibilities must include, at a minimum, the right to:
 - y. Receive information on the PASSE;
 - z. To understand their PCSP and to receive the services contained within it;
 - aa. Be treated with respect and with due consideration for the dignity and privacy;
 - bb. Receive information on available treatment options and alternatives, presented in a manner appropriate to the member's condition and ability to understand;
 - cc. Participate in decisions regarding his or her health care, including the right to refuse treatment;
 - dd. Be free from any form of restraint or Seclusion used as a means of coercion, discipline, convenience or retaliation;
 - ee. Choose a participating provider for any service the member is eligible and authorized to receive under his or her PCSP, including a PCP;
 - ff. Execute an advance directive without discrimination in the provision of care or otherwise;
 - gg. Request and receive a copy of his or her medical records and request that they be amended or corrected;
 - hh. Obtain needed, available and accessible health care services covered under the PASSE;
 - ii. Live in an integrated and supported setting in the community and have control over aspects of their lives; and

jj. Be protected in the community.

4.7.5 The PASSE and its participating providers are prohibited from treating a Member adversely for exercising his or her rights, as outlined above.

4.8 RESTRICTIVE INTERVENTIONS IN AN HCBS SETTING

THE 1915(C) WAIVER THE 1915I STATE PLAN AMENDMENT OUTLINE THE REQUIREMENTS REGARDING RESTRAINTS AND SECLUSION.

4.7.1 PASSEs must have policies that prohibit maltreatment or corporal punishment of members and guarantee an array of rights which includes the right to be free from the use of a physical or chemical restraint, medications, or isolation as punishment for the convenience of the provider except when a physical restraint is necessary for the health and safety of the individual.

4.7.2 The PASSE is responsible for ensuring Risk Mitigation Plans are developed for all members. Risk mitigation plans are not behavior plans but may result in the development of a behavior plan.

4.7.2.1 If a member has a history of low-risk behaviors that could cause harm to himself/herself or the community, a Behavioral Prevention and Intervention Plan must be developed as outlined under the service Prevention, Intervention, and Stabilization in the 1915(c).

4.7.2.2 If a member has a history of high-risk behaviors that could cause harm to himself/herself or the community, a Positive Behavior Support must be developed as outlined under the 1915(c) and the 1915(i).

5.2 PERSON CENTERED SERVICE PLAN (PCSP)

5.2.1 The PASSE is responsible for the creation, monitoring, and updating of the PCSP for all Members of the PASSE. The PCSP must adhere to content requirements as found at 42 CFR § 441.301(c) and 42 CFR § 441.540 in a standardized format for the specific PASSE. The planning process and the PCSP must include, without limitation:

1. The Member's health information, including:
 - vi. Relevant medical and mental health diagnoses;
 - vii. Relevant medical and social history;
 - viii. PCP and primary provider of Behavioral Health or Developmental Disability services;
 - ix. The individual who has legal authority to make decisions on behalf of the Member; and
 - x. Indication of whether or not an advance directive or living will has been created for or by the Member.

- m. Reflect that the setting in which the individual resides is chosen by the individual;
 - n. Reflect the Member's strengths and preferences;
 - o. Reflect the clinical and support needs as identified;
 - p. Include individually identified goals and desired outcomes;
 - q. Reflect the services and supports that are important for the Member to meet the needs as identified through an assessment of functional need, including services and supports in the community to avoid placement in an institution;
 - r. Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals and desired outcomes;
 - s. Reflect the risk mitigation plan
 - t. Includes strategies for solving conflict;
 - u. Be finalized and agreed to in writing; and
 - v. Prevent the provision of unnecessary or inappropriate care.
-
- a. The PCSP must ensure that the Member's needs are being met in a way that is individualized and specific to that member's needs. The PCSP is the fundamental plan for assisting an individual live safely and successfully in his/her own home or community and deference to it must be given by interested parties. It should be designed to meet the individual's goals and objectives for the next twelve (12) months.
 - b. It must reasonably reflect the daily and weekly activities and routine a member chooses that is age and developmentally appropriate. It should also reflect progress towards a future goal. examples include:
 - i. activities to assist an adult with a developmental disability to plan to transition from an elderly parent's home into a community setting.
 - ii. activities to assist DCFS and member's family to achieve the member's permanency plan, through obtaining needed medical services and supports.
 - iii. activities to assist member transition out of residential or institutional setting.

Individuals are able to control their personal resources.

Compliance with Arkansas PASSE Provider Agreement

X Met ☐ Unmet ☐ Not Applicable

Individuals who reside in HCBS residential settings have the right to live in an integrated community setting and have control over aspects of their lives. Per staff interview and review of records, it is noted that a representative payee is in place. Individual is able to access personal resources to engage in community activities, shopping, and going out to eat with family.

The setting is selected by the individual from among setting options including non-disability specific settings. [42 CFR § 441.301(c)(4)(ii)].

Compliance with AR 0188 CES Waiver and PASSE Provider Agreement and 42 CFR § 441301 (c) (4) (ii).

Arkansas has protections in place as outlined below for CES Waiver members to ensure that they understand their choices under the Participant Access and Eligibility in the approved waiver

B-7: Freedom of Choice

***Freedom of Choice.** As provided in 42 CFR §441.302(d), when an individual is determined to be likely to require a level of care for this waiver, the individual or his or her legal representative is:*

informed of any feasible alternatives under the waiver; and

given the choice of either institutional or home and community-based services.

Procedures. Specify the state's procedures for informing eligible individuals (or their legal representatives) of the feasible alternatives available under the waiver and allowing these individuals to choose either institutional or waiver services. Identify the form(s) that are employed to document freedom of choice. The form or forms are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

The DDS Intake and Referral staff is responsible for assisting individuals to understand their options to choose the CES Waiver or placement in an ICF/IID. A staff person communicates with the beneficiary or legal guardian by personal visit, telephone, email or mail. The beneficiary or legal guardian selects either of the options and documents the choice by completing the HCBS Services Choice Form which is maintained as the record of informed choice. Any individual residing in an ICF/IDD can request CES Waiver services at any time by contacting DDS. The choice is also offered at the time of their annual PCSP review. Waiver beneficiaries are mandatorily enrolled in a PASSE. Beneficiaries have a choice of PASSEs. If choice is not made, they are auto-assigned into one of the PASSEs and are allowed to switch to another PASSE within 90 days. PASSEs provide choice of network providers. And, at any time, a beneficiary has the right to change PASSEs for cause as described in 42 CFR 438.56(d)(2). The PASSE Care Coordinator is also responsible for offering members the choice of providers and services in accordance with the member's PCSP. Every year, the beneficiary will have an open enrollment period, where they can change their PASSE for any reason.

X Met ☐ Unmet ☐ Not Applicable

The DHS/DDS Intake and Referral staff, at time of application, offers choice of HCBS or ICF Facility-based services. Documentation is maintained in electronic file by state agency. The DHS/DDS conducts a retrospective review of HCBS CES Waiver members on an annual basis utilizing random sample as defined in the approved waiver. As part of the retrospective review of the PCSP and PCSP development process, documentation of choice of provider is

reviewed.

The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and resources available for room and board. [42 CFR § 441.301(c)(4)(ii)].

The DHS/DDS conducts a retrospective review of HCBS CES Waiver members on an annual basis utilizing random sample as defined in the approved waiver. As part of the retrospective review of the PCSP and PCSP development process, documentation of individual's needs and preferences are considered in the development of the plan. Interview with staff indicates that member's Mom serves as advocate for her son.

X Met ☐ Unmet ☐ Not Applicable

Enter Evidence Here

The setting facilitates choice regarding services and supports, and who provides them. Individuals have a choice in selecting their service providers, and are not reliant on services from the institution to the exclusion of other community-based options. Individuals can choose to receive services in the community to the same degree as individuals not receiving Medicaid HCBS. [42 CFR § 441.301(c)(4)(v)]

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X Met ☐ Unmet ☐ Not Applicable

UCP-Foxmeadows provides residential services only in the complex. All other services/supports are provided in the community and available to the same degree as for any other resident in the community. This member receives medication management through a local mental health provider. Staff attends appointments to facilitate communication with provider and assure understanding of treatment.

The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. [42 CFR § 441.301(c)(4)(iv)]

X Met ☐ Unmet ☐ Not Applicable

On-site review and observation was conducted utilizing the Arkansas HCGS Residential Site Review survey. Result of the survey indicate that individuals are able to engage in community activities of choice and are supported to engage in activities in the community. Staff indicated that member likes animals and enjoys going to the Nature Center and Petco to watch them. He likes taking rides.

Individuals have the freedom and support to control their own schedules and activities. [42 CFR § 441.301(c)(4)(vi)(C)]

X Met ☐ Unmet ☐ Not Applicable

On-site review and observation was conducted utilizing the Arkansas HCBS Residential Site Review Survey. Interview with staff indicated that there are no restrictions on this individual's schedule. Review of the PCSP indicated no restrictions on freedom to control schedule or activities.

The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, [42 CFR § 441.301(c)(4)(iii)].

Compliance within State Standards through PASSE Provider Agreement and CES Waiver 0188

PASSE Agreement

- 4.8.1 These rights and responsibilities must include, at a minimum, the right to:
- kk. Receive information on the PASSE;
 - ll. To understand their PCSP and to receive the services contained within it;
 - mm. Be treated with respect and with due consideration for the dignity and privacy;
 - nn. Receive information on available treatment options and alternatives, presented in a manner appropriate to the member's condition and ability to understand;
 - oo. Participate in decisions regarding his or her health care, including the right to refuse treatment;
 - pp. Be free from any form of restraint or Seclusion used as a means of coercion, discipline, convenience or retaliation;
 - qq. Choose a participating provider for any service the member is eligible and authorized to receive under his or her PCSP, including a PCP;
 - rr. Execute an advance directive without discrimination in the provision of care or otherwise;
 - ss. Request and receive a copy of his or her medical records and request that they be amended or corrected;
 - tt. Obtain needed, available and accessible health care services covered under the PASSE;
 - uu. Live in an integrated and supported setting in the community and have control over aspects of their lives; and
 - vv. Be protected in the community.

X Met ☐ Unmet ☐ Not Applicable

Compliance with this requirement was measured through interview with staff and observation. During observation, it was noted that bathroom door has lock that individual can use. Staff indicated that he closes the door but does not lock it. Staff indicated that staff knock before entering. Bedroom doors can also be locked. Staff indicated that they knock on member's doors before entering for privacy.

Individuals are able to have visitors of their choosing at any time. [42 CFR § 441.301(c)(4)(vi)(D)]

☒ Met ☐ Unmet ☐ Not Applicable

Interview with staff indicate that member is free to have visitors. Member often visits with Mom.

Individuals have access to food at any time.

By observation and review of documentation, member has free access to food. There are no dietary restrictions. Staff indicated that member will go into kitchen and shows staff what he wants to eat. Member's Mom (also representative payee) provides groceries through home delivery. Snacks are readily available with no restrictions. Staff indicate that member is able to indicate food preferences. He determines when to eat meals. He is encouraged to eat in the dining area but can take food to his room if he desires.

The living unit is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services:

- The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the applicable landlord/tenant laws.
- The State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)]

☐ Met ☒ Unmet ☐ Not Applicable

Rental agreement was in the Member's file that indicated the amount of rent. The Rental Agreement that was on-site did not contain sufficient information to assure rights of member as it relates to eviction.

Overcoming Institutional Presumption

The setting demonstrated a meaningful physical distinction between the HCBS setting and the institutional setting, including separate entrances and signage, physical divisions, and differences in décor.

☐ Met ☐ Unmet ☒ Not Applicable

Each individual has privacy in their sleeping or living unit.

Each duplex at UCP-Foxmeadows is a self-contained apartment unit consisting of open floor plan with fully equipped kitchen, dining area, living area, laundry space, 2 bedrooms, bathroom and closets. Member is able to furnish and decorate room as preferred. Bedroom door can be closed for privacy. There are areas in common that are shared (living room, kitchen, dining area). There are no restrictions on members uses of common area and member is free to use common areas when he wants.

X Met ☐ Unmet ☐ Not Applicable

Enter Evidence Here

Individual living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

X Met ☐ Unmet ☐ Not Applicable

Individual living units in the duplex have lockable doors. While there is staff on-site 24 hours, staff are required to be granted permission by the resident to enter their apartment. Staff also have keys that can be used in case of emergencies.

Individuals sharing units have a choice of roommates in that setting.

☐ Met ☐ Unmet ☒ Not Applicable

Enter Evidence Here

Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. [42 CFR § 441.301(c)(4)(vi)(B)(1-3)]

Compliance within State Standards

X Met ☐ Unmet ☐ Not Applicable

UCP-Foxmeadows provides furnished kitchen and laundry. All other furnishing and/or décor is at the discretion of the member. With the assistance of family, member decorated his bedroom to reflect his love of movies.

The setting is physically accessible to the individual. [42 CFR § 441.301(c)(4)(vi)(E)]

Compliance within State Standards

X Met ☐ Unmet ☐ Not Applicable

Operational Distinction

The setting demonstrated meaningful operational distinction between the institution and the community-based setting, such as minimal administrative and financial interconnectedness.

☐ Met ☐ Unmet ☒ Not Applicable

This program is not connected to the Jonesboro HDC.

There is a distinction between staff for the HCBS setting and the institutional setting. Staff working in the HCBS setting receive initial and ongoing training on HCBS settings rule requirements and principles, and person-centered planning.

☐ Met ☐ Unmet ☒ Not Applicable

This Program is not connected to the Jonesboro HDC

DHS Recommendation

DHS finds that UCP-Foxmeadows substantially meets the required home and community-based characteristics and overcomes the presumption of having institutional qualities. An area of concern, noted during the review, is that the rental agreement that is maintained by the individual does not contain protection from eviction. A letter of compliance was issued for this finding and a corrective action plan has been requested. United Cerebral Palsy provided a Corrective Action Plan assuring that all beneficiary leases contain setting requirements that meet this measure.

Please note that these findings are preliminary only and must receive final approval from CMS.