# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Brookdale Chenal Heights

Address: 1 Chenal Heights Drive, Little Rock, AR 72223

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 8/30/2024

Brief Description of Setting: Brookdale Chenal Heights is an Assisted Living Facility (ALF) attached to Hickory Heights Health and Rehabilitation Center (a Skilled Nursing Facility), and operated by Brookdale Senior Living, Inc. The two facilities are owned by separate organizations, do not have co-mingled activities, or shared personnel. They also maintain separate financial and operational procedures. Brookdale Chenal Heights has 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. 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).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* A review of beneficiary surveys confirms that Brookdale Chenal Heights has calendars of events, flyers, and notes provided to the residents with info about community events. Beneficiary surveys also confirm that residents can come and go as they please. Residents in the ASCU do so in keeping with their personal care plans. 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 attend outings in the community and dine out with friends and family.
* A review of the beneficiary interviews indicates that individuals go to off-site locations at their leisure via transportation provided by the facility. The facility provides transportation to residents, into the community for shopping, worship, and community events. Staff also work closely with family members, to arrange transportation for resident appointments in the community. The facility provides transportation into the community.
* Beneficiary interviews of residents at Brookdale Chenal Heights confirm 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.
* A review of beneficiary surveys supports 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 beneficiary’s meet with their Community Resource Specialists who discuss settings options with them, including non-disability specific options.
* A review of the Bill of Rights, and the Occupancy Admission Assessmentsupports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their activities. Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing. Brookdale Chenal Heights 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. The 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.
* At Brookdale Chenal Heights the resident has the right to choose any licensed, certified or registered health care professional, including their primary care physician. 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. Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers
* There are no double occupancy rooms. The Bill of Rightsconfirms that each resident is entitled to privacy in their living unit. HCBS privacy is part of the HCBS staff training.
* Beneficiary surveys confirmed that all rooms have locks on their doors and a key and key codes are given to each resident. HCBS lock policies are part of the HCBS staff training.
* There are no double occupancy rooms and everyone has their own room.
* A review of the Bill of Rights, and Occupancy Admission Assessmentsupports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their décor, and living arrangements. One beneficiary indicated they decorated their apartment with the help of family and friends. Beneficiary survey interviews also confirm that each resident can decorate their individual rooms with personal furnishings.
* A review of the Bill of Rights, and Occupancy Admission Assessmentsupports the right of each resident to make choices about their activities. Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing. Brookdale Chenal Heights 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. The Administrator also indicated that the residents could 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 Administrator indicated that the residents have the ability to determine when and where they eat. The meals are scheduled, but they can request food 24/7. Staff are available to cook meals and provide snacks at all times. There are also switch outs for meal items based on personal preference. Residents indicate that 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.
* The setting is physically accessible to residents per state surveyor.
* To the extent any facility staff are assigned to support or back up the HCBS staff, the facility staff are cross trained to meet the same qualifications as the HCBS staff. The two facilities do not share personnel as they are not owned by the same company. Further, there is no sharing of employees between the ASCU side of the facility and the ALF side during shifts.
* The state considered the following evidence to demonstrate Brookdale Chenal Heights is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys; administrator interview; Bill of Rights, Occupancy Admission Assessment, and Occupancy Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + The facility supports a resident’s right to seek employment in the community outside the facility, per beneficiary interviews, and confirmation via interviews with staff.
  + The facility posts jobs available in the facility and in the surrounding community on a bulletin board in front foyer of the facility. Resources, employment opportunities and application assistance posted in common area on bulletin board. (Employment Resources and Opportunities document and photos documenting information is posted in common area)
  + There is a section of the residency agreement for each beneficiary file examined that indicates no resident will be required to perform services in the community [in the facility] unless they agree to perform that work and there is a written agreement that meets all applicable legal requirements.
  + Interview with Office Manager on 11/25/2024 stated no clients have employment outside of the facility at this time.
  + Interview with Administrator on 11/26/2024 stated clients can voice their opinions in council meetings if they desire to seek employment, always have internet access, and are always welcome to ask the staff for any help they may need through the process.
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. [42 CFR 441.301(c)(4)(ii)].
  + A review of thirteen (13) residency agreements and person centered care plans, chosen at random, indicates the residents were a part of the decision to reside in the facility.
  + The services provided are based on the beneficiaries individual needs, preferences, and resources available per the person centered care plans.
  + Surveyor reviewed person-centered service plans, health care service plans, and direct care service plans. Facility Health and Wellness director works in conjunction with Medicaid nurse to plan clients’ services according to individual needs and preferences.
  + Interview with the administrator on 11/26/2024 stated the facility has a registered dietitian who works on the menus and will accommodate meals if there are special diets or the clients have certain food preferences. Meals will be brought the clients to their rooms, if so desired.
  + Administrator stated staff will accommodate to clients if they prefer to sleep in or have services done at a certain time if possible.
* Attestation that 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)]. Please confirm the remediation has occurred regarding updating the Assisted Living Facility Manual around the language for restraints.
  + The facility’s inspection and a review of inspection materials and evidence collected indicates **the facility does not use restraints**.
  + The facility has a specific policy to address the use of both physical and chemical restraints. Both are prohibited per policy CS-80-1.
  + “Restraints Policy” provided by facility
  + “Brookdale Employee Training Plan” includes a specific section on abuse
  + “Brookdale Employee Training Plan” Specific section on Physical Restraint, Wandering, and Egress Control
  + Interview with Office Manager 11/25/2024 stated we do not utilize restraints at this facility per our policy.
  + Manager signed a letter of attestation regarding restraints and coercion on 11/26/24.
* Confirmation that a lease, residency agreement or other form of written agreement is 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)].
  + Per the thirteen (13) randomly chosen occupancy agreements, the facility has a policy regarding eviction and has a policy regarding arbitration for appeals of eviction.
  + “Eviction and System of Appeals” is part of the lease agreement and is consistent with state and federal laws
  + Beneficiaries indicated they know there is a section of their occupancy agreement that addresses their rights when it comes to eviction or termination of the residency agreement.
* Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + The facility has provided a letter of attestation indicating only appropriate staff have keys to resident apartments.
  + Residents indicate they are notified in advance when someone is going to enter their apartment.
  + The facility has a standing policy in the occupancy agreement that indicates they will provide advance notice before entering an apartment expect in cases where the resident’s safety is in eminent danger or they are unresponsive, etc.
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. Please also propose the remediation for the state standard which indicates there can be visiting hours as this is in direct conflict with the settings criteria and confirm when remediation is completed.
  + No remediation is necessary. After additional surveys and evidence collection beneficiaries indicate the facility allows visitors at any time, including overnight.
  + Facility policy in the occupancy agreements indicates that visitors are allowed at any time. Overnight stays require notification of executive staff.
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + Review of person centered care plans show that beneficiaries with modifications and additional conditions have justifications in their person centered care plans.
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please clarify staff have been trained on all of the HCBS settings criteria and how the state determined this.
  + The facility provided surveyors with a staff roster indicating attendance at a HCBS staff training where HCBS specific training was provided.
  + “Brookdale Employee Training Plan” evidenced that all employees are required to successfully complete required HCBS regulation training topic “Resident Rights”
  + “HCBS Regulation Training Documentation” evidence employees have successfully completed required training
  + Interviewed manager “what is your procedure to ensure all employees have received HCBS Regulation training? they stated, “It’s part of the 10 hours of Relias training (ALF2 Orientation Topics), new employees cannot be on the floor until all of those are finished”

# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Countryside Assisted Living

Address: 722 Phillips Place, Huntsville, AR 32508

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 8/30/2024

Brief Description of Setting: Countryside Assisted Living is an Assisted Living Facility (ALF) located in Huntsville, Arkansas. Countryside Assisted Living has an Alzheimer’s Special Care Unit (ASCU) located on the same campus, however the ASCU is located in a separate building, with separate personnel and policies and procedures. 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 are from the surrounding Huntsville area. At the time of the survey, there were one hundred five (105), 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).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* The state determined that residents at Countryside Assisted Living enjoy many options for interaction and access to the greater community. The site survey indicated there is a board with activities listed in the setting. Beneficiary surveys confirms that residents can come and go as they please. One resident indicates they spend time with their niece regularly. A review of beneficiary interviews highlights individual interests, hobbies, and activities that residents participate in and attend. Residents attend outings in the community, partake in vacation opportunities with family, and dine out with friends and family.
* According to the state assessment, staff work closely with family members, friends, and volunteers to arrange transportation for resident appointments in 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 a beneficiary needs to go somewhere but do not have a car they provide provisional transportation.
* Beneficiary interviews of residents at Countryside Assisted Living confirm that residents 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 findings. including an interview with the administrator, also indicate beneficiaries have the ability to control their own resources both independently and with assistance from the facility.
* Review of beneficiary surveys regarding individual direct care services and health care services plans indicates that settings options are a part of the health care service plan. 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 beneficiary’s meet with their Community Resource Specialists who discuss settings options with them, including non-disability specific options.
* 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. There are flyers and posters for residents to decide what community activities they would like to attend. A review of the beneficiary interviews highlights individual interests, hobbies, and activities that residents participate in and attend. Countryside Assisted Living 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 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.
* 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. 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. Countryside Assisted Living residents are able to contract with home health and other third-party service providers. Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers.
* The Bill of Rights confirms that each resident is entitled to privacy in their living unit. HCBS privacy policies are part of the HCBS staff training.
* Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. HCBS lock policies are part of the HCBS staff training.
* The facility does not have any double occupancy apartments and everyone has their own unit.
* 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 décor, and living arrangements. Beneficiary survey interviews confirm that each resident can decorate their individual rooms with personal furnishings.
* Beneficiary survey interviews confirm that each resident can wake up when they choose, and participate in activities of their choosing. Countryside Assisted Living encourages and supports that each resident has the right to choose when they eat, when they sleep and what they choose to engage in. The Administrator also indicated that the residents have the ability to determine the schedule of their activities.
* Countryside Assisted Living encourages and supports that each resident has the right to choose when they eat. The Administrator also indicated that the residents have the ability to determine when and where they eat. The meals are scheduled, but someone is available on site to prepare food when requested. 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.
* The setting is physically accessible to residents per the state surveyor.
* The state considered the following evidence to demonstrate Countryside Assisted Living is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys; administrator interview; Bill of Rights, Occupancy Admission Assessment, and Admission Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + This is addressed on client application for residence at the facility. It is highlighted on the blank prescreening document. No residents currently are employed, but it is asked during pre-screening if they would like to explore job opportunities.
  + The facility administrator indicates they are supportive of beneficiaries working in the community and help facilitate employment when asked.
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + the setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. [42 CFR 441.301(c)(4)(ii)].
    - PCCPs and occupancy agreements were reviewed. Likes and dislikes are documented on the paperwork.
    - Administrator indicates individual needs, preferences and resources available for room and board are discussed during admission and throughout residency.
* Attestation that 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)]. The state indicated through staff interview they adhered to requirements around abuse and neglect but did not provide how the state determined the setting met the protections outlined in this specific settings criterion.
  + Signed by Administrator on 11/21/24. During observation tour of the facility and individual resident rooms upon entry, no residents were observed to be restrained and there was no indication any restraints were used on residents.
  + Multiple residents were observed at various times walking within the community and visiting with other residents.
  + All personal care interactions between staff and residents was performed in the privacy of the residents’ own apartments. There were no indications of abuse, coercion, or neglect.
  + The facility has specific policies prohibiting coercion, restraint, and abuse; surveyor reviewed policies.
* Confirmation that a lease, residency agreement or other form of written agreement is 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)]. The evidence related to this criterion (p. 53) is specific to Azalea Commons. Please confirm the correct evidence for Countryside Assisted Living.
  + All HCBS residents’ occupancy agreements were reviewed and downloaded into evidence. The occupancy agreement addresses services provided and protections related to the eviction process as well as information on how to appeal a discharge.
  + Reference to Azalea Commins was a typo. All evidence was re-reviewed to ensure the evidence used to make determinations of compliance were specific to Countryside Assisted Living.
* Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + Residents were provided with key fobs to enter their rooms and appropriate care staff were observed entering rooms after knocking prior to entry. Attestation signed by administrator and provided as evidence.
  + Administrator signed Letter of Attestation indicating that only appropriate staff have access to resident rooms.
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. Please propose the remediation for the state standard which indicates there can be visiting hours as this is in direct conflict with the settings criteria and confirm when remediation is completed.
  + Countryside policy/procedures provided and states unrestricted visitation. Family members were observed coming in and out of the facility at various times during facility tour unrestricted. Visitors were observed to interact with staff members amicably.
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + No rights were observed to be infringed upon.
  + No PCCPs had modifications upon review of beneficiary files.
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please clarify staff have been trained on all of the HCBS settings criteria and how the state made this determination.
  + Employee records were obtained and HCBS training manual documenting HCBS training for employees was signed by the staff members.
* The evidence package submitted by the state includes Ongoing Compliance for Azalea Commons instead of Countryside Assisted Living, (p. 53). Please provide the correct information for Countryside Assisted Living and confirm all other responses in this package is specific to Countryside Assisted Living.
  + Reference to Azalea Commins was a typo. All evidence was re-reviewed to ensure the evidence used to make determinations of compliance were specific to Countryside Assisted Living.
* Arkansas’s Division of Provider Services and Quality Assurance (DPSQA) will ensure through ongoing compliance reviews that Countryside Living 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.”

# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Dalton’s Place of Fordyce

Address: 1718 Industrial Drive, Fordyce, AR 71742

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 8/30/2024

Brief Description of Setting: Dalton’s Place of Fordyce is an Assisted Living Facility (ALF) in Fordyce, Arkansas. The majority of the residents at Dalton’s Place of Fordyce are from the surrounding Fordyce area. At the time of the survey, there were thirty-five (35) residents, 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).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* A review of the facility survey confirms that Dalton’s Place of Fordyce has a bulletin board where residents are notified of community events. Residents hold council meetings to discuss community events and activities that are upcoming. A review of beneficiary surveys confirms that residents can come and go as they please. Residents also indicate they attend community events often and the facility facilitates community involvement. The Administrator indicates that the residents are transported to community events including the county fair and the senior center.
* 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.
* Beneficiary interviews of residents confirm that residents do have the ability to control their own personal resources. Facility practices documented in operating manuals, and in-service trainings also indicate the facility supports personal resource autonomy.
* 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 beneficiary’s meet with their Community Resource Specialists who discuss settings options with them, including non-disability specific options.
* 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. Beneficiaries have full autonomy as stated in their occupancy admission agreement and confirmed through beneficiary surveys. Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing. Dalton’s Place of Fordyce 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. The 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 state assessment confirms there are no double occupancy rooms except for married couples.
* 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 décor, and living arrangements. Beneficiary survey interviews confirm that each resident can decorate their individual rooms with personal furnishings and can bring personal effects.
* 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. Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing. The Administrator also indicated that the residents can choose what they do, and the schedule of their activities.
* Dalton’s Place of Fordyce encourages and supports that each resident has the right to choose when they eat and what they eat. This was confirmed by the Administrator who indicated that residents are able to eat 24/7, as there are staff available to cook 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. Residents confirmed this in the beneficiary surveys.
* The state assessment found the setting is physically accessible to residents.
* The state considered the following evidence to demonstrate Dalton’s Place of Fordyce is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys; administrator interview; Bill of Rights, Occupancy Admission Assessment, and Admission Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + Interviews with beneficiaries and records review of the facility demonstrated that outside employment is allowed and supported.
  + Currently the facility has one resident working a regular schedule at another location outside the facility.
  + Another resident drives to her daughter’s house daily to babysit her grandson full time.
  + Facility manager provided letter of Attestation of the facilities stance on employment.
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. [42 CFR 441.301(c)(4)(ii)].
  + Record reviews of individual care plans, occupancy agreements, prescreening assessments, and activity/personal interest surveys indicated individual needs and choices of the residents are a central part of the plan of care.
  + The activity/interest surveys appear to be updated on an annual basis to continue to support personal autonomy and the individual needs, desires, preferences and resources available to the beneficiaries.
* Attestation that 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)]. The state indicated through staff interview they adhered to requirements around abuse and neglect but did not provide how the state determined the setting met the protections outlined in this specific settings criterion. Additionally the information included was specific to Fairweather Manor. Please provide the correct setting assessment evidence.
  + Reference to Fairweather Manor was a typo. Re-review of evidence materials confirms that all evidence used to determine compliance was and is related to Dalton’s Place of Fordyce.
  + The facility manager signed a Letter of Attestation indicating the facility does not engage in the use of restraints or coercion.
  + Facility policy and procedures clearly outline protections for the residents dignity and freedom from restraint and coercion.
* Confirmation that individuals have a choice in selecting their services and supports and who provides them [42 CFR 441.301 (c)(4)(v)]. The information included was specific to Fairweather Manor. Please provide the correct setting assessment evidence.
  + Reference to Fairweather Manor was a typo. Re-review of evidence materials confirms that all evidence used to determine compliance was and is related to Dalton’s Place of Fordyce.
  + Review of person centered care plans and admission documentation indicates all beneficiaries were a part of the person centered care plan development and chose the facility services and supports they would be provided.
* Confirmation that a lease, residency agreement or other form of written agreement is 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)].
  + Surveyors reviewed all residency agreements and found that the residency agreements covered the eviction process.
  + Residency agreements had provisions for eviction and appeals of eviction consistent with local laws.
* Attestation that units have entrance doors lockable by the individual and only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + Letters of Attestation were provided by the facility to address keys. Letters attest that only appropriate staff have keys to the apartments and residents have the right to privacy.
  + Facility policy and procedures clearly outlines protections for the residents dignity and freedom from restraint. Follow up in services have been provided that demonstrate ongoing training on the subjects of Dignity, HIPPA and residents rights along with reporting of abuse and neglect.
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. Please also propose the remediation for the state standard which indicates there are visiting hours as this is in direct conflict with the settings criteria, and confirm when remediation is completed.
  + Policy stated that residents can have any visitors of their choice.
  + No time was specified.
  + Further interviews with staff confirmed that visitors are allowed 24 hours a day and the only provision requested was the noise be kept to a minimum after hours as to not to disturb the community.
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + Review of records indicates no beneficiaries have any modifications present in their person centered care plans (PCCP).
  + Staff at the facility indicated in the past when there was a modification to a PCCP, staff would ensure the least restrictive modifications were used, and that PCCPs were supported by doctor’s orders or other supporting documentation within the PCCP.
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please clarify staff have been trained on all of the HCBS settings criteria and how the state determined this.
  + Documentation was provided by facility management showing a roster that was consistent with current employees, of new employee training and in-service education has been conducted in relation to HCBS requirements.
  + Follow up in services have also been provided that demonstrate ongoing training on the subjects of Dignity, HIPPA and residents rights along with reporting of abuse and neglect.
* The evidence package submitted by the state includes and Fairweather Manor in the Facility Summary, (p. 70), choice of services (p. 74), and individual rights (p.76) instead of information specific to Dalton’s Place. Please provide the correct information for Dalton’s Place and confirm all other responses in this portion of the package is specific to Dalton’s Place.
  + Reference to Fairweather Manor was a typo. Re-review of evidence materials confirms that all evidence used to determine compliance was and is related to Dalton’s Place of Fordyce.

# **Heightened Scrutiny Summary of Findings**

CLOSED

## Setting Information

Name of Setting: Fairweather Manor

Address: 320 Wittington Ave, Hot Springs, AR 71901

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 8/30/2024

Brief Description of Setting: Fairweather Manor is a Residential Care Facility (RCF)/group home in Hot Springs, Arkansas operated by Counseling Clinic, Inc, that also provides outpatient mental health services. The majority of the residents at Fairweather Manor are from the surrounding Hot Springs area. At the time of the survey, there were nineteen (19) residents, 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).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* The state found that 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. Beneficiary interviews indicate that individuals go to offsite locations via transportation provided by the facility.
* The state found that facility practices documented in 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. Beneficiary interviews of residents confirm that residents have the ability to control their own personal resources.
* At Fairweather Manor the resident has the right to choose any licensed, certified or registered health care professional. Beneficiary survey interviews confirm that each resident can choose their primary care physician and other healthcare providers. There are healthcare and medical providers that come to the campus that the resident can choose. If they utilize outside services the facility facilitates transportation. Residents can contract with home health and other third-party service providers as well, if needed. The facility 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.

CLOSED

* 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.
* 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 décor, and living arrangements. One beneficiary indicated they decorated their apartment with the help of family and friends. Beneficiary survey interviews confirm that each resident can decorate their individual rooms with personal furnishings, they were able to bring personal effects.
* Fairweather Manor encourages and supports that each resident has the right to choose when they eat and what they eat. The Administrator also indicated that the residents have the ability to determine when, what, and where they eat. They reported that the residents are able to eat 24/7 since 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. Residents further indicated 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.
* The setting is physically accessible to residents per the state surveyor.
* The state considered the following evidence to demonstrate Fairweather Manor is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys; administrator interview; Bill of Rights, Occupancy Admission Assessment, and Admission Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that individuals have control over their own schedules, and that the variation and frequency of engagement in community activities of individuals’ choosing (including group and individual outing options in the broader community) are consistent with the preferences and desires outlined in each individual’s person-centered plan as identified through a review of the person-centered service plan, setting activity records/notes and/or direct on-site observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(4)(vi)(C)].
* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting is selected by the individual from among setting options including non-disability specific settings.
  + The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. [42 CFR 441.301(c)(4)(ii)].
* Attestation that 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)]. Please confirm the remediation has occurred regarding updating the Assisted Living Facility Manual around the language for restraints. Confirmation that 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)].

CLOSED

* Confirmation that a lease, residency agreement or other form of written agreement is 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)]. Please confirm the state’s review of the Occupancy Agreement to determine the sufficiency of the evidence and the determination that the setting meets this criterion.
* Attestation that units have entrance doors lockable by the individual and only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
* Confirmation through review of provider policies and/or observational data collected by the state during the onsite visit that individuals sharing units have a choice of roommates in that setting [42 CFR 441.301(c)(4)(vi)(B)(2)]. The information provided addresses married couples only and it is not clear how the state determined the setting has met this criterion.
* Confirmation that individuals have the freedom and support to control their own schedules and activities [42 CFR 441.301(c)(4)(vi)(C)]. The state indicated in their review the setting has an 8pm curfew which is in direct conflict with the settings criteria. Please clarify how the state will remediate and confirm when remediation is completed. Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. The state indicated in their review that resident’s can visit with any person during visiting hours and only addresses overnight visitation if it is outside of the facility. This is in direct conflict with the settings criteria. Please clarify how the state will remediate and confirm when remediation is completed.
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].

Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please clarify staff have been trained on all of the HCBS settings criteria and how the state determined this has been completed.

# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Independent Living Services-Florentz Estates

Address: 1125 Addybrook Lane, Conway, AR 72032

Type of Setting: Residential

Heightened Scrutiny Category: Setting is in a building located on the grounds of, or immediately adjacent to, a public institution.

Date Submitted: 08/30/2024

Brief Description of Setting: Independent Living Services (ILS)-Florentz Estates is adjacent to the Conway Human Development Center in Conway, Arkansas. It offers supportive living in a supervised living apartment with on-site management. While it is on property owned by the state, it is located within a mixed residential community comprised of single and multi-family dwellings. The 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. 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 are within walking distance of shopping and recreation.

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* In an 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.
* Individuals who reside at ILS-Florentz Estates have the opportunity to be employed in competitive integrated settings. A resident interviewed indicated that they have been employed by a Center for Independent Living for many years and looked forward to retirement. A retirement celebration was held at ILS-Florentz Estates Club House for an individual who lives there that was attended by employer, neighbors and greater community.
* Public transportation is available through the METRO Connect Conway Micro transit Service. The parent company, ILS, provides limited transportation as needed. A 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.
* The state determined that this requirement is met in compliance with Arkansas PASSE Provider Agreement. Per interview and review of records, the state found that noted that a representative payee is in place. Residents are able to access personal resources to engage in community activities, shopping, going out to eat with family/friends, and attending community events .
* 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. Interviews with staff indicated that there are not restrictions on individuals’ schedule. Review of the PCSP indicated no restrictions on freedom to control schedule or activities. A sample resident interview indicated that 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.
* ILS-Florentz estates provides residential services only in the complex. Based on that, the state determined that all other services/supports are provided in the community and are available to the same degree as for any other resident in the community.
* In addition to previously shared information on privacy, the state found that 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. Apartments are single occupancy with one bedroom. Each bedroom and ensuite bathroom have doors that can be locked for privacy.
* Compliance with this requirement was measured through interview and observation. 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.
* The state found that apartments are single occupancy with one bedroom and therefore roommate choice is a non-issue.
* The state found that individuals can furnish and decorate as they choose. ILS-Florentz Estates provides furnished kitchen and laundry. All other furnishing and/or décor is at the discretion of the resident.
* Review of the PCSP indicated no restrictions on freedom to control schedule or activities. A sample resident interview indicated that 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.
* 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.
* The state considered the following evidence to demonstrate Independent Living Services-Florentz Estates is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; lease agreement; resident interviews using Arkansas HCBS Residential Site Review Survey tool- random sample of residents using sampling protocol as approved under the CES Waiver; PCSPs.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting is selected by the individual from among setting options including non-disability specific settings
    - The DHS/DDS Intake and Referral staff, at time of application, **offers choice of HCBS or ICF Facility based services to the beneficiary for them to choose from.**
    - **Documentation maintained by the facility in electronic file by state agency indicates beneficiaries chose the facility.**
    - The DHS/DDS conducts retrospective reviews 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, and preferences. [42 CFR 441.301(c)(4)(ii)]. Please note needs and preferences should be more than just “considered” in this process.
    - Review of person-centered care plans indicates the person-centered care plans are based on individual needs, desires, and preferences.
* Attestation that 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)]. The state provided evidence for how the setting met the individual’s rights or privacy, dignity, and respect. Please clarify how the state determined the setting met an individual’s rights of freedom from coercion and restraint. Confirmation that a lease, residency agreement or other form of written agreement is 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)]. The state indicates the provider meets this requirement but did not provide how it was determined protections that address appeals or eviction processes are included and are comparable to typical landlord tenant law.
  + State surveyors reviewed occupancy agreements and found there are protections that address eviction and arbitration and appeals of the eviction, consistent with local law.
  + The lease agreement clearly outlines the rights of the individual, financial terms and protections from eviction without notice.
* Confirmation that individuals have access to food at any time [42 CFR 441.301(c)(4)(vi)(C)].
  + All residents have access to food at any time, however those with dietary restrictions due to doctor/dietitian prescribed diets do need to request access to the foods that are appropriate per their person centered care plans.
  + By observation and review of documentation, one beneficiary’s access to food is restricted due to hypertension and obesity. **Per physician’s note, unlimited access to refrigerator and pantry is restricted.** At mealtime and upon request of the member, they can gain access to foods that are permitted in their PCCP. By interview with member, they stated they do have a choice of what to eat and when to eat.
  + All other beneficiaries have unrestricted access to food. Restrictions are only applicable for those that have documentation of a physicians order in their PCCP.
  + Staff indicated they make every effort to provide foods in the least restrictive manner possible even when a PCCP indicates restrictions are warranted.
* Attestation that the setting is physically accessible to the individual [42 CFR 441.301(c)(4)(vi)(E)]. The state did not provide any information on how they made this determination.
  + The state determined this through visual observation of ramps, hand holds, and other assistive devices to help disabled individuals navigate and perambulate through the facility.
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)]. Please describe the process used to justify the modification cited in the summary, including all of the required documentation in the person-centered service plan such as positive interventions and supports used prior to the modification, less intrusive methods that have been tried and have not worked, justification of how the condition is directly proportionate to the specific assessed need, the regular collection and review of data to measure the ongoing need, the time limits for periodic review and that the individual consented to the modification are present.
  + Resident is reevaluated quarterly, including blood testing and physical examination by physician to determine if the individual still needs a modified diet.
  + Individual indicated during interview they are not restricted from food at any time, they simply lack the ability to determine which foods are allowable as part of their person centered care plan, authorized by the physician, to keep their hypertension under control. Employees give them the choice of what to eat from foods that are reduced sodium.
  + PCCP indicates the resident has agreed to this intervention.
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>).
  + The facility provided evidence of HCBS annual training and initial new hire training for all employees and employee names were compared to in-service records.

# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Mercy Crest Retirement Living

Address: 1300 Strozier Lane, Barling, AR 72923

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 08/30/2024

Brief Description of Setting: Mercy Crest Retirement Living is an Assisted Living Facility (ALF) located in Barling, Arkansas. The majority of the residents at Mercy Crest are from the surrounding Barling area. At the time of the survey, there were ninety-four (94) residents at Mercy Crest Retirement Living, 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).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* A review of beneficiary surveys supports that Mercy Crest was selected from a choice of setting options. 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. Survey reviews also documented that this setting continues to be the setting of choice for the individuals.
* 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. When someone does choose this option, 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 and has policy in place to safeguard the residents finances. .
* A review of five (5) beneficiary surveys indicate the facility coordinates transportation for community outings of the resident’s choice and the occupancy agreement also indicates transportation is provided. The facility also works with friends and family to coordinate transportation options.
* The occupancy agreement indicates that beneficiaries are able to choose providers outside the facility. It also stipulates that the facility will make arrangements for or provide transportation for a fee to residents in order to meet “necessary” medical and dental needs. At Mercy Crest the resident has the right to choose any licensed, certified or registered health care professional. Mercy Crest residents are able to contract with home health and other third-party service providers. Beneficiaries are able to choose the provider they prefer and are free to see providers outside the setting. The Administrator interview confirms that beneficiaries are free to choose providers outside the facility and the facility does provide transportation. 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. Survey reviews also documented that this setting continues to be the setting of choice for the individuals.
* 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.
* A review of the Occupancy Agreement supports the right of each resident to enjoy individual choice, autonomy, and independence in making choices about their décor, and living arrangements. Beneficiary surveys indicated that the residents were able to bring personal effects and decorate their spaces as they saw fit. One beneficiary indicated they do not decorate their apartment, but this was by personal choice.
* The Occupancy Agreement describes that each resident has three meals a day, snacks anytime, and access to food as they desire. The Administrator indicated that the residents have the ability to determine when and where they eat. The meals are scheduled, but someone is available on site 24/7 to prepare food when requested. Snacks are also provided. Residents confirmed 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.
* The setting is physically accessible to residents per the state surveyor.
* The state considered the following evidence to demonstrate Mercy Crest Retirement Living is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys; administrator interview; Bill of Rights, Occupancy Admission Assessment, and Admission Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that individuals have control over their own schedules, and that the variation and frequency of engagement in community activities of individuals’ choosing (including group and individual outing options in the broader community) are consistent with the preferences and desires outlined in each individual’s person-centered plan as identified through a review of the person-centered service plan, setting activity records/notes and/or direct on-site observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(4)(vi)(C)].
* A sizable bulletin board that lists all of November's events greets visitors to the building. The activity calendars for the previous few months, which included many daily activities **that are adjusted for each resident, were also made available by the administrator. This is consistent with person-centered care plans. Surveyors observed that person-centered care plans are being followed, and community outings are being adjusted and accommodated to meet the beneficiaries’ desires and needs.**
* The facility includes two vans for activities: a small minivan that is ideal for physically fit individuals, and a large van that is handicapped accessible. All beneficiaries have the option to go out in the community **if they choose** thanks to the two vans and the alternating tours.
* Surveyors interviewed beneficiaries and they indicated they can go into the community any time they want, and the facility provides transportation into the community for them. **Beneficiary outings are not strictly scheduled activities and beneficiaries can be transported into the community for non-scheduled activities.**
* The facility occupancy agreement states, **“The facility will also provide regularly scheduled transportation services for use by residents for shopping and other outing**s.” The facility will also offer a program of planned activities, opportunities for community participation and services designed to meet your physical, social and spiritual needs.”
* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + Currently there are no beneficiaries that are employed in the community. The facility supported his right to work in the community.
  + The facility has a policy that states, “The resident or responsible party shall be responsible for transportation to and from such employment.”
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that: The setting is selected by the individual from among setting options including non-disability specific settings;
* Per beneficiary interviews, all beneficiaries indicated they chose the facility of their own volition and were not coerced to choose the facility.
* Facility policy indicates that the beneficiaries are included in the person-centered care plan development along with a team of professionals and staff at the facility.
* Staff also indicated beneficiaries are a part of the development of person-centered care plan.
* Surveys indicate the facility is still the beneficiaries’ choice.
* Attestation that the setting ensures an individual's freedom from coercion and restraint [42 CFR 441.301(c)(4)(iii)]. Resident rights in the occupancy agreement include the right to privacy.
* Compliance with these requirements has been confirmed through staff interviews, and beneficiary interviews.
* **The occupancy agreement indicates the facility complies with all applicable federal, state, and local laws regarding abuse and neglect.** 
  + All occupied rooms were inspected, and no beneficiaries were confined at the time, nor was there any indications that they had been.
* Per facility policy, "Restraints shall not be used on any resident," according to facility policy.
* **Restraints are strictly prohibited at the facility and according to records review staff receive regular training on the prohibition of restraints, and coercion.**
* Confirmation that 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)].
* The facility has several scheduled activities planned throughout the day. Nevertheless, it was seen that **a few groups were engaging in their own activities rather than taking part.** A couple of women were seen studying the Bible alone, and a few guys were seen playing cards.
* Additionally, there was a two-bedroom apartment with **a room solely for sewing**. The beneficiary indicated they enjoy making tiny presents for friends and family, and she has an entire room set aside for it when she wants to.
* **Per facility autonomy and freedom of choice policy "[Beneficiary] Has the right to make his or her own choices regarding personal affairs…"**
* **Staff receive in-service trainings to reiterate and reinforce beneficiary rights to autonomy and choice.**
* Confirmation that a lease, residency agreement or other form of written agreement is 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)]. The state indicated a review of the beneficiary survey confirms a written agreement is in place that outlines room, board, grievance procedures according to state law but it is not clear how the state determined the settings residency agreements include the same protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law. Please clarify.
* **Surveyors have attested that leases and residency agreements exist for all occupants.**
* Residency agreements provide protection from eviction, and address the eviction process and list the appeals process that further outlines room, board, and grievance procedures according to state law.
* **The facilities’ residency agreement is consistent with landlord tenant laws for the State of Arkansas.**
* Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + **All occupied rooms were inspected with the facility’s Office Manager. Different keys were used for the rooms and most doors were locked. All rooms have different keys. There is no mater key, and all rooms have unique keys that only appropriate staff are allowed to have.**
  + During rounds residents were observed using their keys to enter their rooms.
  + **Per surveyor reports, surveyors attest that only appropriate staff have keys to the beneficiary rooms.**
* Confirmation through review of provider policies and/or observational data collected by the state during the onsite visit that individuals sharing units have a choice of roommates in that setting [42 CFR 441.301(c)(4)(vi)(B)(2)]. The information provided addresses married couples only and it is not clear what policies or practices are in place in the setting for when roommate selection may occur. Please clarify how the state determined the setting has met this criterion.
  + Per records review, at the time of the site visit the only room used for shared occupancy was for a mother and her daughter.
  + The facility’s policy regarding shared occupation is, “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**.”
  + **Per surveyor observations, no beneficiaries, save the mother and daughter, share occupancy with another individual. All other rooms are single occupancy.**
* Confirmation that individuals have the freedom and support to control their own schedules and activities [42 CFR 441.301(c)(4)(vi)(C)].
* The facility has several scheduled activities planned throughout the day. Nevertheless, it was seen that **a few groups were engaging in their own activities rather than taking part.** A couple of women were seen studying the Bible alone, and a few guys were seen playing cards.
* Additionally, there was a two-bedroom apartment with **a room solely for sewing**. The beneficiary indicated they enjoy making tiny presents for friends and family, and she has an entire room set aside for it when she wants to.
* **Per facility autonomy and freedom of choice policy "[Beneficiary] Has the right to make his or her own choices regarding personal affairs…"**
* **Staff receive in-service trainings to reiterate and reinforce beneficiary rights to autonomy and choice.**
* Currently the facility is in the process of conducting a survey and part of the survey is regarding “Activities and Recreation”, all residents are welcome to fill them out and add their own comments. The survey will conclude on 11/29/2024 and all participants will be placed in a drawing for one of four $25 gift cards. "[Beneficiary] Has the right to make his or her own choices regarding personal affairs…" is the facility's autonomy and freedom of choice policy. The facility also has a resident council that meets monthly to discuss actives and scheduling of activities. Surveyors observed that some of the beneficiary suggestions are on the calendar.
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. While the state provided in their review that individuals could have visitors at any time, the Compliance with Arkansas State standard and Regulations section indicates there are “visiting hours” which is in direct conflict with the settings criteria. Please propose remediation of this non-compliant policy and confirm remediation when it is completed.
  + During facility rounds there were several beneficiaries that had visitors in their room. There was a sign posted in the very front of the entrance that stated, **“Visitor hours at Mercy Crest are unrestricted!”**
  + Facility policy states, “**Facility residents shall be allowed communication including personal visitations with any person of the residents’ choice**…” the policy goes on to state that **residents can have overnight guest** for up to two nights as prearranged by the administrative staff.
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + At time of site visit thirty-two person centered service plans were reviewed. Of the thirty-two only one had a modification regarding an electric coffee pot. On 01/23/2023 resident, initials B.O, signed a compliance agreement regarding a coffee pot. The facility and the beneficiary came to the agreement that he could have a coffee pot in his room if it was in working condition with an automatic shut off. Beyond that **no other exceptions were present in the person-centered care plans that were reviewed.**
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>. Please clarify staff have been trained on all of the HCBS settings criteria and how the state determined this has been completed.
* The facility offers training to all new employees regarding “client rights” and “Philosophy and principles of independent living in an assisted living residence.”
* Surveyors were provided evidence of initial trainings and subsequent yearly and in-service trainings that indicated patients’ rights and rules pertaining to an HBCS setting are covered on a regular basis.
* The evidence package submitted by the state includes a reference to Massey Avenue Operations in the brief description on pg. 86 and in the choice of provider section on pg. 92. Please ensure the correct information for Mercy Crest Retirement Living in these sections and confirm all other responses in this package is specific to Mercy Crest Retirement Living.
* This was a typo. **We have reviewed evidence and data packages to ensure all evidence in this response is specific to Mercy Crest.**

# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Peachtree Assisted Living

Address: 1803 Cordie Drive, Mena, AR 71953

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 08/30/2024

Brief Description of Setting: Peachtree Assisted Living is an Assisted Living Facility (ALF) in Mena, Arkansas. It is not co-located with another facility. The majority of the residents at Peachtree are from the surrounding Mena area. At the time of the survey, there were forty-five (45) residents, with eighteen (18) of those residents supported by HCBS waiver funding such as Living Choices. The total maximum census/capacity under their license is seventy (70).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* The state found thatthe facility does have transportation and works closely with families and friends of residents to coordinate transportation for individuals. Per the state’s review of five (5) beneficiary surveys, the facility has a bus and provides transportation into the community. The administrator indicated that transportation is provided.
* A review of the beneficiary interviews found individual interests, hobbies, and activities that residents participate in and attend., The administrator indicated the beneficiaries are able to control their own schedule. Beneficiary survey interviews confirm that each resident can wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
* The state found that residents have 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 the facility’s bus. Peachtree residents are able to contract with home health and other third-party service providers, choose the provider of their preference and see providers outside the setting. This was confirmed in an interview with the administrator and through beneficiary survey interviews. 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
* Beneficiary surveys confirmed that all rooms have locks on their doors. HCBS privacy and lock policies are part of the HCBS staff training.
* Beneficiary surveys confirmed that a key is given to each resident.
* Beneficiary survey interviews confirm that each resident can decorate their individual rooms with personal furnishings and bring personal effects.
* The Administrator indicated the beneficiaries are able to control their own schedule and what they do. Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing.
* The Administrator indicated that residents have the ability to determine when and where they eat. The meals are scheduled, but someone is available on site 24/7 to prepare food when requested. Snacks are also provided. Residents also indicated that 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.
* The setting is physically accessible to residents per the state surveyor.
* The state considered the following evidence to demonstrate Peachtree Assisted Living is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys; administrator interview; Occupancy Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that individuals have control over their own schedules, and that the variation and frequency of engagement in community activities of individuals’ choosing (including group and individual outing options in the broader community) are consistent with the preferences and desires outlined in each individual’s person-centered plan as identified through a review of the person-centered service plan, setting activity records/notes and/or direct on-site observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(4)(vi)(C)].
  + A comprehensive November activity calendar was displayed at the time of the site visit. The majority of the beneficiaries had the November calendar on their wall or refrigerator, and all 48 inhabited rooms were noted on rounds. There is at least one community event every week in November.
  + A copy of the "Resident's Rights," which reads, "Make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which he or she is capable," is given to the new hires during orientation and must be signed and put in their employee file.
  + After being interviewed, ten (10) beneficiaries indicated that they were able to visit the community with their family or the facility.
  + Additionally, the facility has a handicap accessible van for community outings.
* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + At time of site visit no beneficiaries at the facility had a job.
  + Ten (10) beneficiaries were interviewed, and they all stated that they did not have a job and most were disabled, but the facility would allow it if they wanted.
  + The facility has a policy that states, “Each [beneficiary] has the right to seek employment. The residents have rights to work while living at the facility…”
* Please provide confirmation that the setting supports full access of individuals to control their personal resources [42 CFR 441.301(c)(4)(i)]. Please clarify what evidence was collected from the beneficiary surveys that helped the state determine the setting has met this criterion.
  + A beneficiary’s financial autonomy is mentioned three times in their occupancy agreement and once in the facility’s policies. In the occupancy agreement it states, “Be allowed to manage his or her financial affairs.”
  + One of the sections under the Resident Rights must be signed by the beneficiary, beneficiary’s responsible party, and facility administrator. The third section is an addendum indicating residents are in charge of their own finances.
  + At time of site visit ten (10) beneficiaries were interviewed and they were all in charge of their finances, and indicated all residents are in charge of their finances to their knowledge.
  + Facility administrator indicated that all residents are in control of their personal resources.
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting is selected by the individual from among setting options including non-disability specific settings;
  + The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. [42 CFR 441.301(c)(4)(ii)].
    - At time of site visit all 48 occupied rooms were observed to be decorated and set up in a way that was best for each beneficiary and their physical abilities.
    - The person-centered service plan for all 28 beneficiaries that receive Medicaid were reviewed and no one had any restrictions.
    - In the facility’s occupancy agreement, the beneficiary signs the Residents’ Rights, it states “[Beneficiaries will] Be provided a safe and appropriate living environment.”
    - A letter of attestation was also signed by the administrator regarding the needs and preferences of beneficiaries being met.
* Attestation that 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)].
  + At time of site visit rounds were made of all rooms occupied by beneficiaries were reviewed. At that time no beneficiaries were restrained, and no restraints were visible.
  + The administrator knocked on every door and waited for a reply before entering.
  + Ten beneficiaries were interviewed and asked if they had ever been restrained at the facility and none of them had.
  + Employee orientation states, “[Resident Abuse is] Restraining a resident.”
  + On 07/19/2024 an in-service for all employees was conducted and the Philosophy and Principals of Independent Living and the Resident Rights was reviewed and beneficiaries’ rights to respect, privacy, dignity, and freedom from restraints nd coercion were discussed.
  + The facility administrator signed an attestation stating, “…beneficiaries have a right to be free from restraint and coercion.”
* Confirmation that a lease, residency agreement or other form of written agreement is 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)
  + A copy of the Occupancy Agreement has been reviewed and pages 7-8 document the eviction process.
  + The eviction process outlines appeals process and is consisted with landlord tenant laws.
* Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + The facility’s policy regarding keys states, “The facility charge staff have keys to all locked doors and residences readily available in the event of an emergency and they need to enter a residence or locked area.”
  + The administrator signed a letter of attestation stating, “…entrance doors that are lockable by the beneficiaries, and only appropriate staff have keys to the unit doors.”
* Confirmation through review of provider policies and/or observational data collected by the state during the onsite visit that individuals sharing units have a choice of roommates in that setting [42 CFR 441.301(c)(4)(vi)(B)(2)]. The information provided addresses married couples only and it is not clear what policies or practices are in place in the setting for when roommate selection may occur. Please clarify how the state determined the setting has met this criterion.
  + Ten beneficiaries were interviewed and none of them had roommates.
  + The facility occupancy agreement and policies **allow consenting adults to share a room.**
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. While the state provided in their review that individuals could have visitors at any time, the Compliance with Arkansas State standard and Regulations section indicates there are “visiting hours” which is in direct conflict with the settings criteria. Please propose remediation of this non-compliant policy and confirm remediation when it is completed.
  + At time of site visit November 2024, ten (10) beneficiaries were interviewed and they all stated that they were able to have visitors without any restrictions.
  + **The facility’s policy states, “The facility permits unrestricted visiting hours…”**
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + The person-centered service plan for all 28 beneficiaries that receive Medicaid were reviewed and no one had any restrictions.
  + A letter of attestation was also signed by the administrator regarding the needs and preferences of beneficiaries being met.
  + Administrator indicated they understand that any restrictions placed on a beneficiary must have justification present in the individual’s person-centered care plan
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please clarify how the state determined staff are trained on all of the HCBS settings criteria.
  + On 07/19/2024 the facility conducted an in-service with all of its staff regarding Resident Rights and the Principles of Assisted Living. These principles cover HCBS requirements including dignity, respect, autonomy, and community involvement.

# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Stone Bridge Senior Living- Heber Springs

Address: 401 Southridge Parkway, Heber Springs, AR 72543

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 08/30/2024

Brief Description of Setting: Stone Bridge Senior Living- Heber Springs is an Assisted Living Facility (ALF) in Heber Springs, Arkansas. It is not co-located with another facility. The majority of the residents are from the surrounding Heber Springs area. At the time of the survey, there were thirty-six (36) residents at Stone Bridge Senior Living-Heber Springs, 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).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* The state found that there is an observable board in the front of the facility that informs beneficiaries of local events they can attend in the community. One resident surveyed said that he goes on hunting and fishing trips. A review of five beneficiary surveys indicated that individuals attend activities in the community and are provided transportation to do so.
* The facility has transportation and works closely with families and friends of residents to coordinate transportation for individuals. The Administrator indicated that the facility provides transportation, and resident surveys confirmed that.
* A review of beneficiary surveys support that Stone Bridge Senior Living- Heber Springs was selected from a choice of setting options. Surveys also documented that this setting continues to be the setting of choice for the individuals. One resident 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.”
* A review of the beneficiary interviews highlight individual interests, hobbies, and activities that residents participate in and attend. The administrator indicated the beneficiaries are able to control their own schedule. Beneficiary survey interviews also confirmed that each resident can wake up when they choose, decorate their individual rooms with personal furnishings, have visitors at any time, and participate in activities of their choosing.
* The state’s 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. In an interview, the administrator indicated that beneficiaries are free to choose providers outside the facility and the facility does provide transportation. The state also found that 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. Residents are able to contract with home health and other third-party service providers.
* Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident. Staff knock before entering beneficiary homes, per beneficiaries. HCBS privacy and lock policies are part of the HCBS staff training.
* Beneficiaries indicated there are no double occupancy rooms.
* Beneficiary survey interviews confirmed that each resident can decorate their individual rooms with personal furnishings and bring personal effects.
* The administrator indicated the beneficiaries are able to control their own schedule. Beneficiary survey interviews also confirmed that each resident can wake up when they choose and participate in activities of their choosing.
* Residents indicate they can eat any time they want. They said that 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 menu is posted and residents have alternatives. and The state attests that residents can prepare their own meals in their rooms. The setting’s website confirms that although the units do not have kitchens, each is equipped with a refrigerator and microwave.
* The setting is physically accessible to residents per the state surveyor.
* The state considered the following evidence to demonstrate Stone Bridge Senior Living- Heber Springs is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures including rights; operating manuals, in-service trainings; facility website; resident surveys; administrator interview; and Occupancy Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + Interview with administrator Janet Loftis concluded that there are no HCBS beneficiary clients that hold employment inside or outside of the facility.
  + Facility Policy “R-1” states, “Ensure that residents not perform duties in lieu of direct care staff and will not be employed by the facility in other capacities. Except, the resident may seek employment and work in competitive integrated settings, if they so choose.” Facility policy “R-9” states, “[The resident shall] be allowed to refuse to perform services for the facility but have opportunities to seek employment and work in competitive integrated setting if they so choose…”
  + “Residents’ Bill of Rights” is posted on the wall by the front door.
  + (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12.
  + HCBS beneficiary client interviews concluded that they are able to seek employment if they wish.
* Confirmation that the setting supports full access of individuals to control their personal resources [42 CFR 441.301(c)(4)(i)]. Please clarify how the state determined the setting met this criterion.
  + Facility policy “R-9” states, “[The resident shall] be allowed to manage his or her financial affairs. The resident may authorize in writing another person to manage his or her money… retain, control, and use personal possession and personal resources including, but not limited to, clothing and furnishings… Be allowed to retain and use personal property in his or her immediate living quarters… ” Facility policy “A-6” states, “**Stonebridge Village residents will be allowed to manage his or her own funds,** the facility may assist residents, who authorize in writing, in finding a responsible party to manage his or her money… the facility does not require residents to deposit funds with the facility…”
  + “Residents’ Bill of Rights” is posted on the wall by the front door.
  + (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12.
  + Blank “Occupancy Admission Agreement” form states on page four, “The facility must maintain inventory records 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 room and that the resident has voluntarily authorized, in writing, the facility to hold in custody or exercise control over at the time of admission or any time thereafter. If applicable, facility may provide for the safekeeping and accountability of resident SSI funds. **A facility may not require the resident to deposit funds with the facility.”**
  + **Surveyor reviewed all HCBS beneficiary records and all beneficiaries that have elected for the facility to manage funds for them have a signed agreement that they consented to it.**
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting is selected by the individual from among setting options including non-disability specific settings;
  + the setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. [42 CFR 441.301(c)(4)(ii)].
    - Facility policy “R-1” states, “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.” Facility policy “R-9” states, “[Residents shall] be permitted to participate in activities of social, religious or community groups… Be provided a schedule of individual and group activities appropriate to individual resident needs, interests, and wishes. The freedom and support to control their own schedules activities… Residential services will be provided in a manner that supports and promotes the belief that individuals must have full access to the benefits of the community and receive services in the most integrated setting… Optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to: the right to make his or her own choices regarding personal affairs, daily activities, physical environment, care, benefits, services, and with whom to interact… Be allowed to make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community… Be allowed to engage in community life… Be allowed to select the private unit of their choice indicated in the [occupancy admission agreement] which is a part of their individualize service plan; based on their service needs, preferences, and their resources available for room and board… Be allowed to immediately leave the assisted living facility, either temporarily or permanently…”
    - Interview with administrator, Janet Loftis, concludes that the facility posts a calendar monthly of community events and will provide transportation to and from the community for various activities, outings, and personal requests.
    - HCBS beneficiary client interviews concluded that they are able to go into the community and have the freedom to control their schedule.
    - “Residents’ Bill of Rights” is posted on the wall by the front door.
    - (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12.
    - Surveyors observed posting on the wall outside of dining room of local community events occurring for clients to view.
    - State Surveyor has signed letter of attestation indicating they feel the beneficiaries have their choice of setting.
* Attestation that 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)].
  + Facility policy “R-1” states, “Make keys to residences readily available to facility personnel in the event of an emergency need to enter a residence. Only appropriate staff are permitted entry to the resident’s apartment.” Facility policy “R-9” states, “… The resident has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights. This applies to all residents regardless of their payment source including residents who receive HCBS… Be free from physical or mental abuse… Be treated with respect, kindness, consideration, and recognition of his or her dignity and individuality… the right to be free from abuse, neglect, and exploitation… be provided a safe and appropriate living environment… Not be confined to his or her apartment or bed… Have privacy in their apartment… Shall have a lockable apartment or unit door…”
  + “Residents’ Bill of Rights” is posted on the wall by the front door.
  + “Residents’ Bill of Rights” is included in the Occupancy Admission Agreement on page ten.
  + (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12.
  + HCBS beneficiary client interviews concluded that they are treated with dignity and respect, free from coercion and restraint, and able to lock their doors for privacy.
  + Interview with administrator, Janet Loftis, concluded that clients are treated with dignity and respect, free from coercion and restraint, and able to lock their doors for privacy.
  + **Letters of attestation were obtained from multiple staff members indicating beneficiaries have the right to be free from coercion and restraint.**
* Confirmation that a lease, residency agreement or other form of written agreement is 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)].
  + Facility policy “R-9” states, “Residents are discharged or transferred in conformity with Ark. Cod Ann. § 20-10-1005 and the provisions governing transfer and discharge in these regulations…”
  + “Residents’ Bill of Rights” is posted on the wall by the front door.
  + (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12.
  + Surveyor reviewed all HCBS beneficiary client “Occupancy Admission Agreement” forms and define the process for discharge or transfer including giving appropriate notice, reasons, and **instructions for appeals**.
  + Blank “Occupancy Admission Agreements states on page seven, “Except in cases of provisional placements, in the event of involuntary transfer or discharge of a resident, the facility shall: Discuss with the resident or responsible party the decision to transfer or discharge the resident; inform the resident or responsible party of the reason for transfer or discharge; inform the resident or responsible party of any available alternative to the transfer or discharge; provide a thirty (30) day written notice of transfer or discharge, unless an immediate discharge is required to ensure the welfare of the resident or the welfare of other residents that may be immediately affected or the conditions found under Ark. Cod Ann. § 20-10-1005(a)(1) exist…”
* Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + Facility policy “R-1” states, “Make keys to residences readily available to facility personnel in the event of an emergency need to enter a residence. Only appropriate staff are permitted entry to the resident’s apartment.” Facility policy “R-9” states, “[The resident] shall have a lockable apartment or unity door understanding appropriate staff have keys to their door to provide services or in case of emergencies…”
  + HCBS beneficiary client interviews concluded that staff only enter beneficiary rooms with permission.
  + Interview with administrator, Janet Loftis, concluded that only appropriate staff have keys to access resident rooms if necessary.
  + Interviews with staff concluded that clients have lockable doors and only appropriate staff have keys to access resident rooms if necessary.
  + “Residents’ Bill of Rights” is posted on the wall by the front door.
  + (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12.
  + Letters of Attestation obtained from multiple staff members.
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. While the state provided in their review that individuals could have visitors at any time, the Compliance with Arkansas State standard and Regulations section indicates there are “visiting hours” which is in direct conflict with the settings criteria. Please propose remediation of this non-compliant policy and confirm remediation when it is completed.
  + Facility policy “R1(a)” states, “The facility shall: permit unrestricted visiting hours. Residents may have visitors of their choosing at any time…; ensure that residents are allowed communication, including personal visitation with any person of the resident’s choice, including family members, representatives of advocacy groups, and community service organizations…” Facility policy “R-24” states, “The facility shall permit unrestricted visiting hours…”
  + Interview with administrator, Janet Loftis, concludes that visitation is unrestricted.
  + “Residents’ Bill of Rights” is posted on the wall by the front door.
  + (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12.
  + HCBS beneficiary client interviews concluded that visitation is unrestricted.
  + Blank “Occupancy Admission Agreement” form states on page two, “The facility encourages family and friends to visit you at any time…”
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + Surveyor reviewed all HCBS beneficiary clients person-centered service plans, care plans, and occupancy admission agreements and found no modifications that impedes on their rights. (Documentation attached)
  + Interview with administrator, Janet Loftis, concludes that there are no clients that have modifications that impedes on their rights. (Documentation attached)
  + “Residents’ Bill of Rights” is posted on the wall by the front door. (Documentation attached).
  + (Medicaid Waiver Program) Home and Community-Based Setting Rule 42 CFR 441.301(c)(4) is included in the Occupancy Admission Agreement on page 12. (Documentation attached)
  + Attestation from surveyor signed. (Documentation attached)
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please clarify how the state determined staff are trained on all of the HCBS settings criteria.
  + Facility provided documentation of in-services on topics of resident rights, abuse restraints and coercion, visitation, privacy, being treated with dignity and respect, confidentiality, and activities and groups.
  + Blank “Orientation” form shows that topics of abuse, neglect, resident bill of rights, methods of ensuring optimal functioning/quality of life: problem solving to care, techniques ensure respect, values, choice, and dignity, person centered care, and principles of person-centered care are all included in new-hire training.
* The evidence package submitted by the state includes a reference to Providence Senior Care on pg. 120. Please ensure the correct information in this sections for Stonebridge Senior Living- Heber Springs and confirm all other responses in this package is specific to Stonebridge Senior Living- Heber Springs.
  + Reference to Providence Senior Care was a typo and all data and evidence used to make a determination was re-examined to ensure all evidence is applicable to Stonebridge.

**Heightened Scrutiny Summary of Findings**

Setting Information

Name of Setting: United Cerebral Palsy-Fox Meadows

Address: 2819 Fox Meadow, Jonesboro, AR 72401

Type of Setting: Residential

Heightened Scrutiny Category: Setting is in a building located on the grounds of, or immediately adjacent to, a public institution.

Date Submitted: 08/30/2024

Brief Description of Setting: Brief Description of Setting: United Cerebral Palsy-Fox Meadows is adjacent to the Jonesboro Human Development Center (HDC) in Jonesboro, Arkansas. It offers supportive living in a supervised living apartment duplex that consists of two separate apartments. While it is on property owned by the 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. The United Cerebral Palsy (UCP)-Fox Meadows are considered a part of the surrounding residential community. Each duplex at UCP-Fox Meadows 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. There are areas in common that are shared (living room, kitchen, dining area).

**Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption**

* In an interview with a resident at United Cerebral Palsy-Fox Meadows, the individual stated that he was able to access the community for shopping, 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.
* Public transportation is available through Jonesboro Economical Transportation (JET), which operates bus routes. The state’s review of a sample interview found that an individual’s visits with family are facilitated with staff providing transportation for them to visit with family members. Given this finding, while public transit is available through JET, this individual is transported by staff. Staff also indicated that when the individual wants or needs to go places that transportation is not an issue.
* The state determined that this requirement is met in compliance with Arkansas PASSE Provider Agreement. Per interview and review of records, the state found that noted that a representative payee is in place. Residents are able to access personal resources to engage in community activities, shopping, going out to eat with family.
* 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. An interview with staff indicates that a member’s parent serves as an advocate for the member in this process.
* On-site review and observation was conducted utilizing the Arkansas HCGS Residential Site Review survey. Results 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. 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. Based on an interview with supportive living staff, the individual in the sample is free to participate in individualized activities; the individual does not like large crowds. A review of the individual’s PCSP reflects activities of preference. Staff indicated that the member likes animals and enjoys going to the Nature Center and Petco to watch them. The individual likes taking rides.
* United Cerebral Palsy-Fox Meadows 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 member receives medication management through a local mental health provider. Staff attends appointments to facilitate communication with provider and assure understanding of treatment.
* Compliance with this requirement was measured through interview and observation. During observation, it was noted that the bathroom door has a lock that the individual can use. Staff indicated that the individual closes the door but does not lock it. Bedroom doors can also be locked. Staff indicated that they knock on the member’s doors before entering for privacy.
* 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.
* The state found that the member is able to furnish and decorate room as preferred. UCP-Fox Meadows provides furnished kitchen and laundry. All other furnishing and/or décor is at the discretion of the member. With the assistance of family, the member decorated their bedroom to reflect their love of movies.
* Interviews with staff indicated that there are not restrictions on individuals’ schedule. Review of the PCSP indicated no restrictions on freedom to control schedule or activities.
* By observation and review of documentation, the member has free access to food. There are no dietary restrictions. Staff indicated that the member will go into kitchen and shows staff what they want to eat. Member’s parent (also representative payee) provides groceries through home delivery. Snacks are readily available with no restrictions. Staff indicate that the member is able to indicate food preferences and determines when to eat meals. The member is encouraged to eat in the dining area but can take food to their room is they desire.
* The state considered the following evidence to demonstrate United Cerebral Palsy-Fox Meadows is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; staff interview; lease agreement; resident interviews using Arkansas HCBS Residential Site Review Survey tool; PCSP.

**Initial Determination**

* Evidentiary Package requires additional information before a final decision can be made.

**Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:**

CMS requests the State of Arkansas provide the following:

* Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting is selected by the individual from among setting options including non-disability specific settings.
* Attestation that 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)]. While the state provided evidence that privacy was met, the state did not provide how it determined the setting met the remainder of this criterion. Confirmation that a lease, residency agreement or other form of written agreement is 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)]. The state indicated the lease on site was not sufficient to show compliance. Please clarify how the state will remediate and confirm when remediation is complete.
* Confirmation through review of provider policies and/or observational data collected by the state during the onsite visit that individuals sharing units have a choice of roommates in that setting [42 CFR 441.301(c)(4)(vi)(B)(2)].
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. While the state provided in their review that individuals could have visitors at any time, the Compliance with Arkansas State standard and Regulations section indicates there are “visiting hours” which is in direct conflict with the settings criteria. Please propose remediation of this non-compliant policy and confirm remediation when it is completed.
* Attestation that the setting is physically accessible to the individual [42 CFR 441.301(c)(4)(vi)(E)].
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>).

**Heightened Scrutiny Summary of Findings**

Setting Information

Name of Setting: West Dixon Assisted Living Facility

Address: 2821 W. Dixon Road, Little Rock, AR 72206

Type of Setting: Residential

Heightened Scrutiny Category: Setting located in a building that also provides inpatient institutional treatment.

Date Submitted: 08/30/2024

Brief Description of Setting: West Dixon Assisted Living Facility (ALF) is attached to a specialized nursing facility (SNF) in Little Rock, Arkansas. The ALF and SNF have separate operating procedures and policies. The majority of the residents at West Dixon ALF are from the surrounding Little Rock area. At the time of the survey, there were thirteen (13) residents at West Dixon ALF, 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).

**Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption**

* The state’s review of the beneficiary survey conducted confirms that residents can come and go as they please. Person-centered healthcare services planning for the residents encourages involvement, where possible, with the family members of every resident. A review of beneficiary interviews highlighted individual interests, hobbies and activities that residents participate in and attend.
* 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. If residents utilize outside services, the ALF facilitates transportation through Medicaid to and from appointments or provides transportation. This was confirmed by one resident survey.
* Beneficiary interviews of residents confirm that residents 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.
* A review of beneficiary surveys support that West Dixon ALF was selected from a choice of setting options. Beneficiary Survey reviews also documented that settings options are part of the health care service plan, and this setting continues to be the setting of choice for the individuals.
* 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. Residents are also able to contract with home health and other third-party service providers.
* Beneficiaries have private rooms. None of the rooms are double-occupancy. The Bill of Rights confirms that each resident is entitled to privacy in their living unit.
* Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident.
* 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 décor and living arrangements. Beneficiary survey interviews confirm that each resident can decorate their individual rooms with personal furnishings.
* Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing. The administrator also indicated that the residents can choose their schedule.
* The administrator indicated that the residents have the ability to determine when and where they eat. The Admission Agreement describes that each resident has snacks anytime, and access to food as they desire in additional to three meals a day. In 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.
* The setting is physically accessible to residents per the state surveyor.
* The state considered the following evidence to demonstrate West Dixon Assisted Living Facility is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys; administrator and staff interviews; Admission Agreement; Residents’ Bill of Rights, and Occupancy Admission Assessment; Occupancy Agreement.

**Initial Determination**

* Evidentiary Package requires additional information before a final decision can be made.

**Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:**

CMS requests the State of Arkansas provide the following:

* Verification that the setting supports full access for individuals to have opportunities to work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + Facility has a policy stating that residents have the right to work or not work.
  + Interviews with residents indicated they do not currently have a job, but if they wanted to work they would have the opportunity to do so.
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting is selected by the individual from among setting options including non-disability specific settings [42 CFR 441.301(c)(4)(ii)].
    - Administrator signed letter of attestation indicating the residents have the choice of where they live.
    - Policies and procedures were examined and it was determined that the beneficiaries are asked during intake if they want to live at the facility and they selected the facility from the available options.
* Attestation that 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)].
  + Letter of attestation was signed by the administrator indicating that beneficiaries are free from coercion and restraint.
  + Faiclity policies and procedures prohibit the use of restraints and coercion.
* Confirmation that 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)]. Please confirm an individual is not required to adhere to a daily schedule as indicated on pg. 7 when the state quotes the provider website, “we provide our residents with a daily schedule of organized recreational and educational activities.”
  + Received a policy and procedure. Policies and procedures indicate the beneficiaries are able to make their own schedules and choose activities they participate in.
  + Interviews with residents were conducted. They stated they have the right to choose activities.
* Confirmation that a lease, residency agreement or other form of written agreement is 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)]. The state indicates the provider meets this requirement but did not provide how it was determined protections that address appeals or eviction processes are included.
  + Lease agreements were examined for all beneficiaries.
  + Lease agreements provide information on the eviction process including process for appeals of eviction.
* Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + Letter of attestation was signed by the administrator indicating that only appropriate staff have keys to the residences.
  + Staff were observed knocking before entering the apartments.
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. While the state provided in their review that individuals could have visitors at any time, the Compliance with Arkansas State standard and Regulations section indicates there are “visiting hours” which is in direct conflict with the settings criteria. Please propose remediation of this non-compliant policy and confirm remediation when it is completed.
  + Received policy and procedure manual. Manual indicates residents have the right to have visitors any time.
  + Re-interviewed additional residents. They stated they can have visitors at any time.
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + During re-visit of the facility all beneficiary PCCPs were examined. None has any modifications.
  + Administrator indicated they understand that all residents must not have their HCBS rights infringed on. If there is ever a modification in a residents PCCP there needs to be justification present in the file, and all means of less intrusive restrictions must have been exhausted prior to the restriction being placed on the beneficiary. The Administrator was provided an example restriction and less intrusive interventions that could be employed in that example. They indicated they understood the concept.
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please confirm that all HCBS Settings requirements are included in training.
  + Staff was in-serviced on HCBS regulations on 11/25/2024. Surveyor was provided copies of in-service training and confirms the topics covered were inclusive of all HCBS regulations.

# **Heightened Scrutiny Summary of Findings**

## Setting Information

Name of Setting: Windsor Cottage Assisted Living Facility

Address: 4110 Jefferson Avenue AR, Texarkana, AR 71854

Type of Setting: Residential

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: 08/30/2024

Brief Description of Setting: Windsor Cottage Assisted Living Facility (ALF) is in Texarkana, Arkansas. It is not co-located with another facility. The majority of the residents at Windsor Cottage ALF are from the surrounding Texarkana area. At the time of the survey, there were twenty-two (22) residents at Windsor Cottage ALF, 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).

### Support Submitted by the State to Demonstrate Setting’s Progress in Overcoming the Institutional Presumption

* A review of the Windsor Cottage beneficiary surveys confirms that the facility has an observable bulletin board with community activities that they can participate in. A beneficiary indicated that residents are also told about community events. Observation of Windsor Cottage and beneficiary surveys confirm that they participate in community events and travel into the community often. The Administrator indicated that the beneficiaries participate in senior day in the community.
* The facility works closely with families and friends of residents to coordinate transportation for individuals. The Administrator also indicated that the facility provides transportation. This was confirmed through beneficiaries.
* Beneficiary surveys indicate that the residents have the ability to control their own resources.
* A review of beneficiary surveys supports that Windsor Cottage ALF 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.
* A review of the beneficiary interviews highlights individual interests, hobbies, and activities that residents participate in and attend. Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing. The administrator also indicated that the residents can choose their schedule.
* 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. Residents are also able to contract with home health and other third-party service providers. 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 administrator confirmed this.
* Each resident of Windsor Heights has privacy in his/her sleeping unit, including a lockable door. Beneficiaries indicated that none of the rooms are double-occupancy. HCBS privacy and lock policies are part of the HCBS staff training.
* Beneficiary surveys confirmed that all rooms have locks on their doors and a key is given to each resident.
* Beneficiary survey interviews confirm that each resident can decorate their individual rooms with personal furnishings and bring personal effects.
* Beneficiary survey interviews confirm that each resident can wake up when they choose and participate in activities of their choosing. The administrator also indicated that the residents can choose their schedule.
* 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 administrator indicated that if residents choose not to eat at mealtime, their tray of food is taken to their room to eat at their discretion. They also said that if residents choose not to eat the planned meal, they will be offered an alternative.
* The setting is physically accessible to residents per the state surveyor.
* The state considered the following evidence to demonstrate Windsor Cottage Assisted Living Facility is integrated and supports full access to the greater community by the individuals: State staff surveyor observations; policies and procedures; operating manuals, in-service trainings; facility website; resident surveys and onsite interviews; administrator interview; Occupancy Agreement.

### Initial Determination

* Evidentiary Package requires additional information before a final decision can be made.

### Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

CMS requests the State of Arkansas provide the following:

* Verification that the setting supports full access for individuals to have opportunities to work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  + Currently there are no clients/residents/beneficiaries that are employed out in the community.
  + The facility has supports available for those wishing to work in the community and assists anyone wanting to work in the community.
* Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:
  + The setting is selected by the individual from among setting options including non-disability specific settings;
    - Resource Book is provided to them at the time of application and anytime upon request. This book has “other options” available to the client/resident/beneficiary for them to explore at their leisure. There are non-disability specific options within this book.
  + the setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. [42 CFR 441.301(c)(4)(ii)].
    - The Assessments have the “needs and preferences” documented in their PCCP/ICP and updated annually and a quarterly review is done to check on the “status” of the individual and changes are made with the client/resident/beneficiary at that time with their approval.
    - There are goals in place within the PCCP/ICP to assist them in maintaining their independence or re-gaining the skills lost over the quarter and finding the barriers in place and assisting the individual with removal of those stated barriers.
* Attestation that 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)].
  + Administrator signed a letter of attestation indicating beneficiaries are free from restraint and coercion.
* Confirmation that a lease, residency agreement or other form of written agreement is 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)].
  + Occupancy agreement in place for the client/resident/beneficiary with current “eviction process and appeals”. These policies are consistent with landlord tenant laws.
* Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  + All occupied rooms were inspected with the facility’s office manager. A colored key with each key belonging to the appropriate colored “hall” was used to open the client/resident/beneficiary locked door.
  + Administrator signed a letter of attestation indicating that only appropriate staff have access to keys that open resident rooms.
* Confirmation through review of provider policies and/or observational data collected by the state during the onsite visit that individuals sharing units have a choice of roommates in that setting [42 CFR 441.301(c)(4)(vi)(B)(2)]. The state review indicates that beneficiaries confirmed that none of the rooms are double-occupancy and that all apartments are single unless a married couple or same sex siblings choose to live together. Please confirm if current policy in the setting would prevent other couples or duos to live together if they both choose, but don’t fit into these parameters.
  + Due to the regulations and the sizes of the rooms a “roommate” would not meet the guidelines for this facility due to the size of the rooms.
  + All rooms are required to be single occupancy.
* Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. While the state provided in their review that individuals could have visitors at any time, the Compliance with Arkansas State standard and Regulations section indicates there are “visiting hours” which is in direct conflict with the settings criteria. Please propose remediation of this non-compliant policy and confirm remediation when it is completed.
  + The Occupancy agreement states the clients/residents/beneficiaries have a right to have visitors and have them any time of day (#17 in the Facility policy and Procedures A360).
* Confirmation that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].
  + No residents currently have modifications to the PCCPs.
  + Administrator indicated they are aware that any restrictions must be justified in the PCCP and all efforts have to be made to implement the least restrictive measures, and exhaust all options and methods before restrictions are placed on an individual.
* Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>). Please confirm that the bi-weekly in-service and new employee trainings include information on all HCBS Settings requirements.
  + The facility has HCBS training in place.
  + The facility offers training to all new employees regarding “client rights” and “Philosophy and principles of independent living in an assisted living residence.”
  + Curriculum review of evidence reflects HCBS regulations are being taught to new employees and in-service training is provided regularly to keep regulations top of mind.
* The evidence package submitted by the state includes reference in the brief description to Providence Senior Care on pg. 152. Please ensure the correct information in this section for Windsor Cottage and confirm all other responses in this package is specific to Windsor Cottage.
  + The evidence packet was re-examined and all evidence was determined to be applicable to Windsor Cottage. Reference to Providence was a typo.