



Heightened Scrutiny Review of 29 Acres

Pursuant to requirements of the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) Settings Rule, the Texas Health and Human Services Commission (HHSC) is submitting certain Medicaid HCBS settings to CMS for heightened scrutiny review, as described in 42 Code of Federal Regulations (C.F.R.) §441.301(c)(5)(v) and in CMS' [March 2019 Updated Frequently Asked Questions on Heightened Scrutiny Provisions](#).

HHSC is submitting 29 Acres, an intentional community setting, to CMS for heightened scrutiny review and a final determination of compliance. HHSC has assessed 29 Acres for compliance with the HCBS Settings Rule and identified remediation activities needed to achieve full compliance with the HCBS Settings Rule. HHSC is submitting this setting to demonstrate that it does not have qualities of an institution and that it does have the qualities of a home and community-based setting.

This document provides a summary of the assessment process, key findings and remediation activities 29 Acres completed to comply with the HCBS Settings Rule.

HHSC invites members of the public, including Medicaid HCBS recipients and their families, providers and other stakeholders to submit comments on the setting. All comments must be received by HHSC by 11:59pm on Thursday, April 13, 2023. HHSC will review and consider public comments received and will share the comments with CMS.

Please find instructions for submitting public comment on page 8 of this document. Additional information about the HCBS Settings Rule, the heightened scrutiny process, and HHSC's statewide transition plan is available on the [HHSC website](#).

Federal Heightened Scrutiny Requirements

A primary purpose of the HCBS Settings Rule is to ensure people receive Medicaid HCBS in settings that are integrated in the community. CMS presumes certain settings are not home and community-based because they have institutional or

isolating qualities. However, the heightened scrutiny process allows states to demonstrate that settings can overcome this institutional presumption. These settings must go through a heightened scrutiny review by CMS. CMS presumes the following types of settings have institutional or isolating qualities:

- **Prong 1 settings:** Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- **Prong 2 settings:** Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and
- **Prong 3 settings:** Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Setting Information

29 Acres is an intentional community setting located in Denton County, in the larger Dallas/Fort Worth area.

29 Acres is a Prong 3 setting.

On-Site Assessment

HHSC conducted an on-site assessment of 29 Acres on December 15, 2022. During the on-site assessment, HHSC assessors observed the setting and interviewed administrative staff, direct care staff, and an individual receiving services and their legally authorized representative.

HHSC used a 79-question interview tool and 30-item observation tool to assess the setting. Observation criteria and provider interview questions are based on [CMS Exploratory Questions](#). HHSC also collected and reviewed the setting's related policies and procedure documents, including the setting's residential agreement, money management forms, community activities and events calendar, and service planning documentation.

Findings

HHSC determined 29 Acres was compliant with all requirements of the HCBS Settings Rule, with the exception of the requirement related to an individual's

control of personal resources. A summary of the setting's compliance with each HCBS settings requirement¹ follows.

- **Requirement 1:** The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
 - **Compliance summary:** 29 Acres staff assess individuals' interests in employment and volunteering. Individuals have opportunities to work in jobs/job fields including cyber security, landscaping, ranching, retail and pet care. At the time of the assessment, no individuals were working but some were volunteering in the community. The setting's service planning form includes a section regarding the individual's employment/vocational interests.

Individuals regularly participate in community activities away from the setting, including going to the salon, bowling, out to restaurants, to the gym and to the nearby trampoline park. Individuals receive attendant care and behavioral support services as needed while out in the community. Individuals can choose where to receive services.

The setting's policies state: "We will advocate with the people we support for justice, inclusion, and full community participation."

- **Requirement 2:** The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit.
 - **Compliance summary:** Setting selection occurs during the person-centered planning process led by the individual's service coordinator. Individuals can visit the setting prior to selecting it, and individuals residing at the setting can request a change at any time.

¹ The HCBS Settings Rule requirements are summarized in this list. The full text of the federal requirements is at [42 CFR 441.301\(c\)\(4\)](#) and corresponding state rules are at [Texas Administrative Code Title 26, Part 1, Chapter 263, Subchapter F](#).

- **Requirement 3:** The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.
 - **Compliance summary:** Individuals' personal information is kept private. Individuals who need help with grooming are groomed as they desire. Individuals dress in clothes that fit, are clean, are appropriate for the time of day and weather, and follow the individual's preferences. Bibs are not required at mealtimes. Staff at the setting talk with individuals throughout the day while providing assistance and in the regular course of daily activities. Staff address individuals as preferred, often by first name or a nickname.

The setting has cameras installed in common areas of the residence, at the front gate, and at the pool area. One individual has a camera in their bedroom, which setting staff and the individual's family have access to. The individual and their family choose to have a camera in the bedroom; it is not a requirement of the setting.

The setting's code of ethics states the setting will safeguard and respect the confidentiality and privacy of individuals and respect their dignity and uniqueness.

- **Requirement 4:** The setting optimizes, and does not regiment, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.
 - **Compliance summary:** Staff respect individuals' decisions about their daily schedules and activities. Individuals may choose to participate or not participate in activities. Staff regularly ask individuals about their needs and preferences related to daily activities. Individuals can request changes at any time. Individuals are informed about their options to make changes and regular Circle of Support meetings are used to discuss with the individual any changes they would like to make.
- **Requirement 5:** The setting facilitates individual choice regarding services and supports and the service providers who provide the services and supports.

- **Compliance summary:** The setting provides individuals and their families with information about how to request a change if they are not happy at the setting. An individual can request changes at any time, and the setting uses regular Circle of Support meetings to discuss with the individual what is working or not working, and any changes they would like to make. The setting surveys individuals to gauge satisfaction.

The setting's policies state individuals have the right to be included in decisions and choices about their care and note that guardians can request changes in services or termination of services for a recipient at any time. Policies also state recipients may choose qualified service providers of their choice.

- **Requirement 6:** The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.
 - **Compliance summary:** Individuals have a residential agreement with the setting. The residential agreement states it is a lease under the Texas Property Code and is subject to Texas law governing residential tenancies.
- **Requirement 7:** The individual has privacy in their sleeping or living unit. Units have entrance doors lockable by the individual with only appropriate staff having keys to doors.
 - **Compliance summary:** An individual's bedroom door is lockable by the individual. Staff and other individuals knock before entering an individual's room. Direct care staff have access to keys to an individual's bedroom and would use a key to enter if the individual is locked in.
- **Requirement 8:** Individuals sharing units have a choice of roommates.
 - **Compliance summary:** Individuals have a choice of room and roommates. An individual can visit the setting prior to selecting the setting, to help make decisions about their room and roommate. If an individual wants to make a change to their room or roommate, staff

will work to accommodate the change. Individuals can request a room or roommate change at any time; such a change could also be discussed at a regular Circle of Support meeting.

The setting's residential agreement states individuals will choose their housemates.

- **Requirement 9:** The individual has freedom to furnish and decorate their living unit.
 - **Compliance summary:** Individuals furnish and decorate their bedrooms as they wish, and individuals' bedrooms have unique decorations including personal effects and memorabilia. The residential agreement states an individual must receive permission from the setting before painting their bedroom.

- **Requirement 10:** The individual has freedom and support to control their own schedules and activities, and has access to food at any time.

- **Compliance summary:** Individuals can make choices about their daily schedule and activities, and have flexibility to change their schedules. Staff assist individuals in developing their schedules and making schedule changes, as needed. Individuals' schedules vary greatly from one another.

Individuals have access to food at any time. There are no physical barriers in the setting that prevent an individual from accessing food. The setting uses a survey to get individuals' input on meals. The setting's policies state that the setting will maintain adequate food and access to the kitchen for individuals.

- **Requirement 11:** The setting is physically accessible to the individual.
 - **Compliance summary:** There are no barriers or obstructions that make it difficult for individuals to move around the setting. There are supports available to support individuals to move around the setting if needed. There are locks on the pool area for safety, but staff assist individuals with accessing the pool when they wish.
- **Requirement 12:** Any modification to requirements 6-10 must be supported by a specific assessed need and documented in the person-centered service plan.

- **Compliance summary:** There are currently no modifications to requirements 6-10 in place for individuals at the setting.

Remediation

Control of personal resources

29 Acres was utilizing an HHSC [Form 4002](#), Management of Personal Funds and Payment for Support, Maintenance and Treatment. Although this is an HHSC form, it is not associated with the Home and Community-based Services (HCS) waiver program, or any other Texas Medicaid HCBS programs, and includes language regarding a facility's role in managing individuals' personal funds that does not meet requirements of the HCBS Settings Rule.

29 Acres completed the following remediation on January 26, 2023:

- Discontinued use of Form 4002 for individuals in the HCS waiver program who reside at 29 Acres; and
- Created and began implementation of a new form specific to the setting, titled "Choice Regarding Management of Personal Funds."

HHSC reviewed the new form and determined that it meets requirements in the HCBS Settings Rule related to an individual's control of personal resources.

Instructions for submitting public comment

HHSC invites members of the public, including people receiving services and their families, providers, and other stakeholders to submit comments on the proposed heightened scrutiny list below.

Written comments, requests to review comments or both may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email. All comments must be received by HHSC by 11:59pm on Thursday, April 13, 2023.

Email

Medicaid_HCBS@hhs.texas.gov

U.S. Mail

Texas Health and Human Services Commission
Attention: Rachel Neely, Program Policy
John H. Winters Complex
701 W 51st Street
Mail Code H-600
Austin, TX 78751

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission
Attention: Rachel Neely, Program Policy
John H. Winters Complex
701 W 51st Street
Mail Code H-600
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Phone number for package delivery: 512-438-4297

Fax

Attention: Rachel Neely, Senior Policy Advisor at 512-438-5835