

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Medicaid Benefits and Health Programs Group

December 23, 2024

Judy Mohr Peterson, Ph.D.
Medicaid Director, Med-Quest Administrator
Med-Quest, Hawaii Department of Human Services
P.O. Box 339, Honolulu, HI 96809-0339

RE: Heightened Scrutiny Review of:

- Hale Makua Kahului Adult Day Health, 472 Kaulana Street, Kahului, Hawaii 96732
- Opportunities and Resources, Inc. (ORI), 64-1510 Kamehameha Hwy, Wahiawa, HI 96786
- Opportunities and Resources, Inc. (ORI) – Home #1 (2A), 64-1488 Kamehameha Highway, Wahiawa, HI 96786
- Opportunities and Resources, Inc. (ORI) – Home #2 (2B), 64-1488 Kamehameha Highway, Wahiawa, HI 96786
- Opportunities and Resources, Inc. (ORI) – Home #3 (2C), 64-1488 Kamehameha Highway, Wahiawa, HI 96786
- Opportunities and Resources, Inc. (ORI) – Home #4 (Unit 10), 64-1488 Kamehameha Highway, Wahiawa, HI 96786
- Palolo Chinese Home Senior Adult Day Care, 2459 10th Avenue, Honolulu, HI 96816

Dear Dr. Mohr Peterson:

This letter is in reference to settings submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review, in accordance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4) and (5). Hawaii submitted one Adult Day Health setting located in a building that also provides inpatient institutional treatment and one Adult Day Health setting, four residential Developmental Disabilities Domiciliary Homes, and one Adult Senior Day Care that could have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

CMS provided the state its initial “Summary of Findings” for the settings referenced above to which the state responded. CMS had discussions with the state regarding additional information needed to make a determination of the settings’ adherence to the settings criteria. Based on the information contained in the initial submissions and the additional information the state provided, CMS agrees with the state’s determination that these settings have overcome any institutional presumption and meet all of the HCBS settings criteria. In the pages that follow, the initial CMS feedback to the state is provided, as well as the state’s responses, and CMS’ reaction

to those responses.

It is important to note that the CMS adjudication of heightened scrutiny solely addresses the state's compliance with the applicable Medicaid authorities. CMS approval does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court's *Olmstead v. LC* decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at: http://www.ada.gov/olmstead/q&a_olmstead.htm.

Upon review of this feedback, please contact Michele MacKenzie at (410) 786-5929 or michele.mackenzie@cms.hhs.gov if you would like to schedule a follow-up call with the CMS team to discuss next steps or request technical assistance. Thank you for your continued commitment to the state of Hawaii's successful delivery of Medicaid-funded HCBS.

Sincerely,

Curtis J. Cunningham, Director
Division of Long-Term Services and Support
Medicaid Benefits and Health Programs Group

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Hale Makua Kahului Adult Day Health

Address: 472 Kaulana Street, Kahului, Hawaii 96732

Type of Setting: Non-residential – Adult Day Health

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

Date Submitted: June 28, 2024

Brief Description of Setting: Hale Makua Health Services is located in Kahului, Maui. The Adult Day Health (ADH) setting is in a building that also houses an intermediate care facility/skilled nursing facility (ICF/SNF). Both are operated by the same provider. Per the provider, there is a separate entrance to Hale Makua Kahului and the setting has its own kitchen, living room area, activity area, dining room and bathrooms. Hale Makua Kahului serves 31 people, five of whom are Medicaid HCBS recipients.

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

- Onsite state reviewers indicated individuals had access to their own personal belongings and resources and were supported to access and carry their own money.
- Onsite state reviewer observed respectful interactions and communication between participants and staff; observed participant information locked in a secure cabinet in a staff office. Reviewer observed a lockable main bathroom door; observed staff ensuring participant's privacy in the provision of personal care. Reviewer observed a private room for participants to use in making or receiving phone calls. Reviewer noted no restraints are used at Hale Makua Kahului Adult Day Health. Participants are provided with a copy of their rights upon admission.
- One participant interviewed indicated they were given choices on where to go for ADH services and they chose this setting. Other participants interviewed indicated they are happy with Hale Makua Kahului Adult Day Health. Staff interviewed indicated participants can talk with the program director if participants wish to change providers.
- The state onsite reviewer indicated individuals had variable and individualized schedules that changed daily or weekly. They observed individuals being supported to make informed choices and to exercise those choices regarding opportunities to participate in activities of interest.
- Participants interviewed indicated they can have food or snacks at any time and have alternative options available to them if they do not like what is on the lunch menu. Participants can also bring their own food if they wish.
- The state onsite observer indicated there were no restrictions on visitors and individuals were allowed to have visitors at any time. There was also a large shaded visiting area outside and a room with a lockable door if individuals would like to meet with their visitors in private.
- Onsite reviewer observed Hale Makua Health Services to be accessible for participants

to navigate with or without assistive devices. Pictures provided in the evidence package show furniture arranged to allow for easy navigation and hard flooring that does not present a trip hazard.

- Though the provider reported that the SNF staff do not support or cover the ADH staff the facility staff are cross-trained to meet the same qualifications as the HCBS staff.
- The state considered the following evidence to demonstrate Hale Makua Kahului Adult Day Health is integrated and supports full access to the greater community by the individuals: onsite visit and observation March 2024; interviews with participants, staff and leadership; review of participant plans; provider policies, sample activity calendars, pictures of Hale Makua Health Services.

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:

- 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)]. The state has indicated Hale Makua has not yet started community outings again. Please confirm the setting has completed this step towards compliance.
 - **Hawaii Response:** The state verifies 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 based on assessments, individualized care plan, setting activity records/notes, staff and participants interviews, and direct on-site observation. Hale Makua staff continues to give participants choices of participating in group activities or providing them with alternative activities of their preference. Regarding the community outings, a group discussion with participants announces the outing and sign-up sheets are passed out in the beginning of the month and passed around throughout the week. The state received an update from Hale Makua on 06/28/2024 stating that community outings have been established using the facility's bus. An activity calendar was provided for review. Hale Makua continues to engage with the Maui Economic Opportunity, Inc. (MEO), which provides transportation services, to schedule community outings. They are also currently seeking volunteers to assist with larger outings and will utilize MEO at that time. The state confirms, by reviewing participants' person-centered care plans thoroughly, that individual outing options in the broader community have restarted and are consistent with the preferences and desires outlined in each individual's person-centered care plan

and/or identified when the participant voluntarily signs up to participate in the outing activities.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- 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)].
 - **Hawaii Response:** Though none of the participants are currently working, the state verifies, through staff interview, that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings. Hale Makua asked participants if they needed assistance in seeking employment and all but one said, "no". The participant who was interested in working was provided information on how to access the Hawaii Division of Vocational Rehabilitation and was also given some information about working remotely from home. Hale Makua Kahului Adult Day Health has initiated a new policy and procedure to ensure that individuals who express interest in seeking employment are supported and individually based.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation from the state that the setting is selected by the individual from among a variety of setting options including non-disability specific settings and 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)].
 - **Hawaii Response:** The state attests that Medicaid beneficiaries were given a variety of setting options that 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)]. This was confirmed through participants interviews during on-site visit. This was also documented on the "Long-Term Care Services and Supports (LTSS) Choice Form" provided by the health plan healthcare coordinator. Please note that Hale Makua is the only ADH program on the island of Maui at this time. The health plan healthcare coordinators and community care management agencies' case managers are trained in options counseling. Through the person-centered planning process, the healthcare coordinator or case manager will discuss the choice of receiving Home and Community Based-Services or Institutional Services and the choice of providers for service delivery. The participant is informed of setting options including non-disability specific settings. This was confirmed through participant interviews during on-site visit and review of completed LTSS choice forms. The state amended the LTSS Choice Form to include language that the participant was provided informed choice in service providers and setting options including non-disability-specific settings.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 state provided evidence for individuals' autonomy in making life choices as it related to daily activities, but did not provide how it came to the determination the person's choice in physical environment and with whom to interact has been met.

- **Hawaii Response:** The state confirms that Hale Makua 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. The state came to the determination that participants' choice in physical environment and with whom to interact has been met through direct on-site observation, staff and participants interviews, and review of My Choice, My Way: Person-Centered Care Policy. Direct on-site observations include ambulatory participants walking around, sitting where they want to sit, and interacting with anyone freely as well as staff assisting those who needed assistance (i.e., toilet use, in group activities). Participants and staff interviews also confirm that participants' choices and preferences of activities and on where they sat, what they did, or with whom they interacted while at the center were considered and accommodated.
- **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that restrictions placed on individuals are supported by a specific-assessed need and are clearly justified and documented in the individual person-centered plans [42 CFR 441.301(c)(4)].
 - **Hawaii Response:** The state confirms that restrictions placed on individuals are supported by a specific-assessed need and are clearly justified and documented in the individual person-centered plans through participant and staff interviews. The state confirmed that there were no participants that required restrictions and confirmed that through person-centered plan reviews. Nevertheless, Hale Makua has an existing policy on restrictive interventions.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Verification through the person-centered service plans, onsite observations or provider records that public transportation options were offered to all individuals including the assistance provided for individuals to access the transportation (<https://www.medicaid.gov/sites/default/files/2019-12/exploratory-questions-re-settings-characteristics.pdf>).
 - **Hawaii Response:** Hale Makua's admission agreement includes a section on transportation which states that "the family is responsible for arranging all transportation ..." and this includes arrangements with MEO for drop-offs and pick-ups to and from the facility. During the on-site visit, staff have reported that some participants use public transportation (e.g., Handi-Van) as their way of going to the facility and returning to their homes. The state verifies, through staff

interviews and updates, that public transportation options are being offered to all individuals for the purpose of community outings. Hale Makua may coordinate public transportation for their participants for community outings.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- 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>)
 - **Hawaii Response:** During the on-site visit, staff confirmed initial training on the HCBS Setting Final Rule has been completed using the training material provided by and accessible through the Med-QUEST Division website.
 - **CMS Response:** CMS agrees that the state's response is sufficient.

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Opportunities and Resources, Inc. (ORI)

Address: 64-1510 Kamehameha Hwy, Wahiawa, HI 96786

Type of Setting: Non-residential – Adult Day Health

Heightened Scrutiny Category: Setting could have 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: June 28, 2024

Brief Description of Setting: ORI is located “at a setting that is a compound including ICF/IID [Intermediate Care Facilities for Individuals with Intellectual Disabilities] homes, DD [Developmental Disabilities] Domiciliary homes, staff housing, and for-profit businesses.” ORI noted in the plan of correction that while “the HCBS classroom is attached to the building where the ICF classroom is, they are being separated.”

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

- ORI has four vans to facilitate participant access to the community, indicating availability to help participants access the community during the week and on weekends. Public transportation, including the accessible Handi-Van service, is available for participants as well.
- Per participant interviews, they carry their own personal belongings and have access to their money. Provider policies support participants’ control of their resources.
- State staff verified in ongoing work with ORI that staff will continue to encourage all participants and explain to them that they have choice to seek a job and be employed outside ORI.
- Through review of person-centered plans and individual interviews the state indicated the setting is selected by the individual. Participants interviewed indicated they had options for other providers/settings but chose this setting. Participants stated they participated in their annual plan meetings.
- ORI policies detail participants’ rights to privacy, dignity and respect and freedom from coercion and restraint, noting specifically no restraints are used in the setting. Participant files are secured in a locked cabinet. State reviewer onsite observed staff interacting with participants respectfully and participants being comfortable around staff. Participants interviewed indicated they have choices and freedom at the setting and privacy when using the phone. The provider implemented monthly training for participants on their rights. Service Plans reviewed indicated no modifications or restrictions.
- State onsite reviewer observed no posted schedule of activities; staff interviewed indicated participants have individualized and varying schedules consistent with their preferences and needs. Reviewer observed participants engaging in different activities. ORI policies support participants’ independent choices.
- Participants interviewed stated they participated in their annual plan meetings, with

one participant indicating that they would notify their case manager, support staff and caregiver should they want to change any services or programs. Staff interviewed indicated they will help participants contact their case manager should participants wish to have a different service. ORI policies support participants' choices of services and supports.

- State onsite reviewer observed participants eating lunch in various locations and per staff interviews, participants can bring food from home, purchase it at the gift shop, purchase food at the dining hall, or leave the setting to purchase food elsewhere.
- Per state staff review and participant interviews, visitors are allowed at any time. ORI policies support participants' right to visitors and the opportunity to develop and maintain relationships.
- State onsite reviewer observed accessibility of ORI and participants navigating ORI. State reviewer also noted participants can come and go freely from the ORI.
- Staff who provide HCBS receive training specific to HCBS as determined through review of provider training plan to include all HCBS topics. Provider noted in their training plan that all staff will understand the different requirements for the ICF/IIDs and the HCBS settings and services, and that the HCBS settings "are not institutional settings." Training is provided monthly and state staff verified the ongoing training at a follow up visit in June 2024.
- The state staff review of the site indicated there were no participants who have restrictions that would require a modification, but if at any point a modification is needed, it will be explored with the participant and their circle of support.
- The state considered the following evidence to demonstrate ORI, Inc. is integrated and supports full access to the greater community by the individuals: onsite review and observation in April 2024, including follow up on site review in June 2024; interviews with support staff, administration, and participants; review of provider policies, provider training outline and topics; review of participants' plans.

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:

- 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)]. Though the state included information pertaining to this criterion, the information provided is not unique for each setting and is duplicated. Please provide unique assessment information for each setting.
 - **Hawaii Response:** The state revised the HCBS Non-Residential Provider Setting Evidence Tool to reflect assessment information that is specific for each of the

settings. The state verified 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 review of provider policy, review of the person-centered service plans, participant & staff interviews, and direct on-site observation.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 and 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)].
 - **Hawaii Response:** The state attests that the setting is selected by the individual from among setting options including non-disability specific settings through the review of person-centered service plans and/or interviews with individuals in that setting. Consent for services have been signed by individual and/or legal guardian.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation that the setting ensures an individual's rights of and freedom from coercion [42 CFR 441.301(c)(4)(iii)]. The state review indicated that shared space was "mostly cleared of text or messages that could be perceived as coercion. Please clarify what this refers to and confirm it has been completely remediated."
 - **Hawaii Response:** The main office/conference area of ORI had posters that read "work hard, play hard" and "travel incentive program", which could be perceived as being coercive. The posters have been removed as of 6/18/24. The State attests that the setting ensures an individual's rights of and freedom from coercion.
 - **CMS Response:** CMS agrees that the state's response is sufficient.

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Opportunities and Resources, Inc. (ORI) – Home #1 (2A)

Address: 64-1488 Kamehameha Highway, Wahiawa, HI 96786

Type of Setting: Residential – Developmental Disabilities Domiciliary Home

Heightened Scrutiny Category: Setting could have 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: June 28, 2024

Brief Description of Setting: ORI – Home #1 (2A) is located in Wahiawa, Oahu. ORI – Home #1 (2A) is one of four developmental disabilities domiciliary homes on the ORI campus which is 10 acres. The campus includes ICF/IID settings, an Adult Day Health setting, and three recreational rooms. Each home is single gender and staffed by a live-in caregiver. ORI – Home #1 (2A) has four people that reside there, all of whom are Medicaid HCBS recipients.

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

- ORI purchased four vans to facilitate access to the community. Staff also note the availability of public transportation, including the accessible Handi-Van service, that residents can and do access.
- Three participants were interviewed during the state onsite visit. Three participants in this home are employed under an AbilityOne contract managed by ORI. When asked if they would like to explore other work opportunities elsewhere, they shared they like what they do now and want to continue working there. Per staff interviews, option to explore other types of work and opportunities at other places were explained and offered to participants. Staff stated that participants who express interest in working will be supported, and case managers will be contacted to help pursue employment.
- Staff interviewed indicated they support residents to cash their paychecks at the bank and were provided a secure code box to keep money in their rooms. ORI – Home #1 (2A) policies support participants' ability to control their personal financial resources.
- State onsite reviewer observed residents and staff interacting and communicating respectfully and residents being comfortable around staff. Staff interviewed indicated residents can have privacy with their visitors and take phone calls in private. ORI – Home #1 (2A) policies detail participants' rights to privacy, dignity and respect and freedom from coercion and restraint. It was noted that restraints are not used in this setting.
- State staff noted during the onsite review that all four residents have their own room with a lockable door and residents have keys to their rooms. ORI – Home #1 (2A) policies support residents' right to privacy.
- State onsite reviewer observed bedrooms with varying decorations in them that were decorated by the individuals.
- According to the state staff onsite visit there were no posted schedules or activities in the home. Participants were able to control their own daily schedules and activities.

Participants have different daily schedules and activities regarding work, attending ADH program, family time away from ORI, church, outings, etc.

- State staff noted during their onsite visit that residents can access the kitchen for food at any time or use the microwave to heat food. Staff interviewed stated that participants may cook and use the stove if they choose to. Staff will support participants to use stove safely. Participants may also access food at the lunch buffet or purchase food at the giftshop on campus if they choose to.
- State onsite reviewer observed ORI – Home #1 (2A) to be accessible to the residents, noting they are able to maneuver through hallways, doorways, bathrooms, and common areas.
- Staff interviewed indicated no residents have any restrictions for health or safety reasons that require modification at this time.
- Staff who provide HCBS receive training specific to HCBS as determined through review of provider training materials to include all HCBS topics. ORI noted in their training plan that all staff will understand the different requirements for the ICF/IIDs and the HCBS settings and services, and that the HCBS settings “are not institutional settings.” Training is provided monthly and state staff verified the ongoing training at a follow up visit in June 2024. Staff interviewed confirmed receiving training recently and found it useful.
- The state considered the following evidence to demonstrate ORI – Home #1 (2A) is integrated and supports full access to the greater community by the individuals: onsite review and observation in April 2024, including follow up on site review in June 2024; interviews with support staff, administration, and residents; review of provider policies, provider training outline and topics; review of residents’ service plans.

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:

- 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)]. Though the state included information pertaining to this criterion, the information provided is not unique for each setting and is duplicated. Please provide unique assessment information for each setting.
 - **Hawaii Response:** The state revised the HCBS Residential Provider Setting Evidence Tool to reflect assessment information that is specific to ORI – Home #1 (2A). The state attests 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 review of provider policy, review of the person-centered service plans, participant & staff interviews, and direct on-site observation.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 and 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)].
 - **Hawaii Response:** The state attests 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 and preferences, through the review of person-centered service plans and/or interviews with individuals residing in the setting.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation that the setting ensures an individual's rights of freedom from coercion [42 CFR 441.301(c)(4)(iii)]. The state review indicated that shared space was "mostly cleared of text or messages that could be perceived as coercion. Please clarify what this refers to and confirm it has been completely remediated."
 - **Hawaii Response:** The main office/conference area of ORI had posters that read "work hard, play hard" and "travel incentive program", which could be perceived as being coercive. The posters have been removed as of 6/18/24. The state attests that the setting ensures an individual's rights of and freedom from coercion.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 state staff indicated individuals have the choice of autonomy on the campus. The state should provide how it came to the determination that the setting complies with these tenets which should include choices as they relate to off campus as well.
 - **Hawaii Response:** The state attests 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. The state confirms that individuals have the choice of autonomy on and off campus through provider Independent Choices policy review, person-centered service plan reviews, and resident & staff interviews.
 - **CMS Response:** CMS agrees that the state's response is sufficient.

- Attestation that the setting facilitates individual choice regarding services and supports, and who provides them [42 CFR 441.301(c)(4)(v)].
 - **Hawaii Response:** The state attests that the setting facilitates individual choice regarding services and supports, and who provides them through provider Setting Choices policy review, person- centered service plan reviews, resident interviews, and resident & staff interviews.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.

- 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)]. Additionally, pg. 548 of the evidence package indicates a residency can be terminated at the request of the caregiver but does not indicate what circumstances in which this applies and that those circumstances are comparable to those under the jurisdictions’ landlord tenant laws.
 - **Hawaii Response:** The state confirms 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. The provider’s policy did not include all the protections and rights of residents included in the HCBS Residency Agreement template provided by the state. The state advised the provider to make revisions to include all protections & rights, and the state confirms that the revisions have been made. The state confirms that the individuals have the same obligations and protections under the Hawaii Landlord-Tenant code at a minimum. The state also confirms that the grievance process is comparable to the appeals protections provided under the jurisdiction landlord-tenant law.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.

- Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
 - **Hawaii Response:** The state attests that only appropriate staff have keys to individuals’ doors through staff interview.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.

- 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)].
 - **Hawaii Response:** The state confirms through the review of provider policy and resident & staff interviews during the onsite visit that individuals sharing units have a choice of roommates in the setting.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)].
 - **Hawaii Response:** The state confirms that individuals are able to have visitors of their choosing at any time through policy review and resident and staff interviews. The state also confirms that this has been remediated through on-going HCBS final rule staff training and review of person-centered service plans for risk modifications or limitations.
 - **CMS Response:** CMS agrees that the state's response is sufficient.

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Opportunities and Resources, Inc. (ORI) – Home #2 (2B)

Address: 64-1488 Kamehameha Highway, Wahiawa, HI 96786

Type of Setting: Residential – Developmental Disabilities Domiciliary Home

Heightened Scrutiny Category: Setting could have 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: June 28, 2024

Brief Description of Setting: ORI – Home #2 (2B) is located in Wahiawa, Oahu. (ORI) – Home #2 (2B) is one of four developmental disabilities domiciliary homes on the ORI campus which is 10 acres. The campus includes ICF/IID settings, an Adult Day Health setting, and three recreational rooms. Each home is single gender and staffed by a live-in caregiver. ORI – Home #2 (2B) has five people that reside there, all of whom are Medicaid HCBS recipients.

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

- One resident interviewed, who works under a contract managed by the provider, was asked if they would like an opportunity to work elsewhere and they said they like what they do now and want to continue working there. Staff interviewed indicated that residents are offered opportunities to explore other types of work, other places to work, and will be supported to do so. Staff indicated they would contact a resident's case manager to facilitate employment options. ORI – Home #2 (2B) policies support a resident's opportunity to seek employment and work.
- ORI has four vans to facilitate participant access to the community, indicating availability to help participants access the community during the week and on weekends. Staff also note the availability of public transportation, including the accessible Handi-Van service, that residents can and do access. One individual interviewed indicated she takes the Handi-Van to visit family every Sunday.
- Staff interviewed indicated they support residents to cash their paychecks at the bank and were provided a secure code box to keep money in their rooms. ORI – Home #2 (2B) policies support residents' ability to control their personal financial resources.
- State onsite reviewer observed residents and staff interacting and communicating respectfully and residents being comfortable around staff. Staff interviewed indicated residents can have privacy with their visitors and take phone calls in private. ORI – Home #2 (2B) policies detail residents' rights to privacy, dignity and respect and freedom from coercion and restraint. It was noted that restraints are not used in this setting.
- All bedrooms have lockable doors and per staff interviewed, residents have keys to their rooms and the home. One resident was observed carrying their keys. Onsite reviewer noted some of the bedrooms were locked since some of the residents were not at home.

- According to the state staff onsite visit there were no posted schedules or activities in the home. Participants were able to control their own daily schedules and activities. Participants have different daily schedules and activities regarding work, attending ADH program, family time away from ORI, church, outings, etc.
- State staff noted during their onsite visit that residents can access the kitchen for food at any time or use the microwave to heat food. Staff interviewed stated that participants may cook and use the stove if they choose to. Staff will support participants to use stove safely. Participants may also access food at the lunch buffet or purchase food at the giftshop if they choose to.
- State onsite reviewer observed ORI – Home #2 (2B) to be accessible to the residents, noting they are able to maneuver through hallways, doorways, bathrooms, and common areas.
- Sample of plans provided in the evidence packet did not indicate any modifications or restrictions. Staff interviewed indicated no residents have any restrictions for health or safety reasons that require modification at this time.
- Staff who provide HCBS receive training specific to HCBS as determined through review of provider training materials to include all HCBS topics. ORI noted in their training plan that all staff will understand the different requirements for the ICF/IIDs and the HCBS settings and services, and that the HCBS settings “are not institutional settings.” Training is provided monthly and state staff verified the ongoing training at a follow up visit in June 2024. Staff interviewed confirmed receiving training recently and found it useful.
- The state considered the following evidence to demonstrate ORI – Home #2 (2B) is integrated and supports full access to the greater community by the individuals: onsite review and observation in April 2024, including follow up on site review in June 2024; interviews with support staff, administration, and residents; review of provider policies, provider training outline and topics; review of residents’ service plans.

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:

- 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)]. Though the state included information pertaining to this criterion, the information provided is not unique for each setting and is duplicated. Please provide unique assessment information for each setting.
 - **Hawaii Response:** The state revised the HCBS Residential Provider Setting

Evidence Tool to reflect assessment information that is specific to ORI – Home #2 (2B). The state attests 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 review of provider policy, review of the person-centered service plans, participant & staff interviews, and direct onsite observation.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 and 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)].
 - **Hawaii Response:** The state attests 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 and preferences, through the review of person-centered service plans and/or interviews with individuals residing in the setting.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation that the setting ensures an individual's rights of freedom from coercion [42 CFR 441.301(c)(4)(iii)]. The state review indicated that shared space was "mostly cleared of text or messages that could be perceived as coercion."
 - **Hawaii Response:** The main office/conference area of ORI had posters that read "work hard, play hard" and "travel incentive program", which could be perceived as being coercive. The posters have been removed as of 6/18/24. The state attests that the setting ensures an individual's rights of and freedom from coercion.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 state staff indicated individuals have the choice of autonomy on the campus. The state should provide how it came to the determination that the setting complies with these tenets which should include choices as they related to off campus as well.
 - **Hawaii Response:** The state attests 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. The state confirms that individuals have the choice of autonomy on and off campus through provider Independent Choices policy

- review, person-centered service plan reviews, and resident & staff interviews.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation that the setting facilitates individual choice regarding services and supports, and who provides them [42 CFR 441.301(c)(4)(v)].
 - **Hawaii Response:** The state attests that the setting facilitates individual choice regarding services and supports, and who provides them through provider Setting Choices policy review, person- centered service plan reviews, and resident & staff interviews.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.
- 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)]. Additionally pg. 548 of the evidence package indicates a residency can be terminated at the request of the caregiver but does not indicate what circumstances in which this applies and that those circumstances are comparable to those under the jurisdictions’ landlord tenant laws.
 - **Hawaii Response:** The state confirms 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. The provider’s policy did not include all the protections and rights of residents included in the HCBS Residency Agreement template provided by the state. The state advised the provider to make revisions to include all protections & rights, and the state confirms that the revisions have been made. The state confirms that the individuals have the same obligations and protections under the Hawaii Landlord-Tenant code at a minimum. The state also confirms that the grievance process is comparable to the appeals protections provided under the jurisdiction landlord-tenant law.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation that only appropriate staff have keys to individuals’ doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
 - **Hawaii Response:** The state attests that only appropriate staff have keys to individuals’ doors. The state confirms that only appropriate staff have keys to individuals’ doors through staff and management interviews and review of policy.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.
- 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)].

- **Hawaii Response:** The state confirms that through review of provider policies, resident interview, and staff interview that individuals sharing units have a choice of roommates in that setting.
- **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement [42 CFR 441.301(c)(4)(vi)(B)(3)].
 - **Hawaii Response:** The state attests that individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. The state also confirms that this has been remediated through ongoing HCBS final rule staff training.
 - **CMS Feedback:** CMS agrees that the state's response is sufficient.
- Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)].
 - **Hawaii Response:** The state confirms that individuals are able to have visitors of their choosing at any time. The state also confirms that this has been remediated through on-going HCBS final rule staff training and review of person-centered service plan for risk modifications or limitations.
 - **CMS Feedback:** CMS agrees that the state's response is sufficient.

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Opportunities and Resources, Inc. (ORI) – Home #3 (2C)

Address: 64-1488 Kamehameha Highway, Wahiawa, HI 96786

Type of Setting: Residential – Developmental Disabilities Domiciliary Home

Heightened Scrutiny Category: Setting could have 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: June 28, 2024

Brief Description of Setting: ORI – Home #3 (2C) is located in Wahiawa, Oahu. ORI – Home #3 (2C) is one of four developmental disabilities domiciliary homes on the ORI campus which is 10 acres. The campus includes ICF/IID settings, an Adult Day Health setting, and three recreational rooms. Each home is single gender and staffed by a live-in caregiver. ORI – Home #3 (2C) has four people that reside there, all of whom are Medicaid HCBS recipients.

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

- ORI has four vans to facilitate participants access to the community, indicating availability to help participants access the community during the week and on weekends. Staff also note the availability of public transportation, including the accessible Handi-Van service, that residents can and do access. One resident interviewed indicated they use the Handi-van to attend church on Sundays.
- Three participants are employed under an AbilityOne contract managed by ORI. When asked if they would like to explore other work opportunities elsewhere, they shared they like what they do now and want to continue working there. Per staff, option to explore other types of work and opportunities at other places were explained and offered to participants. Staff stated that participants who express interest in working will be supported, and case managers will be contacted to help pursue employment.
- Staff interviewed indicated they support residents to cash their paychecks at the bank and were provided a secure code box to keep money in their rooms. One resident interviewed indicated they keep their money in the secure code box in their room and can access it whenever they want. ORI – Home #3 (2C) policies support residents' ability to control their personal financial resources.
- State onsite reviewer observed residents and staff interacting and communicating respectfully and residents being comfortable around staff. Staff interviewed indicated residents can have privacy with their visitors and take phone calls in private. ORI – Home #3 (2C) policies detail residents' rights to privacy, dignity and respect and freedom from coercion and restraint. It was noted that restraints are not used in this setting.
- All four residents have their own private room. ORI – Home #3 (2C) policies support residents' right to privacy.
- One resident interviewed stated they have keys to the home and their room. One

resident was observed using their keys to the home and shared that they have both keys and likes having both keys. One resident was observed with their keys on the table while eating. All bedrooms have lockable doors and per staff interviewed, residents have keys to their rooms and the home. Onsite reviewer noted some of the bedrooms were locked since some of the residents were not at home.

- State onsite reviewer observed bedrooms with varying decorations in them.
- According to the state staff onsite visit there were no posted schedules or activities in the home. Participants were able to control their own daily schedules and activities. Participants have different daily schedules and activities regarding work, attending ADH program, family time away from ORI, church, outings, etc.
- State staff noted during their onsite visit that residents can access the kitchen for food at any time or use the microwave to heat food. Staff interviewed stated that participants may cook and use the stove if they choose to. Staff will support participants to use stove safely. Participants may also access food at the lunch buffet or purchase food at the giftshop if they choose to.
- State onsite reviewer observed the setting to be accessible to the residents, noting they are able to maneuver through hallways, doorways, bathrooms, and common areas.
- Staff interviewed indicated no residents have any restrictions for health or safety reasons that require modification at this time.
- Staff who provide HCBS receive training specific to HCBS as determined through review of provider training materials to include all HCBS topics. ORI noted in their training plan that all staff will understand the different requirements for the ICF/IIDs and the HCBS settings and services, and that the HCBS settings “are not institutional settings.” Training is provided monthly and state staff verified the ongoing training at a follow up visit in June 2024. Staff interviewed confirmed receiving training recently and found it useful.
- The state considered the following evidence to demonstrate ORI – Home #3 (2C) is integrated and supports full access to the greater community by the individuals: onsite review and observation in April 2024, including follow up on site review in June 2024; interviews with support staff, administration, and residents; review of provider policies, provider training outline and topics; review of residents’ service plans.

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:

- 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)]. Though the state included information pertaining to this criterion, the information provided is not unique for each

setting and is duplicated. Please provide unique assessment information for each setting.

- **Hawaii Response:** The state revised the HCBS Residential Provider Setting Evidence Tool to reflect assessment information that is specific to [ORI – Home #3 (2C)]. The state attests 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 review of provider policy, review of the person-centered service plans, participant & staff interviews, and direct on-site observation.
- **CMS Response:** CMS agrees that the state’s response is sufficient.
- 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 and 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)].
 - **Hawaii Response:** The state attests 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 and preferences, through the review of person-centered service plans and/or interviews with individuals residing in the setting.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation that the setting ensures an individual's rights of freedom from coercion [42 CFR 441.301(c)(4)(iii)]. The state review indicated that shared space was “mostly cleared of text or messages that could be perceived as coercion. Please clarify what this refers to and confirm it has been completely remediated.”
 - **Hawaii Response:** The main office/conference area of ORI had posters that read “work hard, play hard” and “travel incentive program”, which could be perceived as being coercive. The posters have been removed as of 6/18/24. The state attests that the setting ensures an individual’s rights of and freedom from coercion.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.
- 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 state should provide how it came to the determination that the setting complies with these tenets which should include choices as they related to off campus as well.
 - **Hawaii Response:** The state attests 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. The state confirms that individuals have the choice of autonomy on and off campus through provider Independent Choices policy review, person-centered service plan reviews, and resident & staff interviews.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation that the setting facilitates individual choice regarding services and supports, and who provides them [42 CFR 441.301(c)(4)(v)].
 - **Hawaii Response:** The state attests that the setting facilitates individual choice regarding services and supports, and who provides them through provider Setting Choices policy review, person-centered service plan reviews, and resident & staff interviews.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- 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)]. Additionally, pg. 548 of the evidence package indicates a residency can be terminated at the request of the caregiver but does not indicate what circumstances in which this applies and that those circumstances are comparable to those under the jurisdictions' landlord tenant laws.
 - **Hawaii Response:** The state confirms 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. The provider's policy did not include all the protections and rights of residents included in the HCBS Residency Agreement template provided by the state. The state advised the provider to make revisions to include all protections & rights, and the state confirms that the revisions have been made. The state confirms that the individuals have the same obligations and protections under the Hawaii Landlord-Tenant code at a minimum. The state also confirms that the grievance process is comparable to the appeals protections provided under the jurisdiction landlord-tenant law
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)].
 - **Hawaii Response:** The state confirms that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)] through policy review and resident & staff interviews. The state also confirms that this has been remediated through on-going HCBS final rule staff training and review of person-centered service plan for risk modifications or limitations.

- **CMS Response:** CMS agrees that the state's response is sufficient.

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Opportunities and Resources, Inc. (ORI) – Home #4 (Unit 10)

Address: 64-1488 Kamehameha Highway, Wahiawa, HI 96786

Type of Setting: Residential – Developmental Disabilities Domiciliary Home

Heightened Scrutiny Category: Setting could have 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: June 28, 2024

Brief Description of Setting: ORI – Home #4 (Unit 10) is located in Wahiawa, Oahu. ORI – Home #4 (Unit 10) is one of four developmental disabilities domiciliary homes on the ORI campus which is 10 acres. The campus includes ICF/IID settings, an Adult Day Health setting, and three recreational rooms. Each home is single gender and staffed by a live-in caregiver. ORI – Home #4 (Unit 10) has three people that reside there, all of whom are Medicaid HCBS recipients.

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

- One resident interviewed, who works under a contract managed by ORI, was asked if they would like an opportunity to work elsewhere and they said they like what they do now and want to continue working there. The resident also shared they like making money. Staff interviewed indicated that residents are offered opportunities to explore other types of work, other places to work, and will be supported to do so. Staff indicated they would contact a resident's case manager to facilitate employment options. ORI – Home #4 (Unit 10) policies support a resident's opportunity to seek employment and work.
- ORI – Home #4 (Unit 10) has four vans to facilitate participants access to the community, indicating availability to help participants access the community during the week and on weekends. Staff also note the availability of public transportation, including the accessible Handi-Van service, that residents can and do access.
- Staff interviewed indicated they support residents to cash their paychecks at the bank and were provided a secure code box to keep money in their rooms. One resident interviewed indicated they keep their money in the secure code box in their room and can access it whenever they want. ORI – Home #4 (Unit 10) policies support residents' ability to control their personal financial resources.
- State onsite reviewer observed residents and staff interacting and communicating respectfully and residents being comfortable around staff. Staff interviewed indicated residents can have privacy with their visitors and take phone calls in private. ORI – Home #4 (Unit 10) policies detail residents' rights to privacy, dignity and respect and freedom from coercion and restraint. It was noted that restraints are not used in this setting.
- The setting facilitates individual choice regarding services and supports, and who provides them. One resident interviewed indicated they are an active participant in

their ISP meetings; services and supports are determined by the resident's choices, needs, and preferences. One resident interviewed stated they would notify their staff member and case manager should they want to change any services or programs. Staff interviewed indicated they will help participants contact their case manager should residents wish to have a different service. Provider policies support residents' choices of services and supports.

- One resident interviewed stated that they lock their room for privacy, and no one bothers them. All three residents have private rooms. ORI – Home #4 (Unit 10) policies support residents' right to privacy.
- One resident was observed carrying their keys and opening their bedroom door. All bedrooms have lockable doors and per staff interviewed, residents have keys to their rooms and the home.
- State onsite reviewer observed bedrooms with varying decorations in them. On the April 2024 site visit, one resident noted they removed pictures from their bedroom wall because they were told to. By the follow up visit in June, the resident shared with the state staff reviewer that staff said they could “decorate their room however they want” so they put up “all these pictures on the wall.”
- State onsite reviewer observed no posted schedule of activities. One resident interviewed indicated that they wake up at any time and can skip work if they want. Reviewer noted residents have different daily schedules and activities regarding work, attending the ADH program, and time with family away from the setting. ORI – Home #4 (Unit 10) policies support residents' ability to control their own schedules and activities.
- State staff noted during their onsite visit that residents can access the kitchen for food at any time or use the microwave to heat food. Staff interviewed stated that participants may cook and use the stove if they choose to. Staff will support participants to use stove safely. Participants may also access food at the lunch buffet or purchase food at the giftshop if they choose to.
- State onsite reviewer observed the setting to be accessible to the residents, noting they are able to maneuver through hallways, doorways, bathrooms, and common areas.
- Sample of plans provided in the evidence packet did not indicate any modifications or restrictions. Staff interviewed indicated no residents have any restrictions for health or safety reasons that require modification at this time.
- ORI noted in their training plan that all staff will understand the different requirements for the ICF/IIDs and the HCBS settings and services, and that the HCBS settings “are not institutional settings.” Training is provided monthly and state staff verified the ongoing training at a follow up visit in June 2024. Staff interviewed confirmed receiving training recently and found it useful.
- The state considered the following evidence to demonstrate ORI – Home #4 (Unit 10) is integrated and supports full access to the greater community by the individuals: onsite review and observation in April 2024, including follow up on site review in June 2024; interviews with support staff, administration, and residents; review of provider policies, provider training outline and topics; review of residents' plans

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:

- 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)]. Though the state included information pertaining to this criterion, the information provided is not unique for each setting and is duplicated. Please provide unique assessment information for each setting.
 - **Hawaii Response:** The state revised the HCBS Residential Provider Setting Evidence Tool to reflect assessment information that is specific to ORI – Home #4 (Unit 10). The state attests 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 review of provider policy, review of the person-centered service plans, participant & staff interviews, and direct on-site observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(4)(vi)(C)].
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 and 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)].
 - **Hawaii Response:** The state attests 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 and preferences, through the review of person-centered service plans and/or interviews with individuals residing in the setting.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation that the setting ensures an individual's rights of freedom from coercion [42 CFR 441.301(c)(4)(iii)]. The state review indicated that shared space was “mostly cleared of text or messages that could be perceived as coercion. Please clarify what this refers to and confirm it has been completely remediated.”
 - **Hawaii Response:** The main office/conference area of ORI had posters that read “work hard, play hard” and “travel incentive program”, which could be perceived

as being coercive. The posters were not visible during the 6/18/24 validation re-visit. The state attests that the setting ensures an individual's rights of and freedom from coercion.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- 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 state staff indicated individuals have the choice of autonomy on the campus. The state should provide how it came to the determination that the setting complies with these tenets which should include choices as they related to off campus as well.
 - **Hawaii Response:** The state attests 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. The state confirms that individuals have the choice of autonomy on and off campus through provider Independent Choices policy review, person-centered service plan reviews, and resident & staff interviews.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- 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)]. Additionally, pg. 548 indicates a residency can be terminated at the request of the caregiver but does not indicate what circumstances in which this applies and that those circumstances are comparable to those under the jurisdictions' landlord tenant laws.
 - **Hawaii Response:** The state confirms 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. The provider's policy did not include all the protections and rights of residents included in the HCBS Residency Agreement template provided by the state. The state advised the provider to make revisions to include all protections & rights, and the state confirms that the revisions have been made. The state confirms that the individuals have the same obligations and protections under the Hawaii Landlord-Tenant code at a minimum. The state also confirms that the grievance process is comparable to the appeals protections provided under the jurisdiction landlord-tenant law.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation that only appropriate staff have keys to individuals' doors [42 CFR 441.301(c)(4)(vi)(B)(1)].

- **Hawaii Response:** The state attests that only appropriate staff have keys to individuals' doors through staff interview.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)].
 - **Hawaii Response:** The state confirms that individuals are able to have visitors of their choosing at any time through policy review and resident & staff interviews. The state also confirms that this has been remediated through on-going HCBS final rule staff training and review of person-centered service plan for risk modifications or limitations.
 - **CMS Response:** CMS agrees that the state's response is sufficient.

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Palolo Chinese Home Senior Adult Day Care

Address: 2459 10th Avenue, Honolulu, HI 96816

Type of Setting: Non-residential – Adult Day Care

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

Date Submitted: June 28, 2024

Brief Description of Setting: Palolo Chinese Home Adult Day Care is located in Honolulu, Oahu. The Adult Day Care setting is in the same building as the nursing facility and the Expanded-Adult Residential Home Care, which is all part of a continuum of care campus. The campus is 15 acres. Palolo Chinese Home Adult Day Care can be accessed through a separate entrance or using the nursing facility elevator. Palolo Chinese Home Adult Day Care serves 38 people, 13 of whom are Medicaid HCBS recipients.

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

- One participant interviewed indicated they are retired. Staff interviewed indicated they support participants who are interested in employment or volunteering but noted most participants are in their “late adulthood.”
- One participant interviewed indicated they bring their personal belongings and money to the setting and has access to them at any time. Staff interviewed indicated participants can bring money and personal belongings, including cell phones, if they want. Each participant has their own cubby to store personal belongings, however, most prefer to keep their belongings near them.
- One participant interviewed indicated they know they have certain rights at Palolo Chinese Home Adult Day Care and will let their family or staff know if they have problems at the setting. The participant also indicated that staff are nice and respectful; they stated they have privacy when using the bathroom, they know their information is kept private and stated they have never been restrained. Staff interviewed indicated that participants are given a copy of their rights upon admission and rights are posted at the setting. Staff also stated they do not use restraints and do give privacy to participants for personal care. Onsite reviewer observed respectful interactions between staff and participants. One bathroom that was previously observed as not having a lockable door has had a lock installed and can be locked from the inside as verified by pictures.
- One participant interviewed indicated they will talk with their family if they need to change the provider or support staff at the setting and added that they like Palolo Chinese Home Adult Day Care and do not want to change. Other participants interviewed indicated they would talk with the program manager to change staff or the provider. Staff interviewed indicated they would assist participants if they wanted to change providers.
- One participant interviewed indicated they can participate in group activities, do their

own activities, and can choose not to participate. Onsite reviewer observed participants engaged in group activities and other participants doing their own activities. Staff indicated there are monthly meetings between staff and participants to ask participants about their preferred activities and outings.

- One participant interviewed indicated that they can access food at any time and can bring their own food and snacks if they wish. The participant noted they like the food provided at the setting but knows other participants do bring their own food. The participant stated that monthly meetings are held with participants to discuss food choices; staff interviewed confirmed this.
- One participant interviewed indicated that while visitors are allowed, they do not have visitors come to see them. Staff interviewed indicated that visitors are allowed and there is private space to meet with visitors. Staff noted that they prefer notice for visitors for safety reasons but unannounced visits are allowed.
- Onsite reviewer observed the accessibility of Palolo Chinese Home Adult Day Care to include a wheelchair-accessible ramp and furniture arranged to allow for easy navigation around the setting.
- State staff confirmed during their follow up desk review that initial training on HCBS Settings Final Rule/My Choice My Way was completed with staff.
- The state considered the following evidence to demonstrate Palolo Chinese Home Senior Adult Day Care is integrated and supports full access to the greater community by the individuals: onsite visit and observation; interviews with participants, staff, and program director, review of participant service plans, provider policies and forms.

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:

- 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)]. The state has provided evidence for limited community engagement but did not include if the barriers for community engagement have been overcome and the setting is now meeting this criterion.
 - **Hawaii Response:** The state verified, through assessments, individualized care plans, setting activity records/notes, staff and participants interviews and direct on-site observations, 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. Regarding community engagement, Palolo Chinese has a scheduled outing on 9/26/2024 to a Chinese restaurant as

voted by the participants. A group discussion for the next outing date and venue is scheduled on 9/30/2024. Some of the venues mentioned by the participants during the previous discussion include visiting museums, botanical garden, and historical sites, driving around, and going to a Zippy's restaurant.

- **CMS Feedback:** CMS agrees that the state's response is sufficient.
- 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 a variety of setting options including non-disability specific settings and 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)].
 - **Hawaii Response:** The state attests that Medicaid beneficiaries were given a variety of setting options, documented in the person-centered service plan, and based on the individual's needs, and preferences. This was confirmed through participants' interviews during on-site visit. This was also documented on the "Long-Term Care Services and Supports (LTSS) Choice Form" completed by a health plan healthcare coordinator. The health plan healthcare coordinators and community care management agencies case managers are trained in options counseling. Through the person-centered planning process, the healthcare coordinator or case manager will discuss the choice of receiving Home and Community Based-Services or Institutional Services and the choice of providers for service delivery. The participant is informed of setting options including non-disability specific settings. This was confirmed through participant interviews during on-site visit and review of completed LTSS Choice Forms. The state amended the LTSS Choice Form to include language that the participant was provided informed choice in service providers and setting options including non-disability-specific settings.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- 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)].
 - **Hawaii Response:** The state confirms, through review of Activities Policy, direct on-site observations, and participant and staff interviews, 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. Direct on-site observations and participants and staff interviews supports that a lot of the participants are independent, can communicate their needs and preferences, and are able and free to walk around, sit where they want, and interact with whoever they choose. Staff provides assistance to those who need it.
 - **CMS Response:** CMS agrees that the state's response is sufficient

- Confirmation that restrictions placed on individuals are supported by a specific-assessed need and are clearly justified and documented in the individual person-centered plans. [42 CFR 441.301(c)(4)].
 - **Hawaii Response:** The state confirmed that restrictions placed on individuals are supported by a specific-assessed need and are clearly justified and documented in the individual person-centered plans, through participant and staff interviews. The state confirmed that there were no participants that required restrictions and confirmed that through person-centered plan reviews. Nevertheless, Palolo Chinese Home Senior Day Care has an existing policy for the use of any restrictive interventions.
 - **CMS Response:** CMS agrees that the state’s response is sufficient.

- Verification through the person-centered service plans, onsite observations or provider records that public transportation options were offered to all individuals including the assistance provided for individuals to access transportation (<https://www.medicaid.gov/sites/default/files/2019-12/exploratory-questions-non-residential.pdf>).
 - **Hawaii Response:** Palolo Chinese Home’s Admission Handbook states that the facility “does not provide transportation to and from Palolo Chinese Home Senior Day Care.” Staff interview confirms that some participants use Handi-Van to come to and from the day care, some also use other commercial transports like VIP transport, 808 transport, Uber, and Lyft. As for community outings, the facility owns vehicles that are being used for community outings. The state verifies, through staff interviews and Admission Handbook review, that provider would refer participants and/or their authorized representative to health plan healthcare coordinators when they express interest and/or request for assistance. Furthermore, provider revised their Field Trips Policy and it now reflects that the facility will coordinate with public transportation, as needed.
 - **CMS Feedback:** CMS agrees that the state’s response is sufficient.