New York State Medicaid Home and Community-Based Services

**Heightened Scrutiny Evidence Packet**

**Setting Information**

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| **Provider Name**Absolutcare at Orchard Brooke |
| **Location of Setting**6060 Armor Road Orchard Park, New York 14127 **Note: for Prong 3 settings only include the name of the city and not the full address.** | **Type of Setting**Adult Home/Assisted Living Program | **Medicaid Home and Community-Based Services Being Provided at the Setting**Personal care and other HCBS are provided as needed.  |

**Heightened Scrutiny Prong**

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| [x] **Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment.**[ ] **Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.**[ ] **Prong 3: Setting has the effect of isolating individuals from the broader community.**  |

**Qualification for Prong**

Describe briefly in the box below how the setting meets the prong indicated (what facility is it in or located on the grounds of, or adjacent to, etc.?)

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| Absolut at Orchard Brooke was co-located with Absolut Center for Nursing and Rehabilitation at Orchard Park. The nursing home closed in October 2019 leaving its space vacant. |

**Provider Compliance Summary**

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| **Requirements for All HCBS Settings** |
| **Compliant?** | **Federal Requirement** | **Summary** |
| *42 CFR 441.301(c)(4)(i)*[x] Yes[ ] Partial[ ] No | Settings are integrated and support 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. | Absolutcare at Orchard Brooke is located in Erie County and is proximal to residences, parks and recreation. Settings are integrated and support full access of individuals receiving Medicaid HCBS to the greater community. Residents have the opportunity to participate in outings with their housemates and to run errands independently. Residents have the opportunity and control of their resources needed for outings. Residents have control of their personal resources unless they have a designated payee/ authorized the facility to manage their finances. Residents are encouraged to go on outings with family and friends. The facility’s activity schedule includes community-based events. Activities are planned based on resident input. As the facility is located in the South Towns area of Erie County, public transit is more restrictive. However, the facility offers a van for residents, and Medicaid provides transportation to those residents in need of transportation to medical appointments. |
| *42 CFR 441.301(c)(4)(ii)*[x] Yes[ ] Partial[ ] No | Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and for residential settings, resources available for room and board. | This is a non-disability specific setting. Individuals receiving services in this assisted livingprogram (ALP) are medically eligible for placement in a nursing home but based on an individuals’ score on a uniform assessment tool (i.e., UAS-NY), it has been determined the individuals’ specific needs can be met in the ALP with home care services, case management, and other supports. Residents are afforded flexibility in their schedules. Activities are adapted to individual needs and preferences. Residents are afforded the option of a private bedroom; the facility has both private and semi-private rooms. Residents who share bedrooms have their choice of roommates. |
| *42 CFR 441.301(c)(4)(iii)*[x] Yes[ ] Partial[ ] No | Settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint. | It is each resident’s right to have privacy in caring for personal needs, confidential treatment of personal and health records courteous, fair and respectful care and treatment at all times. Privacy is available in residents’ private room, as applicable, or in any of the sitting areas identified throughout. As well as the right to lock doors; all room and bathroom doors, which must be lockable, to ensure privacy. Each resident has the option to procure an in-room telephone, their needs and preferences are respected, and each is provided lockable storage in his or her room. Residents are provided a copy of their rights upon admission. Residents are orientated to the Grievance Form and its location and are free to express complaints without fear of reprisal. The facility’s residents are free from coercion and the facility does not use restraints. |
| *42 CFR 441.301(c)(4)(iv)*[x] Yes[ ] Partial[ ] No | Settings optimize, but do 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 facility is free of barriers. Residents are free to participate in activities and visit friends in all areas of the facility. Residents are able to make choices to create their daily schedules and routines that best fit their lifestyle, including but not limited to, making life choices, daily activities, physical environment, and with whom they interact. |
| *42 CFR 441.301(c)(4)(v)*[x] Yes[ ] Partial[ ] No | Settings facilitate individual choice regarding services and supports, and who provides them.  | Absolutecare of Orchard Brooke may only care for a person who voluntarily chooses to participate in the program after having been provided with sufficient information to make an informed choice. Upon interview, it was confirmed that residents are able to choose who provides the services they voluntarily receive. The facility ensures individuals are supported in developing care plans that support his/her needs and preferences**.** |
| **Additional Requirements for Provider-Owned or Controlled Settings** |
| **Compliant?** | **Federal Requirement** | **Summary** |
| ***Standards for Provider-Owned and Controlled Residential and Non-Residential Settings*** |
| *42 CFR 441.301(c)(4)(vi)(C)*[x] Yes[ ] Partial[ ] No | Individuals have the freedom and support to control their schedules and activities; and have access to food any time. | Residents have the freedom and supports to control their schedules and activities on a day-to-day basis, in other words full autonomy to engage as they wish. Residents are able to determine how they spend their time (participate in planned activities or not). Residents are able to eat meals when they wish, and in the resident’s preferred location. Residents have access to a kitchenette to prepare meals, and refrigerator to store snacks and other food to consume at their leisure. Residents are able to dine in the location of their choice. Residents are assigned seats for dining but are able to change upon request. The residents’ have standard access to food 24 hours a day. |
| *42 CFR 441.301(c)(4)(vi)(D)*[x] Yes[ ] Partial[ ] No | Individuals are able to have visitors of their choosing at any time. | Residents may have visitors at any time, these times cannot be limited for any reason. For safety purposes, visitors must sign in and sign out. The facility offers a variety of private space to meet visitors. Guests are able to enter and exit without staff assistance. |
| *42 CFR 441.301(c)(4)(vi)(E)*[x] Yes[ ] Partial[ ] No | The setting is physically accessible to the individual.  | The facility is physically accessible. All individuals have access to all common areas of the facility. Assistive devices are available for those in need. Residents may come and go as they choose. Entry or egress is not inhibited from the facility. There are no barriers preventing entrance/ exit from the facility. |
| *42 CFR 441.301(c)(4)(vi)(F)*[ ] Yes[x] Partial[ ] No | Any modifications of the additional conditions under 441.301(c)(4)(vi)(A) through (D) for provider-owned and controlled settings must be supported by a specific assessed need and justified in the person-centered service plan. | Care plan changes are assessed, discussed, and documented accordingly. Remediation is in progress to procure an independent assessor/case management agency to determine the individual’s need for HCBS and develop a person-centered service plan. This is to ensure conflict-free case management. We expect remediation of this to be completed by July 1, 2024. |
| ***Standards for Provider-Owned and Controlled Residential Settings Only*** |
| *42 CFR 441.301(c)(4)(vi)(A)*[x] Yes[ ] Partial[ ] No[ ]  Not Applicable | The unit or dwelling is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord/tenant law. | Upon admission, each resident is provided with, and signs, a written admission agreement. The admission agreement required elements to protect the resident’s rights, as well as specifies conditions under which the admission agreement may be terminated, including right to pursue a challenge to termination in court. |
| *42 CFR 441.301(c)(4)(vi)(B)*[x] Yes[ ] Partial[ ] No[ ]  Not Applicable | Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. | Residents have privacy in their sleeping units. All resident rooms are private. Residents’ rooms are equipped with a door that latches and is lockable to ensure privacy. Residents have keys to their rooms and to the home with only appropriate staff having keys to the doors. Each private room has its own private bathroom. Residents are welcome and encouraged to decorate their room as they wish and per personal preferences. This was observed upon site visit.  |

**Recommendation**

As required by 42 CFR 441.301(c)(5), the State of New York submits this request for heightened scrutiny review for the setting identified above. The State has compiled evidence that the setting is integrated in and supports full access of individuals to the greater community, is selected by the individual from among disability and non-disability specific settings, ensures individual rights, and promotes individual initiative, autonomy, choice, and independence.

**Instructions for Completing Sections One through Four**

**The following four (4) sections may be expanded in length to capture evidence of HCBS Final Rule compliance. However, a complete heightened scrutiny packet may be no longer than ten (10) pages in length. The ten (10) pages should include documentation that demonstrates support of the statements made here. Any additional supporting documentation should be kept by agencies/offices/units for the recommended amount of time.**

**Section One**

**On-Site Visit Observation**

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| **Date(s) Conducted****10/15/2019, 11/13/2019, 02/11/2020, 01/23/2023, 02/27/2023** | **State Agency/Entity that Conducted the On-Site Visit New York State Department of Health** |
| **Description of the Setting** Absolutcare at Orchard Brooke is an Adult Home and Assisted Living Program (ALP). As an Adult Home, the facility provides long-term residential care, room, board, housekeeping, personal care, and supervision to five or more adults. As an ALP, the facility provides individualized services to persons who are medically eligible for nursing home placement but in a less medically intensive, lower cost setting. The ALP provides personal care, room, board, housekeeping, supervision, home health aides, personal emergency response services, nursing, physical therapy, occupational therapy, speech therapy, medical supplies and equipment, adult day health care, home health services, and the case management services of a registered professional nurse.The total bed capacity is for 80 adult home residents, of which 69 may receive ALP services. The facility is located in a suburban area in Erie County in a residential community. There are many adult care facilities in Erie County, including two within five miles from Absolutcare at Orchard Brooke; however, Absolutcare at Orchard Park is the only facility licensed to provide ALP services in the immediate area. The facility is free of barriers inhibiting access to or egress from the location. The facility is free from barriers inhibiting movement and is physically accessible by all individuals. Residents have access to all common areas of the facility. Assistive devices, such as walkers and rollators, are available to residents as prescribed. The facility also provides licensed home care services. The facility has both private and semi-private rooms. Room options and availability is discussed prior to admission. Residents are encouraged to personalize their surroundings with cherished mementos and favorite possessions from home. Bedrooms and bathrooms are both equipped with locks to provide privacy. Residents have access to food throughout the day. Residents have access to a kitchenette to prepare meals, and a refrigerator to store snacks and other food to consume whenever they prefer. The nutritional services are supervised onsite by a registered dietitian and are prepared by a chef. Meals are served restaurant style in the dining room.The facility offers a stimulating activity program schedule which includes daily activities and events to keep the residents engaged and interactive with those around them. The facility also scheduled community-based outings and events. Outings are scheduled and encouraged, but the choice whether to participate rests with the residents. Residents are welcome to come and go as they please. Transportation is available for activities and outings. Residents may go on outings with anyone they wish to go with. The facility holds a monthly Resident Council meeting in which residents can give input on activities and outings they wish to participate in. Resident schedules are designed by the resident, and flexible according to the resident’s individual circumstances. Activities are adapted to individual needs and preferences of the residents. |

**Section Two**

**Community Integration Observations and Input from Individuals Served (without observation by staff), Family Members/Guardians, and Staff**

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| **Individual Interviews**During the onsite visit one resident was interviewed without staff present. The following information was gathered regarding community integration. Individual A shared that she sometimes enjoys going out into the community. She goes out when she feels like it or if she needs something. Individual A will go out with her niece once in a while or participate in facility planned outings. Individual A enjoys going shopping at the dollar store and Target. She also shared that she enjoys going out to eat and to the casino every once in a while. Individual A shared that she also participates in inhouse activities with some of her friends. She is able to participate as much or as little as she chooses.**Employee Interviews**During the onsite visit the administrator was interviewed. The following information was gathered regarding community integration: Residents are able to access the community to the degree of their choosing. Residents are able to move about the facility as they choose. There is a covered porch area that the residents enjoy relaxing on. An activities calendar is created each month to include both inhouse and community-based activities and events. The residents enjoy a variety of activities including social activities, exercise, games, movies, and community outings. The facility also has live entertainment for the residents to enjoy. The facility strives to schedule at least one outing per week for residents to participate in. With the input from residents, via the Resident Council, the activities schedule is made. Examples of outings that residents enjoy are going out for lunch at a variety of restaurants, shopping at the dollar store and seasonal activities such as going to the pumpkin patch and out for cider and donuts. An activities calendar is distributed to the residents each month. There is also a monthly sign-up book for outings. Residents are required to sign up for outings as there is limited space due to transportation. |

**Section Three**

**Additional Evidence**

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| **The following evidence has been compiled that demonstrates the setting is integrated in, and supports full access of, individuals receiving HCBS into the greater community.** Click or tap here to enter text.1. Person Centered Care Policy2. Personal Rights3. Dining Room Seating Policy4. Visitors to Facility Polciy5. Activity Schedule6. Photo: Indoor Gathering Space Also Showing Assistive Devices7. Photo: Coffee and Tea Station Available to Residents8. Photo: Refrigerator Stocked with Available Snacks for Residents9. Google Map10. Website: <https://www.absolutcare.com/orchard-brooke/>  |

**Section Four**

**Public Comments Summary**

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| **Public Comment Period****From:** Click or tap to enter a date. **To:** Click or tap to enter a date. |
| **Summary of Public Comments Received for the Setting** |
| **Summary of the State’s Response to the Public Comments Received**Click or tap here to enter text. |