Virginia received the Home and Community Based Setting (HCBS) Review Site Visit Report on September 24, 2024. Following a review of the report the Department of Medical Assistance Services (DMAS) conducted several stakeholder meetings with the Department of Behavioral Health and Developmental Services (DBHDS), Virginia's provider association, the Virginia community service board association and each individual provider who received a visit from CMS. The response below is inclusive of those robust discussions and Virginia's plan moving forward to assure full compliance with the HCB Settings Regulation.

CMS Identified the following areas as systemic concerns:

| Regulation Citation | Virginia's Response |
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| 441.301(c)(4)(i)<br><br>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. | **Access to the greater community:** Access to the greater community and integrated community involvement is of paramount importance to Virginia. However, Virginia acknowledges that the national direct care workforce shortage has had devastating impacts on the provider community and access to the greater community is often directly linked to staffing. Virginia is taking steps to address the workforce crisis by supporting the provider association's plan to develop a workforce development plan that can be used in high schools. This plan is in partnership with Virginia's community college workforce development program. In addition, DBHDS adopted a Quality Improvement Initiative (QII) around workforce retention that was approved by the quality improvement committee in July 2024. This QII has resulted in robust discussions around making the direct care workforce more flexible by exploring platforms that would allow a direct support professional to move easily from one provider to another and bring their training documentation with them. The provider community has noted that the training associated with new hires is time intensive and can strain already thin resources. DBHDS is also offering in-person training opportunities for providers beginning October 2024 in their "Employment and Integrated Community Involvement Life Areas Training." In addition, DBHDS has committed to additional trainings for support coordinators. This "back to basics" training will include the importance of community access and how to assess if an individual is accessing the community to the same degree as someone who is not using Medicaid HCBS Services. Training is anticipated to begin in March 2025 and will be provided monthly for six months. Following 6 months, DBHDS and DMAS will review the scheduling for effectiveness.<br>For Adult Day Health Services, DMAS and the MCOs will provide training for providers and care coordinators to focus on methods to ensure individuals have access to the community while receiving the service. This will include information on making |

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| | modifications to the plan of care when barriers exist for the member to ensure that member can safely access the community. All training will be completed by July 2025.<br><br>**Employment:** Virginia is an employment first state and believes that competitive & integrated employment must be the first and priority option for individuals with disabilities. Virginia has embedded this principle throughout the HCBS system by working with the Department for Aging and Rehabilitative Services (DARS) to establish policy and protocols to promote employment. This includes a multiagency memorandum of understanding (MOU) with DARS, DBHDS and DMAS. This MOU grants additional flexibilities for individuals using HCBS 1915c services. Under this MOU, an individual can directly access waiver funding for employment services if the DARS resources are unavailable (priority categories are closed and individuals are placed on a "delayed status"). Virginia does recognize that DARS funding is limited and due to limitations in funding it is possible that an individual will have to be placed on a waiting list to access that agency's services. However, unless the priority categories are closed by DARS and individuals can directly access waiver funds, DMAS is unable to fund those services as Medicaid must remain the payer of last resort. To assist with this issue, DBHDS has committed to additional training for support coordinators/case managers. This training will focus on how to facilitate a meaningful discussion on employment, step by step instructions on making referrals to DARS, a review of the MOU in place and a review of services that can assist with attaining and maintaining employment such as benefits planning (a waiver service). This training will be available to all support coordinators/case managers, but DBHDS will focus on supporting support coordinators that are new to their roles. This training will be provided monthly and is anticipated to begin by March 2025. Virginia is committed to monthly trainings for six months and will reevaluate the success of the trainings following the initial 6-month period. DMAS will also provide training for the MCO care coordinators to highlight employment options when working with the individual to develop the person-centered plan. The training will include employment options available through DARS.<br><br>**Control personal resources:** Personal resource management is a complex area that requires a review of many factors. Virginia believes that individuals who utilize HCBS services should have as much control and freedom in managing their resources as is possible. However, Virginia must acknowledge that there are factors that are beyond the |

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| | direct control of DMAS. Individuals using Virginia's HCBS waiver services are overwhelmingly determined to require a representative payee by the Social Security Administration. As this determination is not made by DMAS, all providers, support coordinators, individuals and families must abide by the determination made by the Social Security Administration. However, Virginia does fully commit to individuals having as much control as is possible despite the requirement of having a representative payee. All individuals must be given choice in their representative payee and any HCBS provider must not force an individual to select a provider as their payee. Individuals must be able to select a natural support or agency to complete these functions. Virginia will begin to embed this question of choice in the scoring tools used during ongoing monitoring reviews. If a provider is found to require that an individual select the provider as their payee, this will result in a citation and the provider will have to complete a compliance action plan.<br><br>**Community-based services:** Virginia has embedded the principle of community-based services within the person-centered individual support plan and all review/audit tools used during HCBS reviews. This includes asking individuals/families questions about using their preferred doctors, pharmacies, barbers, etc. In addition, providers are required to answer self-assessment questions that ask if "in house" services will be used and how individuals are provided choice for community-based services. Virginia will continue to utilize these questions throughout all reviews and any provider deemed to be out of compliance in this element will be issued a citation and must remediate that finding in a compliance action plan. In addition, Virginia will continue to remind providers that "reverse integration" of bringing community members into service settings does not fulfill this requirement and is not best practice. |
| 441.301(c)(4)(ii)<br><br>The setting is 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 | Virginia supports full choice for individuals utilizing HCBS services. This has been supported by recent modifications to the person-centered individual support plan that now includes sections that ask individuals and their support teams if they are interested in or have explored integrated options to include resources for individuals to have their own homes or apartments. Virginia believes this change will assist support coordinators in having meaningful discussions of choice. |

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| individual's needs, preferences, and, for residential settings, resources available for room and board. | In addition, Virginia had several discussions with stakeholders to discuss presenting services options in a manner that is easily understandable to individuals and their families. These discussions included ideas of a supplemental resource for individuals that explains different service types and uses graphics and plain language or developing short videos that could be accessed by individuals that would explain different service options. Virginia plans to discuss these options with advocacy organizations and explore different funding opportunities to make an engaging and helpful resource.<br><br>Throughout our discussions the theme of training was discussed frequently. As such, Virginia will incorporate a "back to basics" training for support coordinators. This will allow the opportunity for new support coordinators or existing support coordinators to attend a training that will be presented by DBHDS staff to highlight the different functions of a support coordinator's role and allow ample time for questions and answers/technical assistance. Virginia anticipates these trainings will begin in March 2025.<br><br>In a similar fashion, back-to-basics training will be provided for MCO care coordinators. |
| 441.301(c)(4)(iii)<br><br>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. | Virginia has expanded on expectations related to this provision in the most recent version of the Medicaid Developmental Disabilities Provider Manual (Chapter 2) linked here. All aspects of this regulation are further expanded in the document with specific examples (gathered from historical reviews). In addition, Virginia commits to ongoing training at all established forums including provider roundtables, support coordinator roundtables, guidance documents and the forthcoming "back to basics" training for support coordinators. Lastly, DMAS and DBHDS will continue to work together to ensure that there are clear expectations and consistent interpretations between HCBS reviews and the DBHDS Office of Human Rights. This work includes ongoing collaborative meetings and trainings to ensure staff from both agencies are providing the community with clear communication and interpretations of regulations. The DBHDS Office of Human Rights is in the process of amending their regulations (currently posted for public comment) to ensure consistency with the HCBS regulation. This includes adding the definition of coercion as it was not previously defined. Any provider found in violation of this provision will be subject to a citation and will have to complete a compliance action plan. |

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| | DMAS will be incorporating expanded language in the Commonwealth Coordinated Care Plus Provider Manual similar to that of the Developmental Disabilities Provider Manual. Training will be provided to MCO care coordinators to ensure expectations are clearly understood and aligned with HCBS settings requirements. Provider training will be conducted after the manual is updated. |
| 441.301(c)(4)(iv)<br><br>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. | Virginia plans to ensure compliance with this element by tailoring ongoing monitoring reviews to include more direct questions about autonomy such as:<br>1. Are you able to stay home or decline an activity?<br>2. Does anyone tell you that you will be in trouble if you decline?<br>3. Are you able to hang-out with the people you choose? Are you able to sit with your friends to play a game, watch TV or eat a meal?<br>4. Do you feel like the people around you listen to your goals and help you reach them?<br>In addition, DMAS will continue to support ongoing work of DBHDS (specifically their quality councils) in developing resources and training providers in the concept of dignity of risk. Virginia has also expanded the review of provider documentation to include asking for program rules or handbooks that may contain procedures that are out of compliance with the HCBS regulation. Any provider who is not in compliance will receive a citation and must remediate the finding in a compliance action plan.<br>In a further effort to ensure individuals are able to maintain autonomy in their lives, Virginia recently adopted Supported Decision Making as an alternative to guardianship. This is new and will require ongoing training to fully embed this option into the minds of all stakeholders. However, there has been great feedback associated with this less-restrictive alternative and DMAS/DBHDS expect this model to expand in the coming years. |
| 441.301(c)(4)(v)<br><br>The setting facilitates individual choice regarding services and supports and who provides them. | Virginia supports full choice for individuals utilizing HCBS services. This has been reinforced by recent modifications to the person-centered individual support plan that now includes sections that ask individuals and their support teams if they are interested in or have explored integrated options to include resources for individuals to have their own homes or apartments. Virginia believes this change will assist support coordinators in having meaningful discussions of choice.<br><br>In addition, Virginia had several discussions with stakeholders to discuss presenting services options in a manner that is easily understandable to individuals and their |

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| | families. These discussions included ideas of a supplemental resource for individuals that explains different service types and uses graphics and plain language or developing short videos that could be accessed by individuals that would explain different service options. Virginia plans to discuss these options with advocacy organizations and explore different funding opportunities to make an engaging and helpful resource.<br><br>The state plans to utilize existing platforms such as quarterly provider roundtable meetings and email blasts to remind providers that individuals have the right to choose their own services beyond specific HCBS services to include doctors, dentists, representative payees, hair salons/barber shops, banks, etc.<br><br>Lastly, DBHDS has been working on recruiting providers of services in areas of the state where options are limited. This includes the option for providers to apply for "Jump Start" funding through DBHDS that can assist in start-up costs associated with service expansion. |
| 441.301(c)(4)(vi)(A)<br><br>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. | Virginia will continue to review providers' lease agreements as a part of all HCBS reviews. DMAS and DBHDS will provide a refresher training to all HCBS review staff on 10/21/2024 during the regularly scheduled cross-agency reviewer meeting. Virginia will continue to issue citations for any provider who does not meet the requirements within their lease, and the provider will be required to remediate the issue with a compliance action plan. |
| 441.301(c)(4)(vi)(C) | DMAS and DBHDS will continue to support providers to fully adopt HCBS within their programs. Virginia believes that we have many providers who have fully understood this |

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| Individuals have the freedom to control their own schedules and activities and have access to food at any time. | provision and adjusted their service provision accordingly, but there remain providers who have yet to fully embrace the concept. This has been included in the Developmental Disability Provider Manual Chapter 2 and in various trainings and resources that are available on the HCBS toolkit linked here. Virginia will continue to provide technical assistance to providers during their reviews and support providers with troubleshooting their questions. Any provider who is noncompliant with this element will be issued a citation and be given an opportunity to remediate through a compliance action plan. Virginia does understand that this element (daily schedules) can be drastically impacted by staffing shortages and will apply the same remediation efforts outlined in 441.301(c)(4)(i). |
| Additional Provision: State Medicaid Director Letter #19-001<br><br>Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state. | After a detailed review of all programs that were visited by the CMS/ACL team, Virginia believes that all providers followed the requirement to train their staff. However, Virginia does acknowledge that the trainings (specifically tests) that were available to the CMS/ACL team may have not included all requirements within the regulation. This appears to have been a misunderstanding from the state staff and specific providers who all believed that the documents that needed to be reviewed showed the names or number of staff trained and not the specific training requirements.<br><br>Virginia will continue to remind providers that staff training is a requirement for compliance and will reiterate this during provider roundtables, support coordinator roundtables and all specific HCBS trainings. In addition, as the state completes reviews the trainings will be reviewed. If a provider does not have documentation of annual training, a citation will be issued, and the provider will have to submit a compliance action plan to address the deficiency. |

**Systemic Changes**

Virginia has used the site visit as an opportunity to evaluate the larger HCBS system and plan for continuous quality improvement in our system. As a result, Virginia has planned the “back to basics” training discussed above, commenced work groups to define roles and responsibilities between the managed care organizations and the community service boards, explored the use of technology to increase understanding and awareness of services (videos discussed above), and made changes to the questionnaires and scoring tools that will be used in ongoing monitoring reviews that will allow the reviewers to dive deeper into agency policy and procedures. Lastly, Virginia was able to see that there is

significant confusion around HCBS modifications and access to DME items. Virginia will address this by initiating a specific training on HCBS modifications that will be offered at least quarterly beginning in March 2025. DMAS and DBHDS will work together on addressing the DME confusion by creating one-pager resources and/or flow charts that will be widely available to providers and support coordinators. DMAS believes that the confusion around accessing DME or medical items is a misunderstanding of process that can be corrected with additional training and the aforementioned workgroup that will define roles and responsibilities.