

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

September 24, 2024

Cheryl Roberts, Director
Virginia Department of Medical Assistance Services
600 East Broad St.
Richmond, VA 23219

Dear Director Roberts:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from June 24-27, 2024. CMS visited several settings in Virginia that were recommended by advocates and the state as benefiting from a site visit, including settings identified by the state and/or stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5). CMS also met with state officials, service and supports coordinators, people receiving Medicaid home and community-based services (HCBS) and service providers to hear directly about Virginia's strategy for implementing the regulatory criteria defining a home and community-based setting and how that strategy is carried out among the entities in the HCBS system.

CMS appreciates the efforts of the state to prepare for our visit to Virginia. We are asking the state to address the systemic findings described in this letter and the attached report and apply remediation strategies addressing the feedback contained in our report to the specific setting(s) as identified. We note that the HCBS settings criteria identified in the report that are followed by an asterisk require the state to go beyond ensuring that the individual setting has completed the necessary actions identified; specifically, complying with person-centered planning requirements requires further direction to and collaboration with the entities responsible for developing and monitoring the person-centered plans and with the HCBS provider community that is responsible for implementing services and achieving the objectives outlined in the plan. In addition, CMS notes that the state's remediation strategies must be applied to all remaining similarly situated settings you have identified as being presumptively institutional that were not included in CMS' site visit to ensure compliance with the settings criteria at 42 CFR § 441.301(c)(4) by the timelines detailed in your approved Corrective Action Plan (CAP). Finally, the state should ensure issues identified in this report are addressed in the state's overall assessment process of all providers of HCBS in Virginia, to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance.

The following were identified as systemic issues across the state of Virginia.

- Support Coordination, Department of Behavioral Health and Disability Services (DBHDS): While the site visit team interviewed Support Coordinators clearly committed to their work, the site visit team also learned of circumstances where Support Coordinators were not actively engaged in addressing individual coordination needs. The site visit team directly observed providers attempting to navigate the broader service delivery system with limited or no coordination assistance in an effort to meet the direct needs of individuals served at that setting. This resulted in a lack of information and access to potential services like supported employment and necessary supports like vehicle adaptations and effective hospital discharges. Support Coordinators reported that the volume of paperwork that they need to complete poses a barrier for them to effectively do their jobs and be more proactive.
- Modifications to the additional conditions of the HCBS Settings Rule: Support Coordinators noted during discussion that modifications to the additional conditions of the settings rule must go through a Human Rights Committee (HRC). Support Coordinators and providers are included in the process. The Support Coordinator leads the process and monitors the implementation of the modification as well as assures the modifications are reflected accurately in the service plan. The site visit team noted a strong desire and striving by the state, Support Coordinators, and the provider community to preserve the rights of individuals receiving services. However, Support Coordinators noted that it is difficult to put necessary modifications or restrictions in place even though there is a robust process for their correct implementation according to the settings rule requirements. The site visit team also noted this through observation and interviews with provider staff and individuals during the setting visits. As a result, individuals can go without much-needed support. One example noted by a provider was an individual who had drug and alcohol issues, lived in a group residential setting, but put housemates at risk by having visitors who were in the setting to sell and use drugs. The provider noted difficulty in serving the individual, while also struggling to support the other residents of the setting and assuring all residents' health and welfare. Some of these challenges could be alleviated by the proper and appropriate use of modifications to the settings rule criteria.
- Setting Selection: When facilitating discussions about setting selection, including options for a non-disability specific setting, the Support Coordinators serving individuals under the DBHDS-operated waivers review the options for the applicable region, talk to the guardians when necessary, and provide options to the individual. While the site visit team reviewed Individual Support Plans (ISP) that clearly outlined different setting options, it was not always clear what these settings were or if the individual was making an informed choice when selecting among them. Support Coordinators noted that geography can be a challenging barrier, with service options limited to the provider options available in that particular region. Some individuals do not want independent living. Guardians are often against relocation. Independent or supported living settings may require a housing voucher. Often times, when someone has a record of evictions, housing options are very limited. Additionally, Support Coordinators report it may not be possible for an individual who wants to live independently but requires 24-hour support to do so.

Support Coordinators noted a lack of providers as one of the biggest challenges impacting their ability to provide choice in settings to individuals receiving services.

- **Employment:** While the site visit team reviewed ISPs that had clear and comprehensive sections inquiring about individual interest in working, providers and Support Coordinators observed that the process for assisting an individual who wants to work is complex and onerous. All requests for employment support must be directed through the state's vocational rehabilitation agency, the Virginia Department for Aging and Rehabilitative Services (DARS). DARS completes an assessment for each individual referred, but as noted by Support Coordinators, providers, and individuals, it often takes several months before a case is opened. The state described a thorough process for referring individuals to DARS for support, and then accessing waiver services as a last payer of support. Virginia has trained Support Coordinators and providers in the process, but noted some issues with following the process still exist and acknowledged this impacts the wait time with DARS. The site visit team noted that even though a robust process is in place to access DARS, there remain extensive issues that limit individuals' access to community employment.
- **Community Integration:** Support Coordinators noted that due to unavailability of staff, providers have a difficult time assuring individual participation in community activities they desire. This is especially true for residential settings, particularly on weekends. The site visit team directly observed this dynamic in at least one residential setting visited. Support Coordinators also indicated that it was difficult to provide 1:1 community integration within the current service definitions.
- **Managed Care Organization (MCO) Care Coordination/Care Management:** Providers of services under waivers overseen by DMAS conveyed challenges in coordinating with MCO Care Coordinators/Care Managers, including not being invited to participate in care planning or receiving the resulting Individual Plan of Care/Person-Centered Service Plans. During the site visit, the team noted instances where providers were assuming coordination responsibilities, including setting selection, when an individual wanted or needed to change settings. The site visit team also observed provider confusion related to care management roles and responsibilities, particularly related to facility discharge planning. Care Coordinators/Care Managers reported large caseloads and noted the challenge of effectively prioritizing multiple issues related to hospital admissions, quarterly caseloads, and communication with the individuals. Care Coordinators/Care Managers cited administrative burden as a key challenge but also noted DMAS has taken steps to mitigate the burden.

As described more fully in the attached report, CMS notes below several areas where issues were found to exist across several setting locations, which raise systemic concerns that must be addressed by the state. Specifically, the following regulatory criteria located at 42 CFR 441.301(c)(4) were not found to be in practice:

- 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.

- 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 individual's needs, preferences, and, for residential settings, resources available for room and board. *
- The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- 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 setting facilitates individual choice regarding services and supports and who provides them.
- 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.
- Individuals have the freedom to control their own schedules and activities and have access to food at any time.
- 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.

Virginia's Statewide Transition Plan (STP) described strategies to ensure that all providers of Medicaid HCBS have been assessed to meet the regulatory criteria and any needed remediation has been identified. The state's practice for addressing the observations described in the attached report must align with the processes described in the STP and in the state's CAP.

CMS requests that the state provide a written response providing updated information describing how the state will remediate both the process for developing and implementing the person-centered service plans and the issues identified in individual settings to ensure compliance with all of the settings criteria. CMS also requests a written response on how the state will apply this feedback to the ongoing monitoring of person-centered planning functions and settings in the HCBS delivery system as noted above. CMS requests this information be submitted no later than October 25, 2024.

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 conference call with the CMS team to discuss next steps or request technical assistance.

Thank you for your continued commitment to the state of Virginia'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

Enclosure

CMS Site Visit Report - Virginia
Summary Review by Setting
Visit Dates: June 24 - 27, 2024

Site Visit Team:

CMS Representatives: Michele MacKenzie, Mansi Shukla
ACL Representative: Erica McFadden
New Editions: Amy Coey, Vicky Wheeler, Trish Farnham

Introduction:

The site visit team visited six settings in Virginia. Two settings are day support programs (Cumberland Mountain Community Services Board (CSB) and Sola, Inc.); two are residential group homes (Cumberland Mountain CSB and Sola, Inc.); one is an adult medical day care (The Feinour Center), and one is a supported living complex (Richmond Residential Services, Inc.). The site visit team visited two settings in the western, rural region of the state, two settings in urban areas and two settings in the eastern, rural region of the state. Sola and Cumberland Mountain CSB were identified by the state as presumptively institutional and submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review. Stakeholders requested Cumberland Mountain CSB and Richmond Residential Services, Inc. be included in the visit. In addition to the settings visits, the site visit team conducted virtual meetings with groups of Support Coordinators and Care Managers and held in-person meetings with state staff from the Department of Behavioral Health and Developmental Services (DBHDS) and Department of Medical Assistance Services (DMAS).

Program Strengths:

The site visit team noted a high level of commitment of staff to people they serve in several of the settings.

The team observed at several settings that staff had taken proactive steps to support the individuals they serve to have improved access to their communities, particularly in the more rural areas. This included developing community partnerships with local businesses and working with community landlords to facilitate streamlined access to community-based housing. The team also noted systemic efforts to address gaps in essential services such as the development of a mobile dental clinic.

The model of service provision at Richmond Residential Services, Inc. “bakes in” the settings requirements by implementing an individualized, “community-first” approach to its support. The individuals served by Richmond Residential Services, Inc. are both *in* and *of* the community in a way that is not typically observed in large congregate settings. The setting also strives to de-link services from the individual’s physical residence so that the individual can remain in their home if they were to choose a different provider. The setting’s model enables individuals who may not be able to live independently to live in their own homes with the support necessary to do so safely. While the site visit team observed individual examples of the Settings Rule not being fully implemented within Richmond Residential Services, Inc., as described below, the setting’s individualized model better enables each individual served to experience the full scope of the Settings Rule protections.

Sola, Inc. is committed to serving medically complex individuals. The leadership and staff know each individual very well, were deeply respectful to the individuals served and know the important, often subtle details about each individual, which helps ensure the individual's health and safety needs are met. Sola, Inc.'s findings described below draw attention to the balance that settings committed to supporting clinically complex individuals to live in their communities must often strike. For example, despite access to transportation and committed staff, the current staff ratio in the residential program does not provide the supports necessary for individuals who require significant assistance to engage in their communities and have choice in their schedules.

Systemic Findings:

Support Coordination, DBHDS

While the site visit team interviewed Support Coordinators clearly committed to their work, the site visit team also learned of circumstances where Support Coordinators were not actively engaged in addressing individual coordination needs. The site visit team directly observed providers attempting to navigate the broader service delivery system with limited or no coordination assistance in an effort to meet the direct needs of individuals served at that setting. This resulted in lack of access to services like supported employment and supports like vehicle adaptations and effective hospital discharges. Support Coordinators reported that the volume of paperwork that they need to complete poses a barrier for them to effectively doing their jobs and being more proactive.

- **Modifications to the additional conditions of the HCBS Settings Rule:** Support Coordinators noted during discussion that modifications to the additional conditions of the Settings Rule must go through a Human Rights Committee (HRC). Support Coordinators and providers are included in the process. The Support Coordinator leads the process and monitors the implementation of the modification as well as assures the modifications are reflected accurately in the service plan. The site visit team noted a strong desire and striving by the state, Support Coordinators, and the provider community to preserve the rights of individuals receiving services. However, Support Coordinators noted that it is difficult to put necessary modifications or restrictions in place even though there is a robust process for their correct implementation according to the Settings Rule requirements. The site visit team also noted this through observation and interviews with provider staff and individuals during the setting visits. As a result, individuals can go without much-needed support. One example noted by a provider was an individual who had drug and alcohol issues, lived in a group residential setting, but put housemates at risk by having visitors who were in the setting to sell and use drugs. The provider noted difficulty in serving the individual, while also struggling to support the other residents of the setting and assuring all residents' health and welfare. Some of these challenges could be alleviated by the proper and appropriate use of modifications to the settings rule criteria.

Setting selection: When facilitating discussions about setting selection, including options for a non-disability specific setting, the Support Coordinators serving individuals under the DBHDS-operated waivers review the options for the applicable region, talk to the guardians when necessary, and provide options to the individual. While the site visit team reviewed Individual Support Plans (ISP) that clearly outlined different setting options, it was not always clear what these settings were or if the individual was making an informed choice when selecting them. Support Coordinators noted that geography can be a challenging barrier, with service options limited to the provider options available in that particular region. Some individuals do not want independent living. Guardians are often against relocation. Independent or supported living settings may require a housing voucher. Often times, when someone has a record of evictions, housing options are very limited. Additionally, Support

Coordinators report it may not be possible for an individual who wants to live independently but requires 24-hour support to do so. Support Coordinators noted a lack of providers as one of the biggest challenges impacting their ability to provide choice in settings to individuals receiving services.

Employment: While the site visit team reviewed ISPs that had clear and comprehensive sections inquiring about individual interest in working, providers and Support Coordinators observe that the process for assisting an individual who wants to work is complex and onerous. All requests for employment support must be directed through the state’s vocational rehabilitation agency, the Virginia Department for Aging and Rehabilitative Services (DARS). DARS completes an assessment for each individual who is referred, but as noted by Support Coordinators, providers, and individuals, it often takes several months before a case is opened. The state described a thorough process for referring individuals to DARS for support, and then accessing waiver services as a last payer of support. Virginia has trained Support Coordinators and providers in the process but noted some issues with following the process still exist and acknowledged this impacts the wait time with DARS. The site visit team noted that even though a robust process is in place to access DARS, there remain extensive issues that limit individuals’ access to community employment.

Community integration: Support Coordinators noted that due to unavailability of staff, providers have a difficult time assuring individual participation in community activities they desire. This is especially true for residential settings, particularly on weekends. The site visit team directly observed this dynamic in at least one residential setting visited. Support Coordinators also indicated that it was difficult to provide 1:1 community integration within the current service definitions.

Managed Care Organization (MCO) Care Coordination/Care Management, DMAS

Provider staff conveyed challenges in coordinating with MCO Care Coordinators/Care Managers, including not being invited to participate in care planning or receiving the resulting Individual Plan of Care/Person-Centered Service Plans. During the site visit, the team noted instances where providers were assuming coordination responsibilities, including setting selection, when an individual wanted or needed to change settings. The site visit team also observed provider confusion related to care management roles and responsibilities, particularly related to facility discharge planning. Care Coordinators/Care Managers reported large caseloads and noted the challenge of effectively prioritizing multiple issues related to hospital admissions, quarterly monitoring for each individual on their caseload, and assuring communication with the individuals they support. Care Coordinators/Care Managers cited administrative burden as a key challenge but also noted DMAS has taken steps to mitigate the burden.

Summary of Findings:

Although a distinct review of each setting is included in this report, the table below summarizes the findings for the entirety of the visit to Virginia and identifies the settings at which the site visit team noted issues that contributed to systemic findings.

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(i)	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.	Cumberland Mountain CSB - Day Support Services, Cumberland Mountain CSB - Group Home, The Feinour Center, Sola Inc. - Adult Day Support Services, Sola Inc. - Group Home
441.301(c)(4)(ii)	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 individual's needs, preferences, and, for residential settings, resources available for room and board.	Cumberland Mountain CSB - Day Support Services, Cumberland Mountain CSB - Group Home, The Feinour Center, Sola Inc. - Adult Day Support Services, Richmond Residential Services, Inc.
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Cumberland Mountain CSB - Day Support Services, The Feinour Center, Richmond Residential Services, Inc.
441.301(c)(4)(iv)	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 Feinour Center, Richmond Residential Services, Inc.
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	Cumberland Mountain CSB - Day Support Services, Cumberland Mountain CSB - Group Home, Richmond Residential Services, Inc.

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(vi)(A)	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.	Cumberland Mountain CSB - Group Home, Sola Inc. - Group Home
441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities and have access to food at any time.	Sola Inc. - Group Home, Richmond Residential Services, Inc.

Additional Provision	Language	Setting Name
State Medicaid Director Letter #19-001 ¹	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.	Cumberland Mountain CSB - Day Support Services, Cumberland Mountain CSB - Group Home, The Feinour Center, Richmond Residential Services, Inc.

¹ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\)](#); see question 10

Cumberland Mountain CSB - Day Support Services, Visit June 24, 2024

Facility Description:

The setting is located in a rural area of western Virginia. The day center is part of Cumberland Mountain CSB's campus. It is a large building with multiple activity rooms, an eating area, an industrial kitchen, a patio, several restrooms and changing rooms. The setting has activities that occur on site including art, video games, cooking/baking and an indoor basketball hoop. There are numerous art projects and posters hanging on the walls, doors and ceilings. The setting serves approximately 70 HCBS beneficiaries, but most individuals were on various community outings when the team visited. The setting serves a variety of individuals, of various ages, disabilities and mobility needs. Staff were friendly and interacted comfortably and easily with the individuals attending the day setting. This is the only day support setting in the area.

The setting is accessible, with dedicated, private areas specifically developed to assist with personal care of individuals with mobility needs. The team observed an individual with mobility needs having adequate space to comfortably maneuver. Individuals control their own schedules and activities within the parameters of the day service model. Staff provided examples of people who chose not to attend day services having the support to remain at home. Staff also noted that there is a requirement to have a schedule but there is also an allowance for supporting choice and flexibility.

Site Visit Review Description:

The site visit team met in the lobby of the Cumberland Mountain CSB administration building where staff directed them to a second-floor conference room reserved for the site visit team's use. State staff and the manager of the residential setting were also present. The site visit team reviewed several person-centered service plans (PCSP), which adhered to regulatory requirements, and related documents. During this review, the site visit team also asked the residential manager questions about the provider's operations and clarifying questions related to the HCBS Settings Rule requirements. The site visit team then split up, with one group touring the day setting and another touring the residential setting. The site visit team members held brief, informal conversations with various individuals who were home or attending the day program. After the tours, the site visit team reconvened with three members of the Cumberland Mountain CSB leadership team, including the residential manager and the day supports director, for additional clarifying questions and to close the visit.

Most of the day support attendees were not at the setting at the time of the visit. The director noted that most were out at various activities, including at the movies. The team talked with several individuals who remained at the setting. The team met an individual who volunteered in their community with the facilitation of their family and met with individuals who reported enjoying many of the activities hosted at the center. Cumberland Mountain CSB has a fleet of cars and vans used to provide transportation to activities and also to employment. PCSPs reviewed also reiterated this transportation support. Staff referenced several people who work in community-based competitive employment and several others who would like to.

The team observed day staff interacting easily and respectfully with individuals served.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	<p>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.</p>	<p>The staff identified several individuals who work, but competitive, integrated employment is the exception rather than the rule. Individuals are typically supported to secure employment through DARS. Provider staff noted that individuals who work on enclave-based contracts (like shredding) are employed as Cumberland Mountain CSB staff and paid full wages, however the work option itself remains segregated. The team talked with an individual who was interested in working at Wal-Mart, but no additional information was provided about the status of the search. The provider staff indicated that the process of working with DARS and activating a referral for supported employment was lengthy and complicated.</p> <p>Cumberland Mountain CSB must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Additionally, the setting should ensure that individuals are informed of their choices for competitive, integrated employment.</p>
441.301(c)(4)(ii)	<p>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 individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>The PCSP is structured to offer individual choice among waiver services that can provide various types of day services, however, the PCSP uses waiver service terms and does not describe the setting or the service to be provided in everyday language in ways that facilitate choice of setting. Staff indicated that it is often the person's guardian or power of attorney who may select the setting.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>Several restrooms used by individuals at the setting did not have locks on the doors.</p> <p>Cumberland Mountain CSB must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint.</p>
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>Most of the case managers are through Cumberland Mountain CSB, which appears to show that there is no conflict-free case management, which could lead to restrictions in individuals' choice of provider.</p> <p>The state should consider strategies to increase the provider pool in the rural areas of the state, to the extent possible, to ensure there is a distinction between the provision of case management and other waiver services.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ²	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.	<p>There was staff training on the characteristics that support HCBS values and principles. There was a quiz with different scenarios. It was a very good and unique training, however, not all settings criteria were included.</p> <p>Cumberland Mountain CSB should ensure all HCBS settings regulatory criteria are included in the training materials. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

² [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\)](#); see question 10

Cumberland Mountain CSB - Group Home, Visit June 24, 2024

Facility Description:

The setting is located in a rural area of western Virginia off a state highway. The group home is part of Cumberland Mountain CSB's campus, within walking distance to two administrative buildings, psychiatrist offices, and a day support setting. There are 15 HCBS beneficiaries served at this location. There are also smaller residential settings in the area, but Cumberland Mountain CSB is the largest. All the residents in the group home attend the day support setting. They can stay home if preferred and one individual was home the day the visit occurred. The staff indicated that most individuals use the same physician network (C-Health) in the area and rely on the publicly-funded mobile dental unit. At this group home, the residents range from age 32-83, divided evenly between those who are older and younger than 65 years of age. The home has two hallways that include 15 private bedrooms and 5 shared bathrooms. All the doors have locks on them, and residents have keys to the front door and their units. The bathrooms are wheelchair accessible. As seen on the tour, there is a living room, dining room, kitchen, laundry room, medication room, staff office, courtyard with an area to smoke, and a backyard. Staff report that the setting has fostered relationships with a community movie theater and a local restaurant and has secured discounts in order to assist individuals to better access them. Individuals have access to their own food at any time.

The residential setting on the property was subsidized through the Department of Housing and Urban Development (HUD), Section 202; Supportive Housing for the Elderly Program. This setting is not being subsidized by HUD any longer; however, it is still under HUD monitoring per the provider.

Site Visit Review Description:

The site visit team met in the lobby of the Cumberland Mountain CSB administration building where staff directed them to a second-floor conference room reserved for the site visit team's use. State staff and the manager of the residential setting were also present. The site visit team reviewed several person-centered service plans (PCSP), which adhered to regulatory requirements, and related documents. There were PCSPs developed by support coordinators and individual service plans (ISP) developed by the provider to implement related goals from the PCSP. During this review, the site visit team also asked the residential manager questions about the CSB operations and clarifying questions related to the HCBS Settings requirements. The site visit team then split up, with one group transitioning to tour the day setting and another to tour the residential setting. At the group home, the team was met by the setting residential manager who led a tour throughout the setting and then met the group home staff. During the visit, site team members held brief, informal conversations with one individual who was home at the setting and staff who were there. The team also met with a couple of Case Managers who have clients in the home. After the group home tour, the site visit team regrouped with the other members and reconvened with three members of the Cumberland CSB leadership team, including the residential manager and the day supports director, for additional clarifying questions and to close the visit.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	<p>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.</p>	<p>Cumberland Mountain CSB requires it serves as representative payee for the residents and the requirement is reflected in the residency agreement. Staff report that the organization manages individual personal resources including benefit checks as well as income earned through employment, and releases funding to each individual every week (\$10), with the option for additional money if requested. The setting retains control of the individual’s resources, allowing residents to keep a maximum of \$100 a month, regardless of their income; there is no set rent. Most of the residents do not have bank accounts.</p> <p>Cumberland Mountain CSB must ensure their model of service delivery aligns with the regulatory criteria to support participants’ full access to the greater community. The setting should ensure that individuals are informed of their ability to control personal resources including the use and choice of a community financial institution for benefits as well as earned income received from employment.</p>
441.301(c)(4)(ii)	<p>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 individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>The PCSP outlines a number of residential options, including non-disability settings. However, the wording and terminology is not sufficient to clearly convey to an individual, in plain language, what the different options actually mean. The choice of setting is documented in a separate form that the state developed (Virginia Informed Choice Form).</p> <p>While not an official finding, CMS suggests that the state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings, in a format that is in plain language.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>Most of the case managers are through Cumberland Mountain CSB, which appears to show that there is no conflict-free case management, which could lead to restrictions in individuals' choice of provider.</p> <p>The state should consider strategies to increase the provider pool in the rural areas of the state, to the extent possible, to ensure there is a distinction between the provision of case management and other waiver services.</p>
441.301(c)(4)(vi)(A)	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.	<p>The provider's lease agreement includes the following reasons for eviction: unmanageable behavior, refusal to follow house rules, elopement, and possession of alcohol or firearms.</p> <p>Cumberland Mountain CSB must ensure that a lease, residency or other written agreement is in place for each individual and that the agreement provides protections from evictions and appeals processes that are comparable to those in the jurisdiction's landlord tenant laws. Cumberland Mountain CSB should revise the existing lease agreement to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ³	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.	<p>There was staff training on the characteristics that support HCBS values and principles. There was a quiz with different scenarios. It was a very good and unique training, however, not all settings criteria were included.</p> <p>Cumberland Mountain CSB should ensure all HCBS settings regulatory criteria are included in the training materials. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

The Feinour Center Adult Medical Day Care (Friendship Living) – Adult Day Health Care, Visit June 25, 2024

Facility Description:

The Feinour Center’s Adult Medical Day Care is situated on the north campus of a larger continuing care retirement community (CCRC) in Roanoke, Virginia. The CCRC is set back off a commercial, suburban arterial road with shopping centers and residential areas nearby. The CCRC campus provides assisted living, adult medical day care, skilled nursing facilities and independent living; only the adult medical day care on this campus serves Medicaid HCBS participants. The adult medical day care center is on the first floor of a building, attached to the assisted living. The building appears to be newly built and is clean and spacious. The adult medical day care entrance includes a large, multi-story lobby and reception desk. The main activity area is beyond the lobby and behind locked doors, which include an alarm when opened from the inside. The main activity area is large with numerous round tables and chairs, where individuals were sitting playing bingo at the time of the visit and where meals are served. This area also included a “puzzle table” with a jigsaw puzzle under construction. Beyond the eating area is an additional seating/activity area with a large TV screen. The center also includes a “quiet room” with comfortable chairs that also provides space for private conversations and individualized television viewing options. Individuals also have access to an enclosed courtyard patio outfitted with patio furniture. All bathrooms were lockable. On the day of the visit, 27 individuals were attending the day center, with a total enrollment of 37. Of the total enrolled, approximately 5 are under 60 years old. While the majority of individuals who attend the setting are older adults, the director noted that there are also individuals who have aged out of the school system and attend the setting for day activities. The setting accepts private payment, participates in the Commonwealth Coordinated Care Plus (CCCCP) waiver and accepts Veterans Affairs (VA) payment. Of the total number enrolled, approximately 10 are HCBS beneficiaries. According to the director, most individuals who attend the day center live off campus in private residences. No one who lives on campus received HCBS. There are only two day settings in Roanoke Valley.

Site Visit Review Description:

The site visit team convened in the outside portico and were greeted by the facility director. The site visit team then met with state staff in a conference room that had been reserved for the visit. The site visit team reviewed individuals' provider-developed plans of care, which was the

³ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\)](https://www.medicicaid.gov); see question 10

documentation made available to the site visit team. The plans of care are developed based on clinical documentation from the individual's physician and state-sponsored documentation. The facility's director mentioned that they do not get the plans developed by the MCO nor are they part of the care plan meetings although she does communicate regularly with one Support Coordinator. The team also met with the site's director to gain a more complete understanding of the setting's operations and approach to the HCBS Settings Rule. The site visit team then received a tour of the setting. Most of the individuals attending the setting on the day of the site visit were participating in bingo when the tour began, although a few chose not to participate. During the tour, the team held brief conversations with several individuals, including several older adults and three younger individuals. During the site visit, the group activity transitioned from bingo to chair yoga, where individuals were guided to a different part of the activity center to participate. At least two younger individuals elected not to participate, one sat in on a couch in a separate part of the center and the other elected to sit outside. Individuals could move freely between the main activity room, the quiet room and the courtyard. Individuals can recommend and lead center-based activities and on the day of the site visit, an individual was going to lead the group in center-based "bowling." The site visit team concluded their tour in the courtyard and then returned to the conference room briefly for final discussion.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	<p>The facility does not have its own transportation, but staff use a company van once a month to attend various community events, such as "Cow Appreciation Day" and a "fishing rodeo." The setting staff indicated the setting would not facilitate more individualized activities. The setting looks to families to provide this type of support and noted the high number of individuals with dementia. Individuals can receive assistance with their money for outings when money is brought in for an activity. People cannot leave the setting on their own.</p> <p>The Feinour Center's Adult Medical Day Care must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. The Feinour Center's Adult Medical Day Care should develop policies, practices and resources to ensure that individuals have full access to the greater community.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	<p>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 individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>There was no evidence that the setting options, including a non-disability specific setting, was offered to the individuals in this program.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iii)	<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>The setting's enrollment agreement requires individuals' consent to pictures and videos for promotional materials.</p> <p>The site visit team observed staff whistling at an individual as a means of getting their attention.</p> <p>The Feinour Center's Adult Medical Day Care must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iv)	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.	<p>The main door between the day center and the lobby is locked and attendees must be let in. The door to the lobby is unlocked but alarmed with a 10 second delayed egress. There is an alarm on the gate in the courtyard to prevent individuals from leaving.</p> <p>Individuals are not allowed to leave the premises without clear permission from guardian/powers of attorney (POA).</p> <p>The setting's enrollment agreement does not allow individuals the opportunity to manage their own medications while at the setting.</p> <p>Individuals have assigned seating for lunch times with name tents. Staff indicated this was to ensure those who required staff assistance were seated together but that people can sit where they want; yet the assigned seats remain.</p> <p>The Feinour Center's Adult Medical Day Care must ensure their model of service delivery facilitates individuals making choices about daily activities and with whom to interact. The Feinour Center's Adult Medical Day Care should revise their current practice to permit individuals to choose where to eat and with whom. CMS issued guidance in 2016 on unsafe wandering behaviors that may provide additional information.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>No restrictions/modifications were noted in the provider plans; however, modifications around access to the larger community and practices that limit individual choice were noted through interview and observation.</p> <p>The state should ensure that the entities responsible for overseeing the development and implementation of service plans are doing so in compliance with regulatory criteria. One function of service plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>The Feinour Center’s Adult Medical Day Care should ensure that only modifications for an individual that are justified through their person-centered service plan, not developed through the provider ISP, are incorporated into daily operations, and that modifications to the settings criteria are limited only to an individual’s specific assessed need as opposed to a blanket modification imposed in the setting.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁴	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.	<p>The provider staff indicated that staff receive HCBS “Rights” training as part of annual training requirements, noting the setting developed the training based off the materials available in the state’s HCBS Settings online toolkit. The supervisor would print off these pages and review them with staff to satisfy the training component. However, it was unclear if the setting staff had been fully trained on all criteria of the HCBS Settings Rule.</p> <p>The Feinour Center’s Adult Medical Day Care should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

Sola, Inc. - Adult Day Support Services, Visit June 26, 2024

Facility Description:

Sola, Inc. Day Services is located off a two-lane highway in rural eastern Virginia and serves between 13-17 individuals daily. All residents from Sola, Inc.’s residential settings (eight individuals) attend the day center, along with residents from other group homes. The eight individuals from the Sola, Inc. group home go five days per week. Other individuals do not all go five days per week. It is surrounded by rural residential areas and farmland. A small shopping center with a grocery store is located nearby, along with other various small stores. Sola, Inc. Day Services is a large, newly constructed building with administrative office space and a conference room at the front of the building. The setting is a single-story building with wide hallways and entrance openings to accommodate the several individuals who use wheelchairs. A short, wide hallway leads to the back of the building where day services occur. The back of the building is a large space with three distinct open rooms connected with casement openings. In two rooms, there were tables positioned to make a large square where art projects and other activities occur. The other main room is a large open space, with a dedicated television area in one corner and a repositioning bed in another. The main room is connected to an open, home-style kitchen with several two to four-person tables. The setting’s layout is accessible to the several individuals who use wheelchairs. The setting provides transportation to individuals between the residential and non-residential Sola, Inc. settings and for community activities.

Site Visit Review Description:

The site visit team met in the parking lot outside the setting and entered the setting with the state staff. Two members of the setting’s leadership met the team, and the team was directed to the conference room where service plans were provided. The team reviewed plans and engaged in

⁴ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\)](#); see question 10

discussion with the leadership. The provider has the Case Manager plans as well as their own. The leadership then provided a tour of the setting and site visit team members visited with several individuals using services and talked with direct support staff. The team then returned to the conference room for further discussion with the state staff and the setting’s leadership. Throughout the visit, the team directly observed highly respectful interaction between individuals and staff in both tone and practices, with staff taking personalized steps to ensure individuals were comfortable and engaged.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	<p>Community outings were noted to be only provided in groups and sporadically. Individual options for community integration based on the assessment, wants/needs, were not evidenced.</p> <p>While the leadership team referenced individuals previously served by the organization who were employed in integrated employment, they did not identify anyone currently served by the organization who works. They indicated that employment is discussed at each annual meeting.</p> <p>Sola, Inc. Adult Day Support must ensure their model of service delivery aligns with the regulatory criteria to support participants’ full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Sola Residential should develop policies, practices and resources to ensure that individuals have full access to the greater community.</p>
441.301(c)(4)(ii)	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 individual's needs, preferences, and, for residential settings, resources available for room and board.	<p>There was no evidence the setting was selected by the individual from among setting options including non-disability specific settings.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>

Sola, Inc. – Group Home, Visit June 26, 2024

Facility Description:

Sola, Inc. is located in rural eastern Virginia in a residential and farmland area and serves 8 individuals. It is a 15-minute drive from downtown Gloucester where there are restaurants and shops. All residents from Sola Inc.'s residential settings (eight individuals) attend the Sola, Inc. day center. The eight individuals go five days per week. It is surrounded by rural residential areas and farmland. The home is a newly constructed stucco building with a large driveway. There is a front patio with a swing chair and other chairs for sitting. Upon entering, there is a living room with a television. There is artwork on the walls. To the right is a little nook that has a desk and computer that residents and staff can use. To the left is the kitchen with an unlocked pantry. There are four bedrooms and shared bathrooms that all have locks. Individuals have keys and staff support them to use them. At the time of the visit, all the bedroom doors were wide open. All areas of the house are accessible to residents, including 24-hour access to the kitchen and pantry. The home is one story and has been designed to support people who have durable medical equipment including wheelchairs. The doorways and hallways are wide, and bathrooms have grab-bars and accessible showers.

Site Visit Review Description:

The site visit team started at the Sola, Inc. day services setting first. Two members of the setting's leadership met the team, and the team was directed to the conference room where they reviewed service plans and engaged in discussion with the leadership. The provider has the case manager plans as well as their own. A couple of site visit team members, one state staff, and one of the leadership members drove to the residential setting about 10 minutes away. The team was met by a support staff member, and they provided a tour of the setting. The team then returned to the day setting to reconvene.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	<p>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.</p>	<p>All residents go to Sola Inc.’s day center five days a week. There are no community outings otherwise. On the weekends, staff said that residents sleep in and they may go for a walk around the house. There is only one staff person at the residential home at all times so while there is access to a van, community outings are not available.</p> <p>The provider staff noted that individual funds and accounts are managed by the owner. Each individual has their own account. The leadership team noted that individuals could take their own debit cards if they choose, but currently the debit cards are managed by the administrative staff. During the site visit tour of the residential setting, the provider showed the team a binder of all the debit cards that were kept in an unlocked drawer in the kitchen.</p> <p>Sola, Inc. Residential must ensure their model of service delivery aligns with the regulatory criteria to support participants’ full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Sola, Inc. Residential should develop policies, practices and resources to ensure that individuals have full access to the greater community and can control their personal resources.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(A)	<p>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.</p>	<p>Each individual has a signed lease agreement; however, the agreement does not contain the appeals process information.</p> <p>Sola, Inc. Residential must ensure that a lease, residency or other written agreement is in place for each individual and that the agreement provides protections from evictions and appeals processes that are comparable to those in the jurisdiction's landlord tenant laws.</p>
441.301(c)(4)(vi)(C)	<p>Individuals have the freedom to control their own schedules and activities and have access to food at any time.</p>	<p>The residents were on a strict schedule Monday through Friday. All residents go to the day center from 7:30 AM-3:00 PM, go to bed between 6:00-7:00 PM and get woken up between 4:00-5:00 AM.</p> <p>On the weekends, they are allowed to sleep in and there are no activities planned.</p> <p>Sola, Inc. Residential must ensure their model of service delivery aligns with the regulatory criteria to support participants' ability to control their schedules and activities.</p>

Richmond Residential Services, Inc. – Supervised Living Service, Visit June 26, 2024

Facility Description:

Richmond Residential Services, Inc. operates several apartments interspersed through an integrated, non-disability specific apartment complex in a walkable area near downtown Richmond. There are shops and services within walking distance of the apartment complex. The apartment has a lobby, pool, gym, activity room, small coffee bar and a private access garage for residents' cars. The complex has at least one hundred units and Richmond Residential Services, Inc. supports eight individuals in eight individual apartments. Richmond Residential Services, Inc. staff float among individuals and assist them with both in-home and community-based needs. The staff use a second bedroom in one individual's apartment as an office and hub for their supports to others. The setting director indicated that Richmond Residential Services, Inc. elects to work out of this specific individual's apartment because the individual requires a slightly higher level of support. The setting serves as the representative payee for individuals, but provider staff noted if they want to manage their own funds, they could and also noted that families do as well. Individuals do have access to their debit cards. Individuals go with their provider to do grocery shopping. They choose to go individually or pair up with another resident. They make a list and then shop.

Site Visit Review Description:

The site visit team arrived onsite and parked in the apartment's garage. Setting staff escorted the team members up to an individual's apartment that also serves as the staff office. The individual was at work and not home. The site visit team members reviewed both Case Manager ISPs and provider service plans and talked with staff, noting a preference to finish before the individual returned home from work so as not to overwhelm them. The site visit team then split up and visited different individuals in their private, highly personalized apartments. The site visit team then reconvened at a private table in the lobby to finish the discussion with setting staff. During this time, the team had an opportunity to meet an individual who returned home from work while the site visit team was in the lobby. The individual elected to get a cup of coffee and met up with another individual served by the setting who had also come down to the lobby. The team also directly observed other apartment complex residents, not served by the setting, using the pool and entering and exiting the building.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	<p>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 individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>The provider worked to locate this apartment building for individuals who were receiving services in a similar set-up but in a less-desirable area of town. The process of selecting the setting was not noted in the individuals' ISPs.</p> <p>One individual who receives additional assistance and benefits from full-time, on-site staff did not have information documented in their ISP to identify that they have the option for a private unit and consent to having staff convene in their apartment several times throughout the day. The provider shares the unit with the individual, is on the lease, and uses the second bedroom as an office for on-site operations.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iii)	<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>An individual interviewed indicated that because they cannot hear staff knocking, staff will walk into their apartment without permission.</p> <p>One individual lives in a two-bedroom apartment with one bedroom serving as the staff office. While staff indicated measures taken to provide the individual privacy, the individual's privacy is compromised by the presence of a staff office in their apartment and the sharing of the kitchen/dining area with staff at the start/end of shift or when needing to check in at the office.</p> <p>Richmond Residential Services, Inc. must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iv)	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.	<p>A person interviewed said the provider does not always allow them to eat what they want or buy what they want from the grocery store because they need to follow the doctor's orders.</p> <p>Richmond Residential Services, Inc. must ensure their model of service delivery aligns with the regulatory criteria to support participants' autonomy in making life choices.</p>
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>An individual the team spoke to wants a little more assistance from their provider and for them to check on them more. They also want dental work done but need assistance in making it happen. The individual was told they need help budgeting money to pay for it. They also mentioned they are uncomfortable outside by themselves and would like more support.</p> <p>Richmond Residential Services, Inc. and the Case Management entity must ensure that individuals have access to services and supports that the individual has been assessed to need, and that the individuals have the ability to choose from whom they receive those services and supports.</p>
441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities and have access to food at any time.	<p>Line 12 of the Helping Hands Apartment Agreement indicates: <i>I agree to inform staff when I plan to leave my apartment. If I leave with a friend, I agree to provide a name or phone number where I can be reached as well as return at a reasonable time to assure compliance with my PCP, to take my prescribed medications and to prepare for scheduled workdays or appointments.</i></p> <p>Richmond Residential Services, Inc. must ensure their model of service delivery aligns with the regulatory criteria to support participants' ability to control their schedules and activities.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	<p>The team interviewed an individual with visual impairments and an individual with a hearing impairment and the site team noted there may be opportunities for assistive technology to improve accessibility. For example, an individual interviewed with a hearing impairment wants a doorbell installed, noting staff enter the apartment without permission because they cannot otherwise hear staff knocking. One individual remained in the hospital for an extended period of time because they did not have the accommodations they needed to transition back to their apartment.</p> <p>Richmond Residential Services, Inc. must ensure that its setting is accessible to all individuals residing there.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁵	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.	<p>While staff report receiving training at orientation and annually on choice and individual rights, there was no evidence that all HCBS Settings Rule Criteria are contained in the trainings.</p> <p>Richmond Residential Services, Inc. should ensure all employees have consistent, accurate, and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

⁵ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\)](#); see question 10