

Commonwealth of Virginia

Heightened Scrutiny Evidence Package

As required by 42 CFR 441.301 (c) (5) the Commonwealth of Virginia submits the request for CMS heightened scrutiny review.

Setting Information

Provider Name: Brambles	Setting Name: Buckley Hall
Setting Address: 347 Buckley Hall Road, Matthews, VA 23109	Type of Setting: Group Home
Number of people served at the setting: 6	Number of individuals reviewed: 2

Waiver Service Information

Individuals in this setting use one of the three (3) DD Waivers available in Virginia.

Community Living (CL Waiver)

Family and Individual Supports Waiver (FIS)

Building Independence Waiver (BI)

Heightened Scrutiny Criteria Met

Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment.

Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.

Prong 3: Setting has the effect of isolating individuals from the broader community.

Section One

Onsite Visit Observation and Assessment

Date(s) of onsite assessment and review: August 26, 2021

State Agencies that Conducted the Onsite Visit: Department of Medical Assistance Services (DMAS) and the Department of Behavioral Health and Developmental Services (DBHDS)

Number of State Agency Representatives who Completed Assessment: Six; 3 representatives from DMAS and 3 representatives from DBHDS

Description of Setting:

347 Buckley Hall Road, Matthews, VA 23109 is located in a rural area of Matthews County. Setting is located on a large piece of property that contains corn farmland that is rented by a local farm. There is an additional group home operated by the Brambles next to the Buckley Hall home. These two homes are side by side; however, it was determined based on interviews, policy review and documentation review that these settings do operate independently from one another. The Buckley Hall home has individual bedrooms for each individual and there are no shared rooms. There are multiple bathrooms, a common living area, and kitchen and large screened in deck.

This setting was originally brought to the state's attention for having an assumption of isolating individuals who are receiving services. This assumption was based on the co-location of two (2) group homes on the same property. However, based on the implementation of the agency HCBS policy in both settings the state does believe that, with remediation, this setting does overcome the presumption of institutionalization. This is based on access to the community, autonomy, privacy, independence and choice.

Evidence included: interviews with staff and individuals, review of pictures, and an in-person tour completed on 8/26/2021.



Section Two

Evidence of Community Access to the Same Degree as Someone Who Does Not Utilize HCBS Services

The individuals who receive services from this setting do report having the opportunity to access their community. Staff and individuals report that typically the staff are able to facilitate community based activities at least once per week. The staff will transport individuals to and from these locations as there is no public transportation, ride-share options, walking or biking infrastructure.

Typical community based activities include: going to Wal-Mart, Family Dollar, going out to eat, getting hair and nails done at local salons, going to local beaches, local parks, bowling, movie theaters and thrift stores. The home does host a monthly meeting where any requested activities are discussed and added to an activity calendar. This calendar is posted monthly within the home.

Evidence included: Pictures of setting, In-person tour completed 8/26/2021, review of person-centered reviews, review of Activity Calendar, daily progress notes.

Section Three

Evidence of Privacy, Autonomy and Independence

The setting does promote privacy by way of having bedroom keys, locks on bathroom doors and providing each individual the code to entrance door. Individuals report that staff always knock before entering their rooms and they do feel that privacy is respected. Any individual with a personal phone or tablet can utilize them in their room (in private) and any individual who does not have a personal phone can take the house phone into their bedrooms.

The setting does promote autonomy by way of encouraging competitive employment. There are individuals who actively work and several others who are interested in working, but experienced delays due to COVID-19 in receiving employment services. Individuals are provided an option as to if they would like to attend the brambles day support, it is not required. In addition, the Lodge Home does conduct a monthly meeting where all individuals meet with staff and the setting manager to discuss the menu, activity schedule and any other desired changes within the setting.

Evidence included: Pictures and tour of setting completed 8/26/2021. Interview with staff, person-centered reviews, individual support plans and daily progress notes. Interviews with individuals and staff.

Section Four

Evidence of Choice and Freedom from Coercion and Restraint

The Virginia Informed Choice Form is completed at least annually with each individual by their assigned support coordinator/case manager. This form is kept on file stating the individual's choice to receive home and community based services and their choice of provider. Should an individual wish to change their services, the support coordinator/case manager would support the individual by looking at multiple other service choices and again completing the choice form (should another service or service provider be selected).

In addition to choice of services and providers, The Buckley Hall Home provides choice in: activities, clothing, food, individuals choose who they spend their days with while at home, and are able to select community activities.

Evidence Included: Virginia Informed Choice Form, Person-Centered Plans, Provider's Home and Community Based Services Policy, Interviews with staff

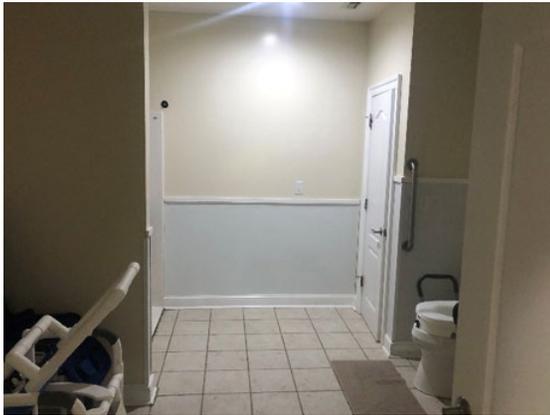
The provider utilizes a de-escalation training for all employees upon hire and annually thereafter. The program utilized is Therapeutic Options. All staff reported that any kind of restraint is a violation of agency policy. When asked about the agency policy on coercion, staff were unable to provide any insight on how they avoid coercion or how to recognize signs that someone is being coerced. A re-training for all staff members will be required for this setting regarding coercion.

Evidence included: Orientation checklist for staff, Provider's Home and Community Based Services Policy, interviews with staff.

Section Five

Evidence of an Accessible Environment

The setting is accessible to all individuals in the program.



Evidence included: pictures and in-person tour completed on 8/26/2021

Section Six

Evidence of Participation in the Person-Centered Planning Process.

Individuals reported participating in their person-centered planning meeting. This included deciding where to hold the meeting, who should attend the meeting, picking their outcomes and voicing any needs for changes. In the event that an individual does not use words to communicate, the staff reported that the House Manager will ask for input from staff who know them well prior to the meeting and ask for feedback from the staff once the plan is drafted. Direct Support Staff did not report attending the meeting.

Evidence included: a review of the person-centered plan, interviews with staff and individuals, review of the provider's Home and Community Based Services Policy- Expectations for Person Centered Planning.

Section Seven (As applicable)

Evidence of Provider-Owned Residential Protections including: a lease agreement, access to food at any time, ability to have visitors at any time, a key to the dwelling, and the ability for the individual to decorate their bedroom.

Each individual does have a signed lease agreement; however, it does not contain all of the protections from eviction. Individuals and staff were able to report that individuals can have overnight visitors and visitors at any time. Individuals do have keys to their bedrooms and the code to the front door. Individuals can decorate their bedroom and apartment to their liking. Several individuals reported getting new bedspreads and décor items as they request changes. Food was accessible in the kitchen and individuals reported having the opportunity to help cook meals on a regular basis.

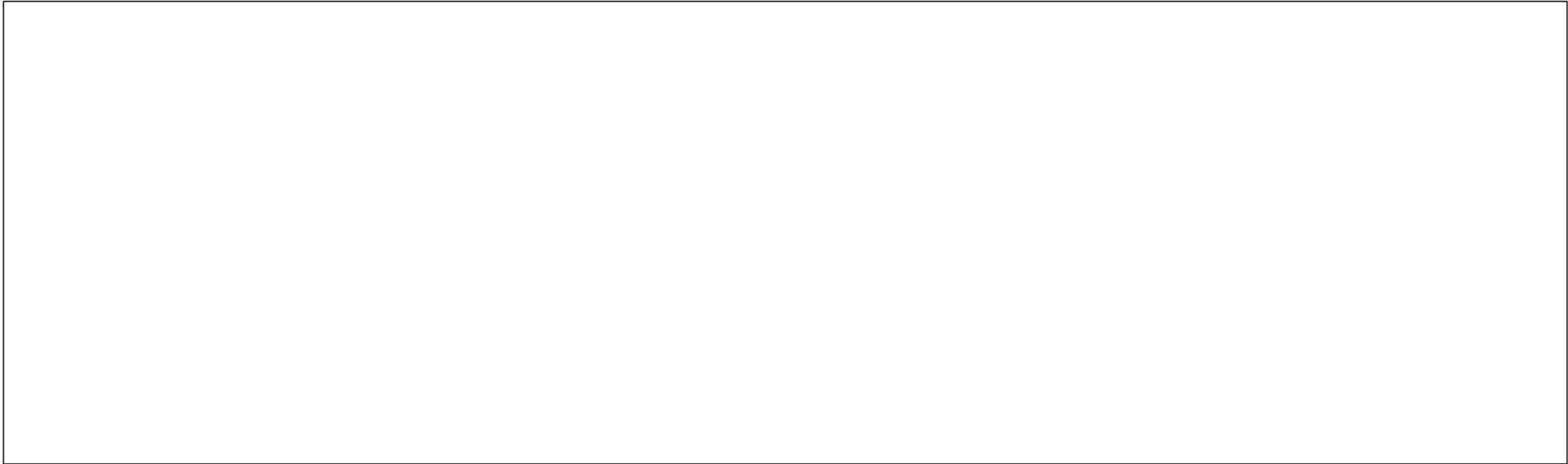
Evidence included: Provider house responsibility documents, Provider Home and Community Based Service Policy, signed lease agreements, person-centered plans, individual and staff interviews, in-person tour of setting completed 8/24/2021.



Section Eight

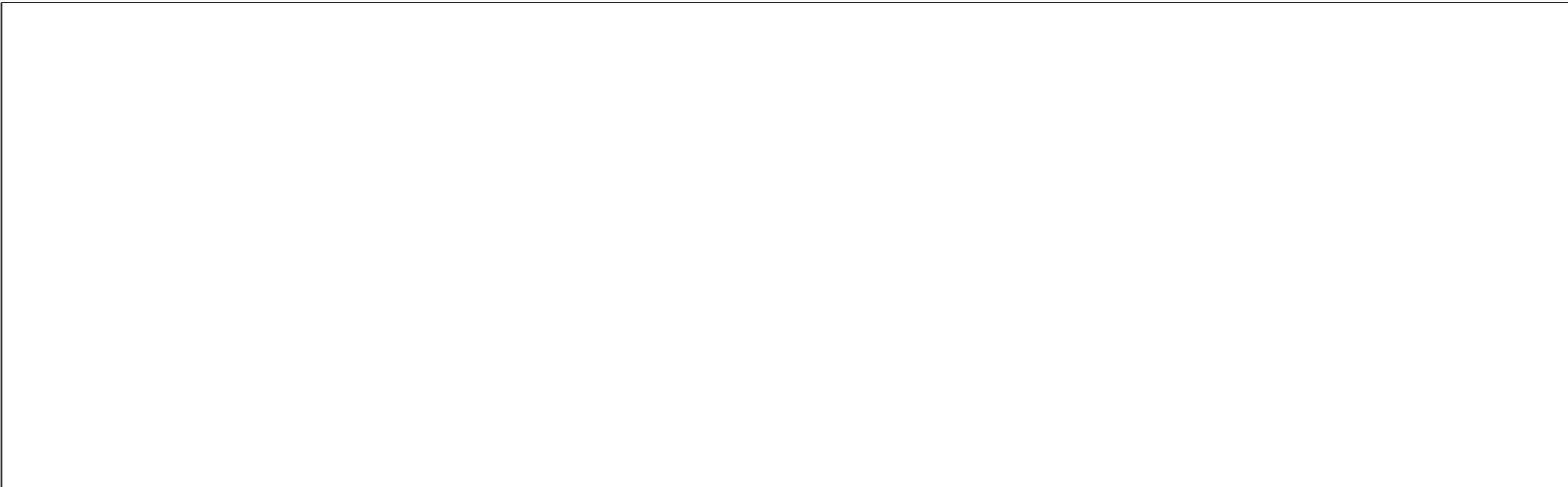
Public Comment Review Period:

Public Comments Summary

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Section Nine

Summary of State Response to Public Comments

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Attachment A:

Summary of Review Protocol Utilized by Virginia

Protocol Overview

The purpose of this protocol is to describe the processes, tools and timelines for the Commonwealth of Virginia Home and Community-Based Services (HCBS) Review Team to conduct a review of a statistically significant sample of the following home and community-based settings: Group Day Services, Supported Living, Sponsored Residential, Group Home and Group Supported Employment Services. The purpose of these reviews is to ensure the rights, dignity and autonomy of individuals enrolled in these programs are honored according to the HCBS Final Rule published in the Federal Register on January 16, 2014; effective March 17, 2014. The HCBS Final Rule establishes requirements for residential and nonresidential service settings in Medicaid waiver programs to ensure individuals receiving services through HCBS waiver programs have access to the benefits of community living and are able to receive services in the most integrated settings. This process is referred to as the provider on-site¹ settings review (OSR).

A HCBS Review Team is established from the Department of Medical Assistance Services (DMAS) and the Department of Behavioral Health and Developmental Services (DBHDS). Each review team consists of 2-4 state staff and may include a combination of representatives from DMAS and DBHDS. In preparation for each OSR, the HCBS Review Team assimilates findings from all provider self-assessment information entered into Research Electronic Data Capture (REDCap). The interview questions, documentation review and visual observations are based on the evaluation of compliance in the following six categories:

- *Community integration and engagement*
- *Autonomy, choice and control*
- *Friends and visitors*
- *Physical environment (Location, signage, accessibility)*
- *Privacy and respect*
- *Policies, procedures and practices (promotion of rights and integration)*

Settings Tours and Observations

Settings Tour

The HCBS Review Team conducts a walking tour of the physical environment to observe indicators of compliance/non-compliance. This includes but is not limited to the location, decoration, accessibility, signage and privacy. The settings tour occurs using the Provider Settings Review Tool

¹ As of 6/1/2020, an alternative, hybrid approach was added to this protocol. All references to OSR mean any method of review, in-person or virtual.

which includes questions for determining if the setting is fully integrated into the community; is accessible, which includes no obstructions or blocked doorways; is decorated according to individual preferences; has locks on the inside of bathroom and bedroom doors to allow privacy; and has signage without terms stating that people with disabilities receive services there.

Additionally, the HCBS Review Team determines whether:

- The home is on or adjacent to an institutional setting (heightened scrutiny)
- The home is isolated from the community and does not have the effect of isolating people from the community
- The home is integrated in and supports access to the greater community
- The environment is physically accessible

The HCBS Review Team also may take indoor and outdoor photographs of the building, signage, access doors, etc., as evidence in the setting's OSR file and to submit to CMS for heightened scrutiny review. For confidentiality purposes, no photos are taken of people.

For OSRs with virtual elements, the HCBS Review Team tours the setting through virtual means with the provider using a tablet or cell phone to offer a live, visual (FaceTime or other visual application) opportunity to observe the setting. The HCBS Review Team may request the provider submit photos taken (both indoors and outdoors) during the virtual tour. The Commonwealth may submit these photos to CMS as evidence for settings subject to a heightened scrutiny review. Photos do not include images of people.

The state may decide to follow-up with an in-person visit if only one state reviewer can participate in the virtual tour or if deemed necessary as determined by what is observed.

Settings Observations

The HCBS Review Team seeks to learn about the implementation of provider processes to assure community integration and engagement. The OSR involves discussion with staff, supervisors and leadership, and review of service documentation. Dependent upon the type of setting, the review may involve observation of active service delivery, such as day programs, residential supports or group supported employment. Where possible, the HCBS Review Team focuses discussions with those involved in the frontline application of the provider's service delivery processes. Observations and discussions with provider leadership, supervisors and managers occur in addition to rather than instead of discussions with direct line staff.

The HCBS Review Team makes observations and ask questions to determine:

- Individuals are provided choice, autonomy, and community engagement
- Individuals are provided choice regarding services and who provides them
- The individual has a lease or other legally enforceable agreement providing protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other entity (for settings where landlord tenant laws do not apply, the state must ensure

that a lease, residency or other agreement provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law). The agreement must include at a minimum the agreement length, payment information, use and return of security deposits, maintenance expectations, notice before entry into a unit, and conditions that could initiate an eviction and the process to terminate an agreement, evict a tenant/resident and the process to appeal an eviction. Additional information regarding the Virginia Resident Landlord and Tenant Law Act can be found [here](#).

- The individual has privacy in his or her unit, including lockable doors, choice of roommates and freedom to furnish or decorate the unit
- The individual controls his or her own schedule, including access to food at any time
- The individual can have visitors at any time
- The home is selected by the individual from among setting options
- Policies, procedures and practices promote HCBS rights and integration
- Staff competencies, training, and interactions promote rights of privacy, and respect, as well as freedom from coercion and restraint

Interview with Direct Service Providers, Volunteer and Supervisor

Interviews with staff and volunteers in the setting, including direct service providers and supervisors, are for the HCBS Review Team to learn about implemented practice and processes for assuring individual's experience with community integration, engagement, and autonomy. Additionally, the team asks questions relating to the physical aspects of the setting to determine how they assure the individual's understanding of their options to participate in general community activities with supports/services, including options for employment and where they live. Questions are to determine if individuals have privacy, understand their choice in roommates, and have the liberty to furnish and decorate the room/home in which they reside.

The HCBS Review Team focuses the interviews with staff who are directly involved in the frontline application of the provider's direct service delivery processes, including group home managers, DSPs, sponsored residential providers, day program managers and employment site managers and/or job coaches. Interviews with provider executive leadership and administrative staff occur separately, in addition to rather than instead of conversations with direct line staff. Interviews occur with individual staff and/or in groups to glean as much information from as many people as possible during the OSR. For settings with five or fewer staff, the HCBS Review Team asks all staff to participate in interviews. The HCBS Review Team interviews a 10% sample when the setting has six or more staff.

All staff interviews, regardless of role within the setting, include the following common elements to initiate the discussion:

- Introductions of the HCBS Review Team
- Introductions by the staff, including a short overview of their role with the setting
- An overview of the project and the purpose of the OSRs and the importance of the staff person's participation in the interview
- An overview of the interview process to include:

- An explanation that the interview is intended to be a fact gathering exercise and that notes are taken to inform the OSR to support the provider's goal of organizational compliance with the HCBS Final Rule
- A note that any references to HCBS individuals include the Authorized Representative/Guardian, as appropriate
- A request that the staff person provide candid responses to the questions to seek improvement with the provider's goal for organizational compliance with the HCBS Final Rule
- An opportunity for the provider or staff to ask questions about the process

The HCBS Review Team then uses the state-developed interview questions to facilitate the conversation and record responses. At the conclusion of the interview, the HCBS Review Team provides contact information for the Regional DMAS staff if the person wants to share additional information after the OSR. The HCBS Review Team concludes with an expression of thanks to the person for sharing valuable information and insights.

When conducting a 100% In-Person OSR, the HCBS Review Team selects staff who are present during the OSR for interviews. Otherwise, a selection of staff that regularly work in the setting receive a remote interview session. Virtual interviews occur by telephone, or teleconference, preferably using a webcam for visual participation (with applications such as FaceTime or Zoom Meetings). It is important to convey to the provider these interviews are private so that no other staff or supervisors are present in the room during the interview.

Interviews with Individuals Who Receive HCBS

The HCBS Review Team interviews individuals during the OSR to learn about their experience in the setting and what they understand about their options for services and supports outside the setting. A minimum of 25% of individuals receiving services in a setting are interviewed and no less than 2 individuals for smaller settings of 2-10 persons receiving services. The HCBS Review Team randomly selects individuals for interviews and provides a list of those individuals in the Provider Packet. Individuals receive information about the visit prior to the OSR via the Individual and Family Letter and Individual Interview Fact Sheet. Individual interviews occur outside of the presence of staff. The HCBS Review Team assures individuals that their responses are not shared with staff. Individual participation in an interview is optional. If an individual does not want to participate, the HCBS Review Team works with the provider to identify a replacement, if possible. The HCBS Review Team documents the number of individuals in each setting that refuses an interview.

The HCBS Review Team then uses the interview questions to facilitate the conversation and record responses. At the conclusion of an in-person interview, the HCBS Review Team provides contact information of Regional DMAS staff if the individual wants to share additional information after the OSR.

At the conclusion of a virtual interview, the interviewer verbally or visually (using a paper sign) provides contact information of Regional DMAS staff if the individual wants to share additional information after the interview. If able, the individual can write down the contact information. Other options for sharing this contact information include:

- Inviting the support person back into the room to assist
- Sending the contact information via email
- Sending the contact information via text message
- Mailing a postcard to the individual
- Adding the contact information to the Individual/Family letter prior to sending the provider packet

Regardless of OSR approach, individuals, or family/guardian, may choose to participate in the interview remotely. The HCBS Review Team collaborates with the provider to determine if individuals in the sample have the ability to consent to participation in a private, remote interview. The expectation is the individual can participate independently without assistance from staff other than to set up and start the phone/video call. At the start of a remote video interview, the interviewer will ask the individual if anyone has joined them in the room. If the response is affirmative, the interviewer will ask the individual to introduce their guest. At this time, the interviewer will determine if the guest will be participating in the interview; if yes, they will be asked to move into the video frame and in view.

Attachment B:

Full Evidence List

REDCap Provider Self-Assessment
Mission Statement
HCBS Policy, Community Participation Policy, Provider policies in REDCap
DSP Job Description
HCBS staff training records
Lease agreements signed by individuals
HCBS rights disclosure form signed by individuals
Person Centered Individual Support Plans
ISP part V for all individuals reviewed
Person Centered Quarterly Reviews for all individuals reviewed
House Activity Calendar
Individual Schedules
House Rules Document
Pictures of location
Google Maps
Daily and Monthly Notes for the period of 1/1/2020-1/31/2020
Logs/Data sheets for 1/1/2020-1/31/2020
Interviews with individuals and staff completed on 8/24/2021.

Attachment C:

Summary of Audit Findings

HCBS Standard	Rating
1. Integrated Setting supports access to the Community.	Partially Compliant
2. Individual Choice of Setting.	Partially Compliant
3. Individual Rights	Partially Compliant
4. Autonomy	Partially Compliant
5. Choice	Compliant

Attachment D:

Provider Remediation Plan

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
<p>Integrated Setting Supports Access to the Community – Partial for all 7 sites</p> <p>Outings seem to be mostly group outings with 5-7 individuals and 3-4 staff, or 2-3 individuals and one staff, with 1-1 outings occurring after a doctor appointment. If an individual requests to go to the Dollar Store, other individuals are invited by Staff as well vs asking the individual if they want peers to come.</p> <p>Documentation reflects community integration but additional details such as interactions during the outing, individual reactions/feelings, and choices made during the activity, and/or when an individual declines to attend a community activity are missing.</p>	<p>60 days</p>	<p>The Brambles will provide a refresher training to ensure staff understand that they can do 1:1 outings. An additional more comprehensive training will be developed to address progress notes in regards to documenting choice, refusal, deviating from the scheduled activities, inviting other housemates, and documenting reactions/feelings, and choices made during the activity.</p> <p>The Brambles is exploring hiring someone to focus on quality of Progress Notes and follow new staff for a certain period of time after their initial training.</p>	<p>N/A</p>	<p>N/A</p>

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
Individual Choice Setting – Partial for all sites Lease agreement in redcap does reference the land lord tenant act with link to the tenant handbook site. Does not go over eviction rights.	60 days	Brambles will update the annual lease agreement to include Eviction Rights. Eviction Rights will be reviewed with each individual and their guardian.	Tenant Act and Eviction Rights provided by HCBS Review Team	N/A
Individual Rights (Privacy, Dignity, and Respect – Partial Compliance for 5 sites Wall postings-ex. staff task lists, staff reminders, etc. recommend place in less conscious locations. Human Rights postings need to be updated. Recommend HCBS and HR postings not next to each other. Add address and phone number on all for Mr. Daye, and add in house person who family can contact to make a compliant/grievance.	30 days	The Brambles will review the location of all posters in each Brambles location. The Brambles management will move excessive postings behind doors and to more conspicuous locations. The Brambles will update all Human Rights posters to ensure they have the Human Right advocates name and phone number as well the Brambles grievance officer. The Brambles will update the Program Rules in each location services is	N/A	N/A

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
<p>House rules were inconsistent stating alcohol allowed on one, but no alcohol allowed on another.</p> <p>Front door has a code lock, but not all individuals were given the code or know how to use the code lock. Individuals have bedroom keys, but not all knew they had them.</p> <p>Staff and Individuals do have some confusion between human rights and HCBS rights for example not knowing overnight visits are allowed and not knowing they can request outings outside the monthly calendar.</p> <p>In one interview, an individual stated they were made to go to day support when they wanted to stay home, while another wanted more opportunities to go shopping.</p>		<p>provided so they are consistent.</p> <p>The Brambles will add using the door code and bedroom key to the ISP as a skill building activity. The Brambles will also require house management to review access to codes and keys at next individual house meeting and practice with each individual. If an individual is not able to have a key or the code for health and safety reasons, The Brambles will treat as an HCBS medication and document in the ISP.</p> <p>The Brambles will conduct refresher trainings more often. These will be completed during the monthly staff meetings held by the supervisors. These will be completed both in the staff and individual meetings which are held at separate times.</p>		

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
		The Brambles will provide coercion training for all staff to ensure they choice and that individuals are not coerced.		
<p>Autonomy – Partial Compliance for 5 sites.</p> <p>Staff state that all the individuals at the homes do require staff support to access the community. The ISP part V does have statements regarding needing staff supports in the community ranging from lack of safety awareness, wandering, fall risk, seizures, self-injurious behaviors, or support with a wheel chair or ambulation.</p>	180 days	The Brambles will obtain or develop a tool to determine if an individual could potentially go somewhere alone or opportunities for growth and independence and add this to the comprehensive assessment completed annually.	Safety Assessment Independence Assessment	N/A

