

## 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

<b>Provider Name: Cumberland Mountain Community Services Board</b>	<b>Setting Name: The Overlook</b>
<b>Setting Address: 216 Coxtown Road, Honaker, VA 24260</b>	<b>Type of Setting: Group Home Residential (Three Bedrooms)</b>
<b>Number of people served at the setting: 2</b>	<b>Number of individuals reviewed: 2</b>

#### 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: July 14, 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: Three; 1 representative from DMAS and 2 representatives from DBHDS

Description of Setting:

The Overlook is located at 216 Coxtown Road Honaker, VA 24260. This home is in a rural area of Virginia and is located off of a main road and is not located within a neighborhood. It is set back on the property and there are other building located in the property that you pass on the drive into the home. This home is also directly behind two other group homes that are operated by the CSB. This home sits on a hill that is overlooking the 2 other group homes. This home is on a large piece of land and does contain a small pond, basketball hoop and corn hole boards. Within the home there are two individuals receiving services. There is currently an empty bedroom in this setting.

This home contains three bedrooms (one is currently vacant) and one bathroom. This home is a one-level home that has an open living concept. There is an open living, dining and kitchen area. Individuals report helping cook with meals within the setting and enjoy having the open concept. There is a laundry room located off of the kitchen that is accessible to the individuals. There is also a porch with patio seating and an outside cat that is beloved by the individuals in the setting.

The setting does have multiple transportation options and the staff are able to use the program vehicles to take individuals to places in the community. Within a short drive there is a Dollar General, local ice cream/shaved ice shop, several state parks, local churches, the local high school, local restaurants (Pizza Plus and Subway).

*Evidence included: interviews with staff and individuals, review of pictures, and an in-person tour completed on 7/14/2021.*

## Section Two

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

The Overlook does follow a schedule for daily activities and this includes access to the community. Individual's report regularly scheduled community activities on Friday evenings when individuals receive their weekly spending money. A Friday evening often includes going out to eat at a local restaurant and going to the Dollar Tree and/or Wal-Mart. This setting does have frequent community access as both individuals in the home enjoy going places and have similar interests. Both individuals enjoy shopping and going to local thrift stores, going out to eat and visiting local parks. Aside from the regularly scheduled Friday evening activity, this setting has multiple activities that happen spontaneously throughout the week at the desire of the individuals. In addition, one individual in this setting is very close with local family and the setting will facilitate transportation for visits.

This setting does have a company vehicle that is available for activities as they are desired.

*Evidence: Provider's Community Integration Policy, Provider's Home and Community Based Services Policy, Person-Centered Plans, Quarterly Person-Centered Reviews, Daily Progress Notes, Interviews with staff and individuals.*



### **Section Three**

#### **Evidence of Privacy, Autonomy and Independence**

Staff and individuals do report that each individual does have a key to their bedroom. However, no individuals have entrance door keys to the home. All individuals also reported privacy in the bathroom to the greatest extent possible. All staff are trained to provide privacy and step out of the bathroom (if appropriate) while an individual is using the toilet. There are no shared rooms in this setting.

*Evidence included: interviews with staff and individuals, daily progress notes, in-person tour completed 7/14/2021.*

Individuals did report that staff always accompanies them when they leave the home. The staff reported that due to the rural nature of the home there is a concern for wildlife. However, there was no record of a safety assessment being completed before implementing the rule that staff are to accompany folks outside of the home. Staff interviews and daily notes outlined a very structured and regimented schedule that each individual follows. This includes: all individuals attending the same day support Monday-Friday for the same length of time and having assigned “chore” days such as cleaning, laundry, etc.

*Evidence included: interviews with staff and individuals and daily progress notes.*

## 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 Cottage home provides choice in: types of food and drinks that are available to all individuals, clothing options, choice in activities, choice of places to go in the community, ability to choose to decline any offered activities or services, and choice in directing one's own life.

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

The provider utilizes a de-escalation training for all employees upon hire and annually thereafter. The program utilized is Safety Care. All staff reported that any kind of restraint is an absolute last resort and verbal de-escalation should be used. 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

This home is accessible for each individual who lives there. There are areas that are “off-limits” or “only for staff”.

*Evidence included: pictures  
and in-person tour  
completed on 7/14/2021*

## **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 Home 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 specific eviction protections and the right to appeal were not included. Individuals and staff were able to report that individuals can have visitors at any time; however, the staff did not report knowing if an individual could visit in private with someone in their bedroom. Individuals are able to access food at any time. There are no locks or barriers to the refrigerator or pantry area within the home. Staff will be retrained on this principle. All individuals do have keys to their bedrooms. There are no keys provided to individuals for the front door. This is a remediation item for the provider. Individuals can decorate their bedroom to their liking. Several individuals reported getting new bedspreads and décor items as they request changes. There are no shared rooms in this setting.

Evidence included: *Evidence included: pictures, the provider's Home and Community Based Services Policy, the signed lease agreements, interviews with staff and individuals, pictures and the in-person tour completed on 7/14/2021.*



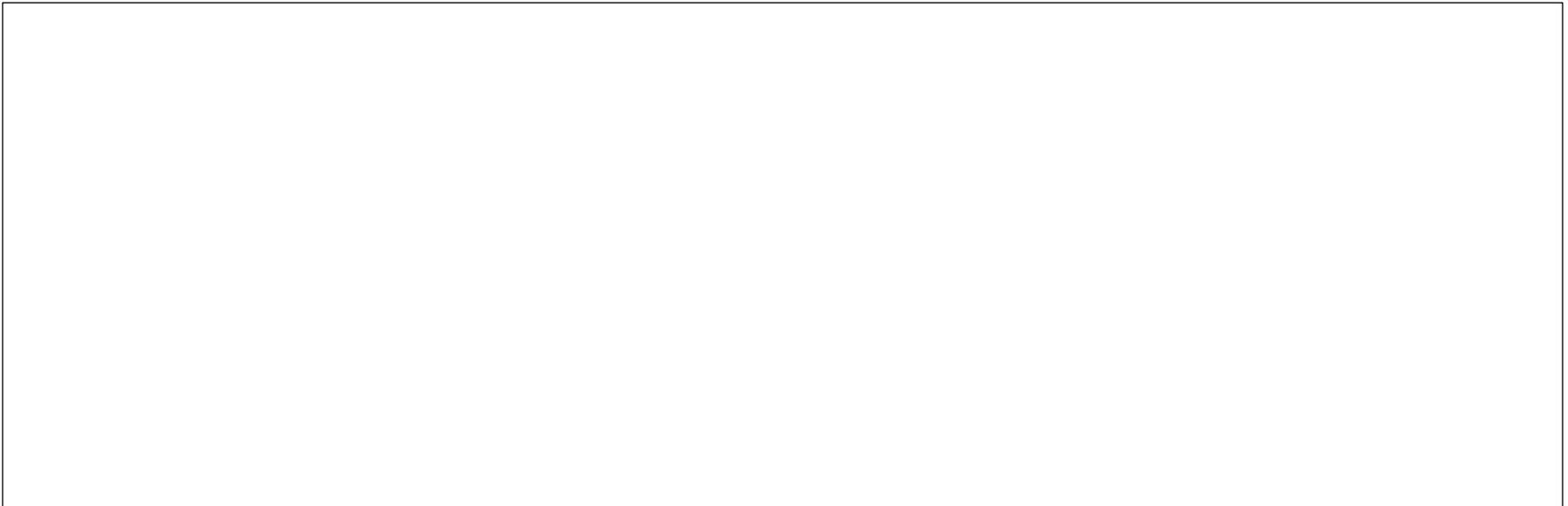
**Public Comment Review Period:**

Public Comments Summary

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**Section Nine**

Summary of State Response to Public Comments

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## Attachment List:

Attachment A- Commonwealth of Virginia: Modernizing Culture, Practices and Competencies in Home and Community-Based Services

HCBS Review Team, Provider On-Site Settings Review Protocol, July 2020

Attachment B- Full Evidence List

Attachment C- Summary of Audit Findings

Attachment D- Provider Remediation Plan

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-site<sup>1</sup> 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

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<sup>1</sup> 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  
Code of Conduct  
DSP Job Description  
Video Monitoring Policy and proof of approval  
Consent forms signed by individuals and/or guardians  
Employee Training Checklist  
Staff Orientation Form  
HCBS training materials  
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  
On Site Visit Tool  
House Activity Calendar  
Individual Schedules  
Pictures of location  
Google Maps  
Supplemental Risk Assessments  
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 8/13/2021.

Attachment C:

## Summary of Audit Findings

<b>HCBS Standard</b>	<b>Rating</b>
1. Integrated Setting supports access to the Community.	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
<b>Setting Level</b>				
1. Individuals do not have entrance door keys	Immediately	All individuals have been given keys and shown how to use them.		
2. Non-compliant Lease agreement	3 Months	Lease will be revised to the landlord tenant act. The new lease will also outline and individual's protection from eviction and right to appeal.	Time to review the landlord tenant act and have new lease approved. Time to review agency policy regarding unearned funds. The individuals receive \$80 of their unearned funds each month. The individuals keep the first \$65 of any earned funds. One half of any earned funds above \$65 go to the agency, this policy was put in place to allow individuals to work and their income not have an effect on their social security.	<i>Time to review the lease agreement and agency policy.</i>
<b>Staff level</b>				
1. Retrain all setting staff on HCBS Rights. Including right to	Immediately	During staff meetings, supervisors will retrain staff to ensure that they understand that all	Copy of HCBS Rights will be provided to staff for review and to keep on hand for future use.	<i>All staff will be informed and will sign a sign-in log which will be submitted through Edoc with the printed names</i>

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
access food at anytime.		individuals are able to access food as desired. Staff will also be retrained to ensure they understand HCBS Rights and the privacy of individuals.		<i>and signatures of those who attend the staff meeting.</i>
2. Train staff on coercion	Immediately	During staff meetings, supervisors will explain the definition of coercion to staff and provide pamphlets that provides further explanation. Coercion will be stated in the ISP (Part V CMH) to be discussed on a monthly basis with each individual with documentation.	Informative pamphlets on coercion and examples of coercion in real life scenarios. This pamphlet is completed and awaiting approval.	<i>All staff will be informed about coercion and will sign a sign-in log which will be submitted through Edoc with the training materials.</i>
<b>Individual level</b>				
1. Re-disclose HCBS rights to all individuals.	Immediately	In small groups, inform individuals who live at Pleasant View about HCBS Rights and provide them with informative pamphlets as well as ensure that they understand to the best of their ability.	N/A	<i>After individuals have been provided their HCBS Rights and provided an explanation (as needed), an attestation will be submitted into Edoc.</i>
2. Assess safety for the ability to come and go at any time.	Immediately	Staff will discuss at the annual plan meeting about the safety/support needs	N/A	<i>All staff who support an individual will discuss any identified support needs that</i>

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
		<p>that would require an individual to be within line of sight and document the support in their ISP. All individuals will be assessed and determinations will be made on a case by case basis. We need further clarification on what "line of sight" entails.</p>		<p><i>would require them to stay within line of sight due to safety concerns and document this in their ISP (Part V).</i></p>