

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: Eggleston Services	Setting Name: Military Highway
Setting Address: 3525 North Military Highway Norfolk, VA 23551	Type of Setting: Group Day Support
Number of people served at the setting: 27	Number of individuals reviewed: 7

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: September 20, 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: Five; 2 representatives from DMAS and 3 representatives from DBHDS

Description of Setting:

Eggleston's Military Highway Day Support Service is located in a highly accessible location in Norfolk. It is located on a busy street that is near local restaurants and businesses. Within a short drive there are local restaurants, Dollar Tree, Wendy's, Food Lion, Dollar General, multiple banks, barbershops and several apartment complexes.

The physical setting has two floors. Both floors are used for support services. There are open areas for recreation activities like games, puzzles, crafts, etc. There are also smaller rooms that can be used for a specific activity or for privacy if it is requested by an individual. It was noted that there is a "freight" elevator in the building, but it is not accessible to any individual who utilizes a wheelchair for mobility. As such, individuals who utilize wheelchairs are unable to access the second floor of the building. Eggleston does have multiple vans that are accessible to all individuals.



Evidence included: interviews with staff and individuals, review of pictures, and an in-person tour completed on 9/20/2021.

Section Two

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

The DSP's support individuals in discussions about what types of things they want to participate in throughout the community. Help individuals look up activities on the internet and bring in ideas for individuals to consider. Staff collaborate with the group to develop an activity calendar. According to staff, the individuals go into the community as a group. An individual interviewed stated that he attended preplanned outings with his peers. Individuals are able to select where they would like to go based on the resources that are available. There is an activity schedule that is followed. Individuals are able to choose to not participate in any given activity and stay at the center. Eggleston does have vans available for transportation to and from any given activity.

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

All individuals have access to a locker while they are attending the program. Individuals can put their personal belongings in this locker and put a lock on the outside, if desired. In addition, individuals have privacy while using the restroom with accessible restrooms and doors that lock.

Evidence included: interviews with staff and individuals, daily progress notes, in-person tour completed 9/20/2021, Provider Home and Community Based Services Policy- Modification section.

Evidence included: interviews with staff and individuals and daily progress notes, quarterly person-centered reviews.

Individuals are able to express choices from the beginning of services and on a daily basis with activities planned. Staff reported that individuals can decline an activity, and be provided with an alternative. For those individuals who are not able to verbalize their choices, staff utilizes communication boards and pictures to help express their choices in what they want to participate in and with whom they would like to engage with. Staff stated that upon intake the individuals are assigned to a group. An individual interviewed stated that he has a friend in his group, and stated that he has to stay with his group. According to staff interviewed, the individuals do not have the option to change groups. It is recommended that individuals can determine the group they would like to join.

Evidence included: Interviews with staff and individuals, HCBS Policy, daily progress notes, quarterly person centered reviews.



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, Military Highway 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 CHOY. 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

This setting is not accessible to all individuals in the setting. There is a second floor that does contain support activities that is not available to individuals who are unable to navigate the steps. There is a “freight” elevator, but it is not used for people to go up and down the steps. The provider will need to remediate this finding.



*Evidence included: pictures
and in-person tour
completed on 9/20/2021*

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.

Not applicable as this setting is a group day support setting.

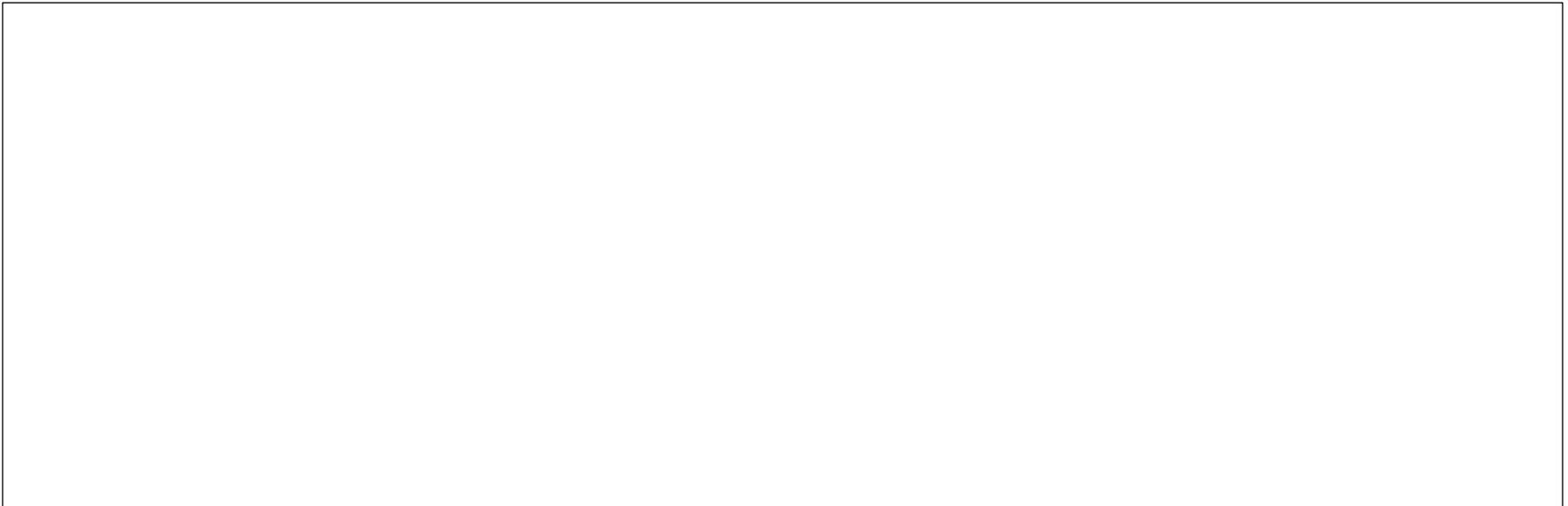
Public Comment Review Period:

Public Comments Summary

A large, empty rectangular box with a thin black border, intended for the summary of public comments.

Section Nine

Summary of State Response to Public Comments

A large, empty rectangular box with a thin black border, intended for the summary of the state's response to public comments.

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-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

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.

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 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

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 and Independence	Compliant
5. Choice	Not Complaint

Attachment D:

Provider Remediation Plan

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
Human Rights postings need to be updated. Need to remove cell phone number.	10/ 11/2021	The Cell Phone number has been removed and updated.	None	<i>Updated and Resolved</i>
Confusion among staff between HR and HCBS rights. Finding for most providers-recommend retraining and reinforcing HCBS more often.	November 2021	Eggleston will add refresher HCBS Training with annual refresher trainings.	In Progress	<i>Update 8/30/21: See Youtube Video</i>
If the upstairs is used to deliver services to individuals, then it should be accessible for all individuals in the program to access. Since the elevator is a freight elevator and is nonfunctional, then the best way for the site to be compliant with both HCBS and licensing is for the day program to be on the first floor only.	February 2021	Eggleston will review the support needs and determine feasibility of the elevator or transitioning all individuals downstairs.	In Progress	<i>See notes from leadership meeting.</i>
Looks very institutional, foosball broken, boxes around. Lockers etc. Not a lot of décor. Eggleston does have work orders to paint	December 2021	Eggleston is in the process of beautifying the space as we moved into the building and other more emergent	In Progress	<i>See emails to Marketing/development and admin support</i>

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
<p>the building, fix ceiling tiles, and a wall. They do have plans to decorate/paint the location. Eggleston does have plans to renovate and beautify the location-once these plans are enacted; please take pictures of the updates then this will be remediated.</p>		<p>things needed to be fixed prior.</p>		
<p>Individuals to keep no more than 1-2 dollars, with the office keeping all the spending money for outings. This should be treated on case by case-not a rule for everyone. Determine if an individual can keep their money in their wallet.</p>	<p>November 2021</p>	<p>Typically the individuals bring in monthly allowances for community activities; which is separate from their daily personal spending; however, we will communicate that their money is accessible at all times and we will begin to document communications of access to funds.</p>	<p>In Progress</p>	<p><i>Next Team meeting 10/20/21 review individual funds.</i></p>
<p>This location also has individuals lock up cell phones in their lockers or keep in back packs due to being a distraction. Individuals do have the choice to use their cell phone instead of participate in an activity. If there is a health or safety reason to restrict use of cell</p>	<p>November 2021</p>	<p>This will be reviewed with all staff in our next team meeting scheduled for 10/20/21</p>	<p>In Progress</p>	<p><i>Review in next team meeting.</i></p>

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
phone-treat this on a case by case basis as an HCBS modification.				
Daily notes and staff interviews for Civitan and Military Hwy have a big focus on safety and remaining in line of site at all times-alone time means sitting off to the side vs in a different room. Overall, appears risk adverse. Would recommend dignity of risk training.	October 2021	Dignity of Risks will also be discussed at our next team meeting. Eggleston will continue to work on person centered language that focus on the needs of adults.	In Progress	<i>Next Team Meeting scheduled for 10/20/2021, will review dignity of risks.</i>

