

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: EnCircle	Setting Name: 1129 Turning Point Road
Setting Address: 1129 Turning Point Road Bedford, VA 24523	Type of Setting: Group Home
Number of people served at the setting: 4	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 13, 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: Four; 2 representatives from DMAS and 2 representatives from DBHDS

Description of Setting:

1129 Turning Point Road Bedford, VA 24523 is located in a rural area of Virginia. Turning Point Road is a non-typical residential location. The surrounding area contains: the regional water authority, sheriff office, an animal shelter and a nursing home. This area is not a neighborhood or largely residential area. However, there are a total of 4 homes on this street. In order for any individual to go out to eat or go shopping the staff would need to drive the individuals as there are no ride-share services or public transportation and no locations are within walking distance. There are shops and restaurants within driving distance: Ruby Tuesday, Lowe's, Sonic, local thrift stores, parks and churches. This home supports four individuals. Each individual has their own bedrooms and there are two bathrooms. It was noted that the bathroom doors do not have locks. Lastly, there are general living areas and a kitchen.

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 four (4) group homes being co-located in an otherwise non-residential area. However, two (2) of the group homes that were also operated by Encircle have been relocated. As such, this area now has two group homes and 2 homes that are able to be rented or occupied by general community members. The relocation of the two previous group homes has removed the presumption of isolation for this setting.

Evidence included: interviews with staff and individuals, review of pictures, and an in-person tour completed on 8/13/2021.

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; however, individuals did report that they wish they had more opportunities for regular community access. Individuals report that staying home in accordance with COVID protocols has been difficult. Prior to COVID, individual person-centered reviews would like roughly 4-5 community based activities per quarter.

Prior to COVID, based on the person-centered reviews for individuals in this location, common community activities included: going to Wal-Mart, Wendy's, McDonalds, going to local hair dressers, seasonal activities (Christmas Tacky Light Tours, tree festivals), and local churches. All of these activities are completed with staff support and transportation to and from each event. As noted above, this setting does have its own transportation as there are no other alternatives.

Evidence included: Pictures of setting, In-person tour completed 8/13/2021, review of person-centered reviews, review of Activity Calendar, daily progress notes.

Section Three

Evidence of Privacy, Autonomy and Independence

The setting does have remediation to complete for the element of privacy. There are not locks on the bathroom doors as each bathroom has 2 doors. It appears that the first door was removed from the hinge and the second door does close, but does not lock. Individuals did not report having keys to their bedrooms. The entrance door has a key-code lock, but individuals did not have access to the code. Individuals did report that staff knock before entering their rooms and they feel respected in their space.

The setting does promote autonomy by way of encouraging competitive employment. There is at least one person in this home who is actively working towards gaining competitive employment. This has been delayed due to COVID. In addition, individuals are able to choose a day support program to attend (if desired) and it is not required that all individuals attend the same programs. Individuals are able to select how to spend their days and take time to themselves when they desire.

Evidence included: Pictures and tour of setting completed 8/13/2021. 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, 1129 Turning Point Rd. 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 8/13/2021

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.

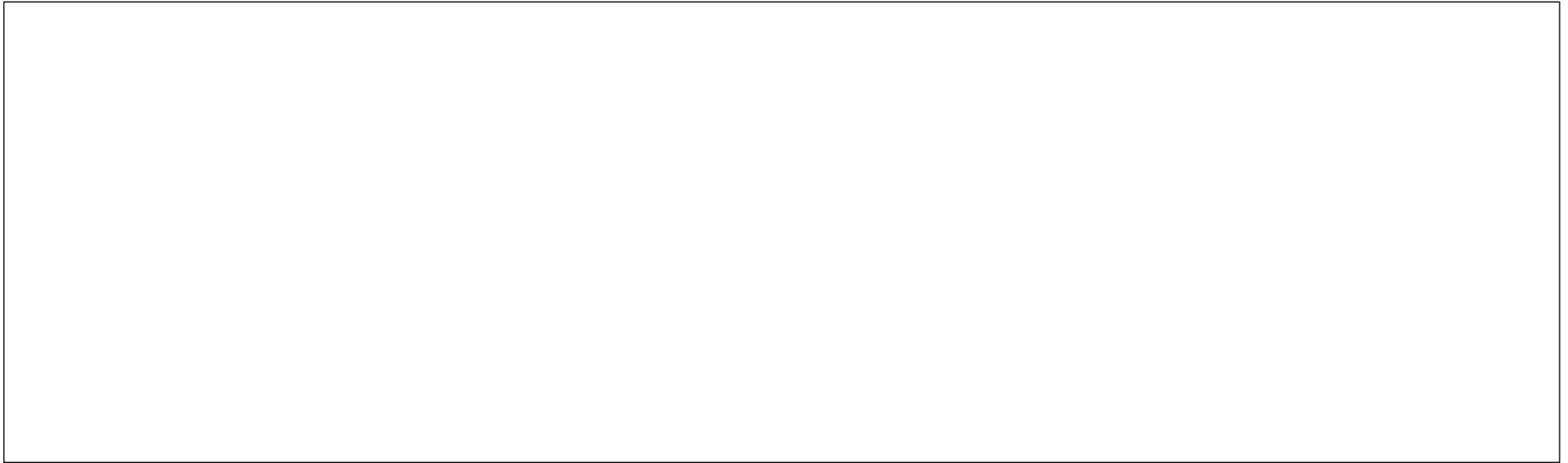
Each individual does have a signed lease agreement that does contain all of the protections from eviction. Individuals and staff were able to report that individuals can have visitors at any time. Individuals do not have keys to their bedrooms or the code to the front door. This is a remediation item for the setting. Individuals can decorate their bedroom and apartment to their liking. Several individuals reported getting new bedspreads and décor items as they request changes. The home did have several locked doors that appeared to be unnecessary as there were no modifications found in any individual support plans. Removing the locks is a remediation item for the provider. 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 8/13/2021.

Section Eight

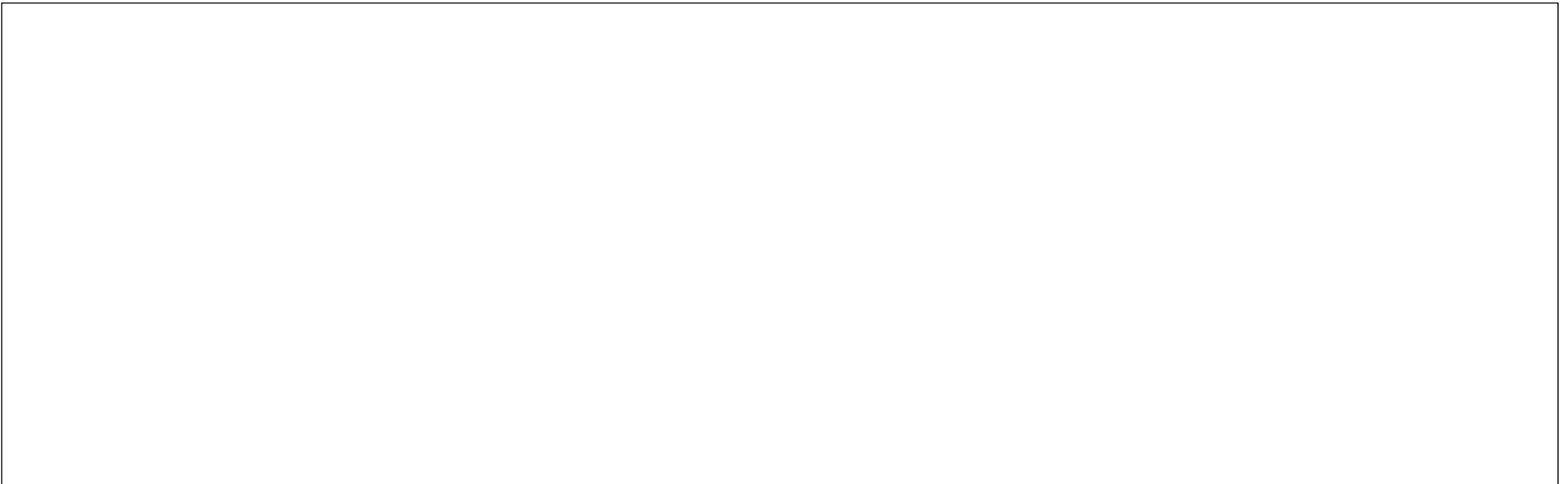
Public Comment Review Period:

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 8/13/2021.

Attachment C:

Summary of Audit Findings

HCBS Standard	Rating
1. Integrated Setting supports access to the Community.	Not Compliant
2. Individual Choice of Setting.	Not Compliant
3. Individual Rights	Not Compliant
4. Autonomy	Compliant
5. Choice	Partially Compliant

Attachment D:

Provider Remediation Plan

Finding	Outcome Needed	Remediation Plan	Date Completed
The individuals are not provided the code to the front door.	If an individual is unable to have their own key/code to the home, it should be listed in their plan. If an individual is not able to have a key due to health or safety issues, (ex. swallow key) they need an HCBS rights modification in place. A guardian cannot opt out of the right to a key.	Each resident has a key and the code to the front door is written on the tag. As front door codes change the DSP II will update the key tags. Anyone who does not want a key will have this documented in their plan for supports and will be reviewed annually with the program participant.	08/31/2021 (locks) 10/15/2021 (key tags)
Human Rights need to be posted in a visible area.	The HCBS Rights should be posted in an area of the home that is visible to all individuals. Individuals should be educated on their HCBS rights.	The day of the audit the Human Rights Posters were visible on the refrigerator in both homes. These will remain in place. We have now placed the HCBS Rights on the refrigerator as well.	09/30/2021
The staff bedroom which is kept locked, and there is a monitor for the individuals.	It is recommended that staff have the individuals in sight and check on them periodically during the night, as needed.	enCircle provides staffing based on the needs of the program participants as detailed in their plan for supports. At any time during the day or night, if a program participant needs support, the staff member is available to provide it, up to 24 hours per day. Each program participant is served in the least restrictive environment, which includes sleeping through the night without bed checks, unless there is a documented need for those routine checks. Our staffing patterns allow the individuals privacy during the overnight hours with minimal disruption. We do not enter the bedrooms of our residents without permission unless there is an emergency. Entering in the night while they are sleeping would not allow for permission to be granted prior to entry without waking the person from sleep to do so. As needs change, we re-evaluate staffing needs. We have	N/A

		operated our homes successfully in this manner for 22 years.	
Bathroom door did not have a lock.	Individuals in the home should be allowed privacy and respect in the home, with a door that locks in the bathroom.	Bathroom door now has a lock.	08/31/2021
The laundry area had locks on the cabinets. According to staff, the locks were to protect the individuals from chemicals stored in the cabinet.	It is recommended that the chemicals be stored in another area, to allow individuals to have more accessibility to the cabinets.	At this time, we plan to leave the chemicals locked in this cabinet. While that cabinet is locked, the remainder of the laundry area is open and accessible to individuals. The only items locked in these cabinets are placed there due to DBHDS regulation that requires that these chemicals be locked up. Anywhere we place them in the home will require a locked area that will not be accessible to individuals. If any of the program participants decide they would like to use these cabinets for storage we can discuss relocating the locked chemicals. The program participants always have access to the laundry room.	N/A
Staff and individuals stated that there are few outings in the home.	It is recommended that the level of community integration be increased, which may include adding bulletin boards with community events, public transportation information, taking walks, or outings in the community. According to staff interviewed, staff are very limited. There does not seem to be a way to accommodate spontaneous outings because of a lack of staff. A plan should be developed for outings that are more personalized and based on the frequency the individual wants. Some individuals may only want monthly outings, some may want an outing a few times a week.	Excursions and activities have been limited due to COVID-19. We will continue to work with the program participants on defining opportunities for community integration. We will hold monthly meetings with the program participants to plan the month and allow choice for all in the home. Activity calendars will be developed, and more activities added the more we are able to get out when the concerns surrounding COVID lessen. Our Group Home Program Coordinator also researches activities and updates the DSP's when activities become available. In addition, we have a relief staff member who has been engaging in 1:1 activities and can also be available for more spontaneous activities.	10/31/2021

