

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: Rachel’s Haven	Setting Name: Sunflower Cottage
Setting Address: 8507 Kanawha Road Pound, VA 24279	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: September 8, 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:

8507 Kanawha Road Pound, VA 24279 is located in a rural area of southwest Virginia. This area is rural in nature and, as such, there are limited options within walking or biking distance. There are no options for ride sharing options or public transportation. The agency does have transportation that is available to facilitate ongoing community access. Within a short drive, there is a local grocery store, ice cream shop, banks, post office, multiple churches, auto shops and multiple parks. The drive time would be typical for any community member who lives in the Pound area.

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 and one (1) group day support on one large piece of property. However, the provider mitigated this potential issue by relocating two (2) of the group homes and the group day support. As such, there are now two (2) group homes on the property and the other building have been rented out to various community members. This has created an inclusive environment and the state does believe that the provider has overcome the presumption of isolation.

Evidence included: interviews with staff and individuals, review of pictures, and an in-person tour completed on 9/8/2021.

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 on a regular basis. The setting does have transportation available to facilitate ongoing community based activities. Typical community activities include: going out to eat, going to local parks, shopping, going to church, and visiting with family and friends. In addition, the provider does facilitate vacations on a regular basis including going to Pigeon Forge, Tennessee.

Evidence included: Pictures of setting, In-person tour completed 9/8/2021, 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. Of note, there are cameras in the living areas of the home. The provider has followed the process for Local Human Rights approval, as it the typical process for common area cameras. All individuals are aware of the use of cameras and sign a consent.

The setting does promote autonomy and independence in day to day choices. Individuals make choices in food, clothing, daily schedules, and decisions on attending work or a day support program and with whom they will interact. Individuals report feeling in control of their day to day choices and having staff support with their choices.

Evidence included: Pictures and tour of setting completed 9/8/2021. 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, Sunflower Cottage 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 9/8/2021

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 and it does contain the protections from eviction. Individuals and staff reported that individuals can have visitors at any time. Individuals do have keys to their bedrooms and the code to the front door. Individuals can decorate their bedroom to their liking based on their own interests and preferences. 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. It was noted that several knives were locked in the kitchen. This is a remediation item for the provider. The state team did make note of excessive signage throughout the home (memos, emails, staff reminders, etc.) and removal of the excessive signage is a remediation item for the provider.

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 9/8/2021.



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 9/8/2021.

Attachment C:

Summary of Audit Findings

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

Attachment D:

Provider Remediation Plan

Commonwealth of Virginia-OSR Compliance Action Plan

SC

Remediation Item	Completion Time Frame	Person(s) Responsible for Completion	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
Excessive signage	10-15-21	Janice Payne	Weapons sign purchased at store & posted outside of building	Purchase signs	
Excessive signage	10-15-21	Janice Payne	Remove all postings not required by regulations		
Excessive signage	10-15-21	Janice Payne	Where possible postings placed in frames and hung versus hung on bulletin boards	Purchase photo frames	
Cameras in living area	12-18-21	Janice Payne	Video Surveillance policy individualized for this setting		See attached-video surveillance policy
Cameras in living area	12-18-21	Kim Smith	Present to LHRC for approval		
Locked doors	11-15-21	Janice Payne	Locks removed from all doors except bedrooms, entrance/exit & those required by regulations. Storage closet with emergency materials, cleaning supplies, etc locked in cabinet in closet. Water heater closet door knob replaced with a non- locking knob	Purchase and install non-locking door knobs	
Cutting knives locked up	10-01-21	Janice Payne	Plastic cutting utensils will be kept in utensil drawer for individual's use at any time		

