

## 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: ResCare Community Living</b>	<b>Setting Name: 141 Mica Road</b>
<b>Setting Address: 141 Mica Road Ridgeway, VA 24148</b>	<b>Type of Setting: Group Day Support</b>
<b>Number of people served at the setting: 28</b>	<b>Number of individuals reviewed: 8</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: August 16, 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:

141 Mica Road Ridgeway, VA is located just outside of Martinsville, Virginia. This is rural town in the southwestern Virginia area. 141 Mica Road is located on a large piece of property that houses four group homes, a group day program, a nursing office, and an office for the agency qualified developmental disability professionals. 141 Mica Road currently has 28 individuals who attend the program and this includes all 18 individuals who live on the campus. The setting contains a large activity space that has tables and chairs for crafts, puzzles, reading, etc. There are also TVs and a karaoke machine for entertainment. Lastly, in the large area there are several recliners, couches and other seating options for people who did not want to sit at a table. Around the main area there are several smaller rooms: a staff office, craft and supply room, kitchen, medication room, individual bathrooms, staff bathroom, and a private changing room with a hospital bed and lift. Individuals do report that group day facilitates many community based activities including going to the movies, parks, out to eat, and shopping.

There were no reports of ride-share options of public transportation.

Shops within a short drive include: Tractor Supply Company, Big Lots, Food Lion, Rural King, Walgreens, and Dollar General.

Restaurants: Sheetz, Hardee's, Wendy's, Subway, Bo 'jangles, Dippers Ice Cream, KFC, Jerry's Pizza and Biscuitville.

Other resources nearby include: multiple gas stations, the state police, a local post office, multiple banks, several places of worship of different denominations and multiple local and state parks.

*Evidence included: interviews with staff and individuals, review of pictures, and an in-person tour completed on 8/16/2021.*



## Section Two

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

141 Mica Road does have a schedule of activities that are posted in monthly calendar format in the dining area. This schedule includes activities that are happening within the home and activities that are to take place in the community. While conducting interviews with the individuals and staff members it was determined that staff plan monthly activities based on the known likes and dislikes of the individuals in the program. However, there was not month-to-month active participation by the individuals in the program. Individual interviews did reference going to movies, fishing, going to parks, and getting ice cream as favorite activities.

*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, In-person tour 8/16/2021.*

### Section Three

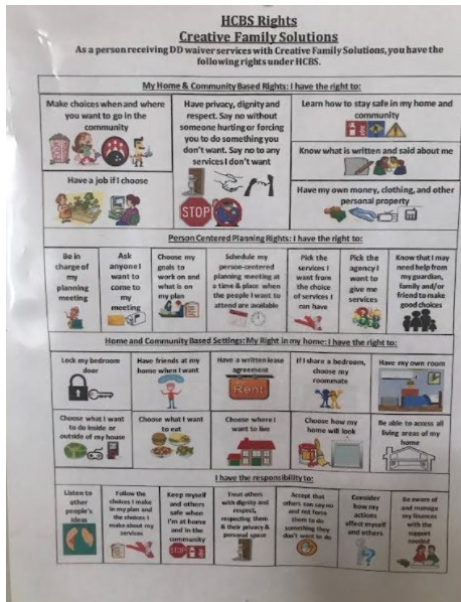
#### Evidence of Privacy, Autonomy and Independence

Staff report that individuals would be able to utilize any of the side rooms for privacy, if desired. However, this is not typically a practice that is done as individuals do not typically request this. There are various seating options in the main area of the program to include tables, chairs, recliners and couches. There is a room with a hospital bed dedicated for individuals who require full-support with repositioning or ADL support. The bathrooms are private with locks; however, there are separate staff and individual bathrooms.

*Evidence included: interviews with staff and individuals, daily progress notes, in-person tour completed 8/16/2021.*

Individuals reported mixed responses when asked if they can direct their own days. Several individuals stated that they are able to decline specific activities and choose something else to do; however, they would not be able to request to go home for the day due to short staffing. Individuals do report having options in various activities, crafts, community based activities, music, and who they spend their days with. Individuals are monitored at all times and would not be permitted to go outside without a staff member.

*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, 141 Mica Road provides choice in: types of food and drinks that are available to all individuals, 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 I'm Safe, You're Safe. 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 day support program does support individuals with a wide variety of support needs. The program is accessible with wide doorways, open spaces, no steps, and equipment for medical and ADL support needs.

*Evidence included: pictures  
and in-person tour  
completed on 8/16/2021*

## 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 Day Support 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.

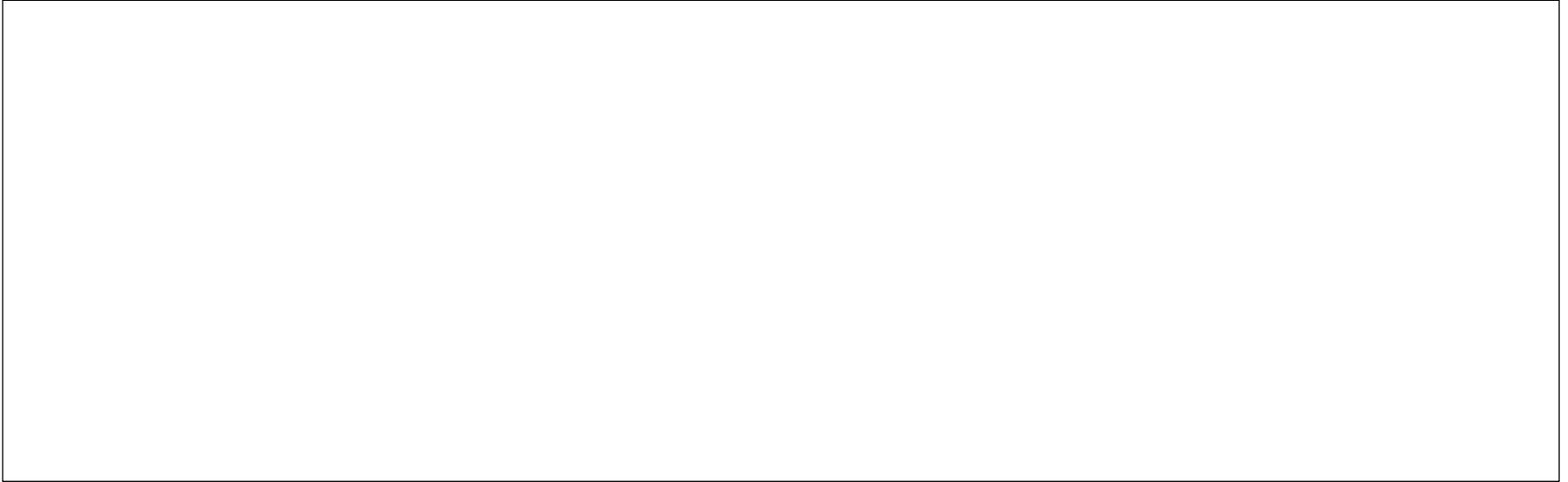
Not applicable- this is a group day support setting.



**Section Eight**

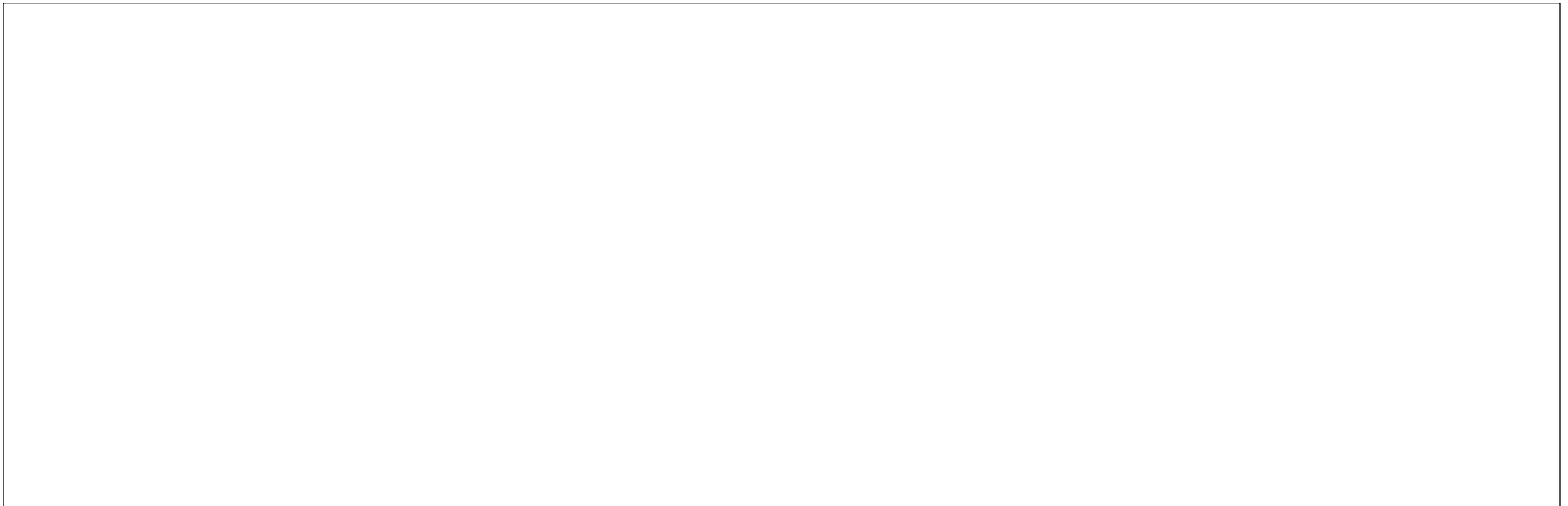
**Public Comment Review Period:**

Public Comments Summary

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**Section Nine**

Summary of State Response to Public Comments

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## Attachment 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

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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.

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

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

Attachment D:

Provider Remediation Plan

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
Campus-style setting is isolating from the larger community	3-17-2023	ED is currently working with Realtor to identify and purchase suitable homes in the Ridgeway/Martinsville areas. ED maintains weekly contact with realtor as well as corporate buyer for properties for ResCare. Once suitable properties are located, ED will move forward with corporate purchase and initiate the completion of all site modification requirements as identified by DBHDS with a goal of all consumers moved into the community no later than March 2023.		
Staff bathrooms	9-24-2021	Remove all signs affiliated with designation of staff vs. individual restrooms.		
In-setting services (hair and nails)	10-31-2021	5 Salons will be identified in the surrounding community and provided to the consumer for choice in receiving haircuts. This will be noted in their quarterly reviews and treatment plan goals and Program Manager will maintain master list. Consumers		

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
		will be offered choice of salon to make appointment for hair cutting and nail services.		
Lack of individual input in activity planning.	10-31-2021	Individuals will create a master list for community outings to choose from (Program Manager will maintain master list).		
Staff are unaware of the specific HCBS Rights.	10-31-2021	All staff will be re-trained on HCBS rights via HCBS approved training PowerPoint developed by CAV and approved by DBHDS and DMAS. ResCare will maintain a signed acknowledgement form on letterhead and placed in employee HR file. Additional training will include training videos sent by DMAS and a completed/signed acknowledgement form on letterhead will be placed in employee HR file.	Resources in place	
Staff used non-person first language.	10-31-2021	All staff will be retrained on person-first language- use of DMAS video, and acknowledgement form signed and placed in the employee HR file. All staff will be retrained on dignity and respect- Use DMAS-	Resources in place	

Remediation Item	Completion Time Frame	Strategies to Address Remediation Item	Resources Needed to Complete	Notes
		approved training for dignity and respect. All staff will be assigned the training and a signed acknowledgement form will be printed and filed in the employee's HR file.		
Individuals unaware of their HCBS rights	10-31-2021	Each consumer and guardian will receive an additional copy of their HCBS rights for re-disclosure. Additional education will be provided to each consumer via videos and daily staff implementation. HCBS posters will be placed in each consumers room and general sitting areas as daily reminder.	Resources in place	

