

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-14-26  
Baltimore, Maryland 21244-1850



## Medicaid Benefits and Health Programs Group

---

May 13, 2024

Sally Kozak, Deputy Secretary  
Pennsylvania Department of Human Services,  
Office of Medical Assistance Programs  
Commonwealth of Pennsylvania,  
Department of Human Services  
625 Forster St., Room 515  
Harrisburg, PA 17120

Dear Deputy Secretary Kozak:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from February 26-March 1, 2024. CMS visited several settings in Pennsylvania that were recommended by advocates and the state as benefiting from a site visit, including settings identified by the state and/or stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5). CMS also met with state officials, service and supports coordinators, people receiving Medicaid home and community-based services (HCBS) and service providers to hear directly about Pennsylvania's strategy for implementing the regulatory criteria defining a home and community-based setting and how that strategy is carried out among the entities in the HCBS system.

CMS appreciates the efforts of the state to prepare for our visit to Pennsylvania. We are asking the state to address the systemic findings described in this letter and the attached report and apply remediation strategies addressing the feedback contained in our report to the specific setting(s) as identified. We note that the HCBS settings criteria identified in the report that are followed by an asterisk require the state to go beyond ensuring that the individual setting has completed the necessary actions identified; specifically, complying with person-centered planning requirements requires further direction to and collaboration with the entities responsible for developing and monitoring the person-centered plans and with the HCBS provider community that is responsible for implementing services and achieving the objectives outlined in the plan. In addition, CMS notes that the state's remediation strategies must be applied to all remaining similarly situated settings you have identified as being presumptively institutional that were not included in CMS' site visit to ensure compliance with the settings criteria at 42 CFR § 441.301(c)(4) by the timelines detailed in your approved Corrective Action Plan (CAP). Finally, the state should ensure issues identified in this report are addressed in the state's overall assessment process of all providers of HCBS in Pennsylvania, to ensure that all

providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance.

The following were identified as systemic issues across the state of Pennsylvania.

- Although the site visit team observed robust and system-wide understanding of person-centeredness, the application of that thinking to person-centered planning was inconsistent across setting types and waivers. The Office of Developmental Programs (ODP) has adopted a standard template for use across all setting types under the 1915(c) waiver, which permits significant narrative descriptions of individuals receiving services and their goals and preferences, and also incorporates many of the settings rule criteria. This format enabled and supported the establishment of plans that are in alignment with many of the federal regulatory requirements. As described in the attached report, different templates are used for Office of Long-Term Living (OLTL) programs, leading to observed variation in the experience of person-centered planning for program participants.
- The site visit team did not see consistent incorporation of the requirement to document any rights modifications in service plans, a challenge that may be related to the format of existing service plan templates. The state noted there are separate documents that comprise the full plan rather than an all-inclusive service plan. The site visit team also noted that service and supports coordinators may, in some cases, be relying on provider-employed case managers to determine appropriate rights modifications and document those modifications in provider behavior plans. The site visit team observed potential over-delegation of service coordination authority to provider case managers in a way that could be at odds with conflict-free case management regulatory provisions.
- Under 6 Pa. Code § 11.39, settings that are licensed by the Pennsylvania Department of Aging as Adult Day Centers may not permit program participants to leave the facility without staff. This is a blanket restriction that applies to all participants receiving services in the setting and is not aligned with the requirements of the HCBS Settings Rule.

As described more fully in the attached report, CMS notes below several areas where issues were found to exist across several setting locations, which raise systemic concerns that must be addressed by the state. Specifically, the following regulatory criteria located at 42 CFR 441.301(c)(4) were not found to be in practice:

- The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
- The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. \*
- The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

- The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. \*
- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals are able to have visitors of their choosing at any time.
- Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.

Pennsylvania's Statewide Transition Plan (STP) described strategies to ensure that all providers of Medicaid HCBS have been assessed to meet the regulatory criteria and any needed remediation has been identified. The state's practice for addressing the observations described in the attached report must align with the processes described in the STP and in the state's CAP.

CMS requests that the state provide a written response providing updated information describing how the state will remediate both the process for developing and implementing the person-centered service plans and the issues identified in individual settings to ensure compliance with all of the settings criteria. CMS also requests a written response on how the state will apply this feedback to the ongoing monitoring of person-centered planning functions and settings in the HCBS delivery system as noted above. CMS requests this information be submitted no later than June 13, 2024.

Upon review of this feedback, please contact Michele MacKenzie at (410) 786-5929 or [michele.mackenzie@cms.hhs.gov](mailto:michele.mackenzie@cms.hhs.gov) if you would like to schedule a follow-up conference call with the CMS team to discuss next steps or request technical assistance.

Thank you for your continued commitment to the state of Pennsylvania's successful delivery of Medicaid-funded HCBS.

Sincerely,

Curtis J. Cunningham, Director  
Division of Long Term Services and Support  
Medicaid Benefits and Health Programs Group

Enclosure

**CMS Site Visit – Pennsylvania**  
**Summary Review by Setting**  
**Visit Dates: February 26, 2024 through March 1, 2024**

**Site Visit Team:**

CMS Representatives: Michele MacKenzie, Susie Cummins

ACL Representatives: Elliot Kennedy, Erica McFadden

New Editions: Devon Mayer, Kelly Eifert, Amy Coey

**Introduction:**

The site visit team visited seven home and community-based services (HCBS) settings in Pennsylvania, met with service coordinators and supports coordinators, and met with representatives from the state operating agencies. The state’s HCBS programs for individuals with intellectual/developmental disabilities are 1915(c) waiver programs operated by the Office of Developmental Programs (ODP) in a fee-for-service system. The program for individuals who are aging and/or have disabilities is operated by the Office of Long-Term Living (OLTL) through managed-care, as well as through a small fee-for-service 1915(c) waiver program for individuals with developmental disabilities (the OBRA waiver). The site visit team visited the following types of settings where HCBS recipients receive services:

- Settings providing services under the ODP 1915(c) waivers: One setting provides Community Participation Support (CPS), two settings were community homes for individuals with an intellectual disability or autism, and one setting was a life-sharing setting.
- Settings providing services under the OLTL Community Health Care (CHC) managed care waiver and the OBRA waiver: One setting is an Older Adult Daily Living Center (which also served several participants through the ODP waiver), one setting is a personal care home, and one setting is a structured day habilitation setting.

Three settings—the structured day habilitation setting, the older adult daily living center and the personal care home—were identified by the state as presumptively institutional under the HCBS Settings Rule and were submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review. The state recommended that the site visit team visit two of the other settings: one community home and the CPS setting. Advocates for Pennsylvania HCBS program participants also recommended that the site visit team visit the CPS setting; the community homes for individuals with an intellectual disability or autism.

The site visit team spent two hours with OLTL service coordinators who work with individuals served under the OLTL and OBRA waivers, and two hours with supports coordinators who work with individuals served under the ODP 1915(c) waivers. The team also met in-person with representatives from ODP and OLTL.

The seven site visits and three subsequent meetings collectively informed the findings below.

**Program Strengths:**

The team noted two important program strengths in Pennsylvania. First, ODP has embedded the HCBS settings requirements into its regulations, policies, and procedures, which have in turn been incorporated into provider business practices. The team witnessed the success of this

implementation strategy across the state. The degree to which state regulations and policies have incorporated HCBS settings requirements was particularly notable in discussions about ongoing monitoring. Both the ODP supports coordinators and the OLTL service coordinators described using monitoring tools or checklists that contain some of the HCBS settings criteria. Service and supports coordinators described using these tools/checklists during routine monitoring visits with Medicaid HCBS participants, which validates the implementation strategy for ongoing monitoring and compliance that the state outlined in its Statewide Transition Plan. Second, the team noted that state representatives, providers, and case managers consistently demonstrated person-centered thinking in each of the settings visited during the site visit. However, the state should ensure that all regulatory criteria is accounted for in monitoring tools and checklists, and, as described below, the application of person-centered thinking to person-centered planning was inconsistent across setting types and waivers.

### **Systemic Findings:**

The team noted two primary systemic challenges to implementation of the HCBS Settings Rule:

#### **Person-centered planning**

Although the site visit team observed robust and system-wide understanding of person-centeredness, the application of that thinking to person-centered planning was inconsistent across setting types and waivers. ODP has adopted a standard template for use across all setting types under the 1915(c) waiver, which permits significant narrative descriptions of individuals receiving services and their goals and preferences, and also incorporates many of the settings rule criteria. This format enabled and supported the establishment of plans that are in alignment with many of the federal regulatory requirements.

OLTL has not adopted a standard template for use across all setting types or waivers. OLTL has developed a service plan template for OBRA waiver program participants. There are three Managed Care Organizations (MCOs) providing services under the OLTL waiver, and each has developed a separate template for service plans. The site visit team observed significant variation across the four service plan templates, leading to significant variation in the experience of person-centered planning for program participants. None of the MCO plan templates included a section related to rights restrictions; when the team asked service coordinators how they documented any modifications to rights in the plan, the service coordinators described adding additional “goals” to the service plan to reflect the modifications. Each of the MCO plan templates also included less room for narrative/free text information than either the OLTL OBRA template or the ODP template. Instead, the MCO templates relied heavily on short and standard pairings; the structure of these templates appeared to lead to service plans across program participants that had minimal information about program participants, and which included “goal” and “intervention” pairings that were repeated verbatim across plans. The site visit team asked service coordinators how the “goals” and related “interventions” were developed, and MCO service coordinators noted that pairings are pre-populated in a database and can then be tailored to individuals based on their preferences and needs. The site visit team reviewed several OLTL MCO service plans with goals that did not appear to have related associated interventions, including “I would like to find a job” and “I would like to live independently again.”

#### **Person-centered planning: rights modifications and conflict of interest**

As noted above, the site visit team did not see consistent incorporation of the requirement to document any rights modifications in service plans; a challenge that may be related to the format of existing service plan templates. The state noted there are separate documents that

comprise the full plan rather than an all-inclusive service plan. The site visit team also noted that service and supports coordinators may, in some cases, be relying on provider-employed case managers to determine appropriate rights modifications and document those modifications in provider behavior plans. The team noted differences between the various MCO service planning templates through which services are coordinated by the providers’ case managers. In addition to not containing a section for modifications, the team also noted the provider assigns a case manager who provides information to the state service coordinator. The site visit team observed potential over-delegation of service coordination authority to provider case managers in a way that could be at odds with conflict-free case management regulatory provisions.

**Licensure requirements**

Under 6 Pa. Code § 11.39, settings that are licensed by the Pennsylvania Department of Aging as Adult Day Centers may not permit program participants to leave the facility without staff. This is a blanket restriction that applies to all participants receiving services in the setting and is not aligned with the requirements of the HCBS Settings Rule.

**Summary of Findings:**

Although a distinct review of each setting is included in this report, the table below summarizes the findings for the entirety of the visit to Pennsylvania and identifies the settings at which the site visit team noted issues that contributed to systemic findings.

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Woods Services Inc. and Beechwood NeuroRehab, Landis Homes (Adult Daily Living Services, Keystone Human Services- Residential Habilitation, REM- Residential Habilitation, Achieva- Life Sharing
441.301(c)(4)(iii)	The setting ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.	Woods Services Inc. and Beechwood NeuroRehab, Landis Homes (Adult Daily Living Services), REM- Residential Habilitation

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	Woods Services Inc. and Beechwood NeuroRehab, Keystone Human Services- Residential Habilitation, Achieva-Life Sharing

**Woods Services Inc. and Beechwood NeuroRehab – Campus Setting, Visit February 28, 2024**

**Facility Description:**

Beechwood NeuroRehab is a campus setting situated on over 300 acres in Langhorne. It is a subsidiary of Woods Services Inc., a larger organization providing a variety of services. The team visited Beechwood NeuroRehab, a setting that includes an administrative building, a building that houses the day services and therapies, a circle of five homes all on one side of the property, and two more homes across the street. The team visited the day services building to visit The Clubhouse, a structured day program, and Inspire, a recreational day services program. Part of the team visited one of the homes across the street that has seven residents. All of Beechwood’s programs, which are Commission on Accreditation of Rehabilitation Facilities (CARF) accredited, serve people with brain injury. Beechwood serves 84 people receiving services through OLTL waivers, and 5 of the 7 residents of the home visited are served through OLTL waivers. Not all people who receive day services or therapy services at Beechwood live on the campus.

**Site Visit Review Description:**

The site visit team met initially in the administration building with provider staff, state staff, and service coordinators from the five MCOs. The team reviewed service plans and provider documents and conducted informal interviews with the various staff present. The team split up to visit the day programs and one of the homes. The team noted the programs provided in the settings are medically and clinically driven for people with brain injury.

During the tour of The Clubhouse, the team learned the format is designed to have participants choose a work unit from the five available options and work in that skill area towards competitive, integrated employment. Inspire, located in the same building, is a more recreational day services type program. During the tour of The Clubhouse, the team spoke with two participants. Both participants voluntarily came over to the group and



shared their story about how they arrived. The team was also shown the horticultural area outside, which is one of the five work unit options available to Clubhouse participants. The Clubhouse has a block schedule for participants designed to train/retrain them in preparation for entering/reentering the work force. Participants were observed leaving to go to therapies or to their assigned tasks. The Clubhouse participants accessed the community in the context of their work. For example, people who worked in the culinary unit went to Sam’s Club weekly to purchase needed supplies, and then made smaller trips to the grocery store during the week as needed. Clubhouse participants are able to try out the different work units to see which one best suits their goals and interests. Conversely, Inspire is focused on community and recreational events based on participant interest. Participants could choose to also attend Inspire when not at the Clubhouse. Some participants who have jobs in the community sometimes attended The Clubhouse on their days off. Participants sometimes get a job and come back to maintain skills. The building holding The Clubhouse and Inspire is accessible to people using mobility devices like wheelchairs. A self-advocacy group within the community petitioned to have yellow lines painted on the campus roads to define a specific lane for wheelchair users. Participants who attend The Clubhouse or Inspire can eat food they bring at any time; additionally, the provider has some snacks on hand that it makes available to participants when it seems necessary (i.e. provider notices change in attention/mood/energy) for someone to eat.

On the residential side, the provider noted the goal is for people to be in the least restrictive environment and for people to progress from the group homes on site to the unlicensed apartments with staff support or return to their family homes. If people want to move from one residence on the campus to another, the provider will help them plan for it. Bedrooms were set up in pairs with a shared jack and jill bathroom. Participants accessed the community with the assistance of staff and can use the Woods Trust Account for assistance with managing personal resources if needed or they can maintain their own bank account; some residents utilize both. The Residents Rights referenced in the residency agreement specified the right to privacy and the right to freedom from restraints. Staff shared that individuals have privacy in their rooms. There were no alarms on the doors or keyed/delayed entrance/egress. There was no Personal Identifiable Information (PII) or Protected Health Information (PHI) posted publicly. The resident rights document included the right to furnish a room, and the bedroom the site visit team saw was decorated with personal items.

Food was available in the kitchen and there was a snack cupboard filled with food and drinks that the residents chose. There was a menu posted and staff purchases preferred food and snacks for residents when shopping for the house. People can label their snacks for storage. The staff accommodates residents and purees food so everyone can partake in celebrations or parties. There were no locks visible related to the refrigerator or food cabinets.

Residents can choose not to go to the day program as scheduled, the same as people can call out from work. Residents can choose unscheduled activities and can request assistance as desired. For example, people are not required to adhere to a shower schedule and when they choose to shower, there is support available. Some people have jobs in the community and others go to a day program. The group home was accessible.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>Due to its specialized focus on brain injury, this provider is typically sought out by participants and their families, and the setting is not offered as an option to waiver enrollees who do not seek it out. There is no evidence that a non-disability specific setting option has been offered as an option.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings</p>
441.301(c)(4)(iv)	<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>The house rules prohibit consumption of alcoholic beverages of any kind and residents are required to sign in and out when leaving the premises. Individuals are allowed to smoke, but the provider holds the cigarettes and lighters. There is a smoking schedule posted and individuals must be accompanied by staff to go outside and smoke. The bathroom doors did not have locks. Residents are also restricted by the provider on the amount of money they can hold in their residence.</p> <p>Beechwood NeuroRehab must ensure their model of service delivery aligns with the regulatory criteria to support participants’ right to privacy, dignity, respect and freedom from coercion and restraint.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>The setting has clinical services on site, but staff indicated that participants (those who live on campus and those who do not) can choose their own physician(s) in the community. The choice of services, beyond the actual selection of Beechwood for residential habilitation and the Clubhouse or Inspire for day habilitation, was not noted. The provider noted that individuals all choose “where they want to go” for services, but meant within the campus.</p> <p>In practice, the team noted that in each of the service plans reviewed, an on-site physician was listed as the primary care provider. When asked if individuals seek out-patient care off campus, the provider noted most individuals received care at the setting.</p> <p>Beechwood NeuroRehab must ensure their model of service delivery aligns with the regulatory criteria to facilitate individual choice regarding services and supports and who provides them.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<p>The provider shared a Residency Agreement on a Pennsylvania template, however, the state staff that were present indicated that this was not a current form that contains eviction protections and appeal rights. The Residency Agreement itself was dated within the last year. The Residency Agreement had resident rights and house rules with clauses that conflict with the settings requirements.</p> <p>Beechwood NeuroRehab should revise the existing lease agreement, to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.</p>
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<p>Not all unit doors were lockable.</p> <p>Beechwood NeuroRehab must ensure that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>Regarding the day services settings, visitors are discouraged during programming/work time as they are working on routine, memory and skills, and to have a visitor during that time is disruptive. This type of modification to the additional conditions of the settings rule was not noted in any service plans.</p> <p>The house rules document (Addendum E of the Residency Agreement) lists visiting hours from 9 AM to 10 PM and states that visitors are not permitted to stay overnight in the residence.</p> <p>Beechwood NeuroRehab must ensure their model of service delivery aligns with the regulatory criteria that participants are able to have visitors of their choosing at any time. The house rules document should be amended to remove restrictions on visiting hours.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>The team saw no modifications to the additional conditions of the setting rule in the service plans, but there were a number of blanket restrictions in place specifically in the setting’s addendums and house rules, as described in the above findings, and including restrictions on smoking cigarettes and consuming alcohol.</p> <p>The team noted differences between the various MCO service planning templates through which services are coordinated by the provider case managers and the service plans reviewed did not contain a modifications section. The team also noted the provider assigns a case manager who provides information to the state service coordinator. In the team’s conversation with the service coordinators, there appears to be a reliance on the provider’s case manager, particularly around information about restrictions and assuring the provision of services once a participant is at a setting.</p> <p>The state should ensure that the entities responsible for overseeing the development and implementation of service plans are doing so in compliance with regulatory criteria. One function of service plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>Beechwood NeuroRehab should ensure that any relevant modifications for a specific individual are incorporated into the individual’s service plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

### **Facility Description:**

The setting is situated on a campus in Lititz where other services are also provided, such as nursing and rehabilitation. The Adult Daily Living Services is located on the main floor of a three-story building that has apartments and suites available for people to live in. Most participants live at home with family. Some reside in congregate settings, such as group homes. The Adult Day Center (ADC) space is divided into three areas that can be used for exercise, arts and crafts, and other small group activities. The ADC also has access to the building's community room and a recreational room with shuffleboard, pool tables, and ping pong tables to use for participant activities. There are lockers available for the participants to store their belongings while attending the program. They offer breakfast, hot lunch, and a snack to participants. The ADC has 70 total attendees, with a maximum of 40 that can attend daily. Six participants are served through OLTL waivers and 12 participants are served through ODP waivers.

### **Site Visit Review Description:**

The site visit team convened in a vacant therapy room. Also present were the setting's administrator and several support coordinators from both the MCOs and the fee-for-service sides of the ODP and OLTL waivers. State staff from OLTL were also present. The team began the visit by reviewing service plans. The service coordinators, state staff, and setting administrator participated with the team in informal interviews. The setting administrator provided the team with a tour of the setting and additional spaces in the building. During the tour, the team spoke briefly with two participants. Service coordinators noted that they present a list of day setting options (based on the participants' needs/wants and type of waiver enrollment) to the participant and the participant selects the setting, sometimes with the support of family or the service coordinator. Through service coordinator interviews, it was noted that individual's rights of privacy, respect, dignity, and freedom from coercion and restraint were reviewed with the participant at least annually. They also noted the provider reviews rights/privacy/dignity/respect and freedom from coercion and restraint at least annually. State staff noted through interview that restraint is prohibited in Pennsylvania waiver services and in the ADC licensure requirements. The team observed Client Rights posted in the setting along with a poster for the Ombudsman Office. Provider administrative staff noted they have a menu and participants have options of daily meals/snacks. Each participant has a dietary card which indicates their preferences and any type of doctor-prescribed dietary orders. It was also noted that participants cannot be forced to follow any specific diet; they can choose not to follow dietary orders. Participants can modify when they come in with prior notice. From discussion with the setting administrator, it appears that participants can opt in or opt out of any specific activity, but the site visit team only observed watching television as an alternative activity. Participants are permitted to have visitors at any time during the operation hours of the setting. The team did not observe any obstructions or barriers during the tour. The bathroom was physically accessible, and furniture was arranged to allow for ease of mobility for participants using mobility devices. The state noted that the settings rule criteria is embedded in state policy and regulation, with the requirements of the rule also added to MCO contracts, so providers of HCBS are required under federal and state regulation and through MCO contracts to comply with the HCBS settings rule.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<p>Most activities take place at the setting, however, there is one group community-based activity scheduled per month. The setting has a recreational director who develops the activities calendar with input of the participants. The director meets with the participants every other month to get their feedback on those activities.</p> <p>Landis Homes Adult Daily Living Services must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Landis Homes ADC should develop policies, practices and resources to ensure that individuals have full access to the greater community.</p>



Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>Participants are not permitted to leave the facility without staff—the setting administrator indicated that it would not be safe to do so. This is a blanket restriction that conflicts with the HCBS Settings Rule, and it applies to all participants. The restriction is a requirement under 6 Pa. Code § 11.39 for all ADCs licensed by the Department of Aging. In addition to the conflict between the licensing requirement and the HCBS settings rule, this rights restriction is not documented in the service plans that the team reviewed.</p> <p>The state should ensure that the entities responsible for overseeing the development and implementation of service plans are doing so in compliance with regulatory criteria. One function of service plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>Landis Homes Adult Daily Living Services should ensure that any relevant modifications for a specific individual are incorporated into the individual’s service plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

**Keystone Human Services- Residential Habilitation, Visit Tuesday, February 27, 2024**

**Facility Description:**

The setting is a house located in Langhorne, in a residential area with shopping, restaurants, and access to the highway within a half mile. The house has three bedrooms and two bathrooms, a kitchen, living room, dining area, finished basement with an extra living room, and work out room. There is a patio with a gas grill, table and chairs, and a smoking area located outside of the basement living room. There is a raised deck that is accessible through the dining room and an attached two car garage accessible through the main hall entrance. The house is open, uncluttered, and tidy. One resident shared that he did not choose the furniture in his room, but he had added personalized touches to his room. The residents mentioned they could make changes to the home décor if they wanted to.

**Site Visit Review Description:**

The site visit team met with provider staff, state staff, and a service coordinator in the basement living room. The site visit team reviewed service plans and conducted informal interviews/discussions. One resident provided the site visit team with a tour of the house.

Through interviews with both residents and staff, it was noted that individuals can travel independently in the community and be alone for eight hours a day (without supervision from staff and based on individual assessment). In the evening, the staff were present and available. Residents receive assistance from staff if/when needed to manage personal resources. One of the residents who was interviewed works, and the other, who has a history of employment, noted a desire to look for employment, including the process they are currently going through to find competitive employment. Transportation is available through staff, including for medical and non-medical needs, but there is no local public transportation available. Residents can have romantic partners visit and friends visit. Staff noted that visitors are with reasonable consent of roommates, but the area supervisor noted that all residents understood roommates could not forbid visitors; the residents want to be able to give input about who they want in their home. This was not something imposed by the provider. The team discussed modifications with the area supervisor, and she described the process of documenting modifications, exploring the least restrictive alternatives, titrating down on the restrictions/modifications, assessing at three and six months, with a goal to provide people with the maximum amount of independence possible.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.	<p>The team noted that this setting was not specifically selected by the residents. One resident’s service plan noted that this was seemingly the only option presented after his prior home closed.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.	<p>There is a standard room and board agreement from ODP that all residential providers are required to use. The document references providers’ requirements to adhere to 55 Pa. Code §6100.301-307 related to transition to a new provider. The code states providers must give residents 45 days’ notice prior to termination, but that timeframe is not explicit in the Room and Board contract, so it is not clear that residents would know they must be given that notice or if it is required only in the event that the resident selects a different provider. There are no due process requirements noted in the regulatory language in the room and board agreement.</p> <p>PA ODP should revise the existing lease agreement to ensure it is a legally enforceable agreement that provides protections addressing eviction and appeals comparable as those provided under landlord/tenant law, to include language that specifies the timeframe for termination notice.</p>

**REM- Residential Habilitation, Visit February 28, 2024**  
**Facility Description:**

The home is a three-story town home in a suburban area outside a larger metropolitan area of Philadelphia. The first floor has a bathroom and a family room and a door leading to the garage, as well as a door leading to the backyard. The second story has the kitchen, dining room, and living room. The third-story has two bedrooms and bathrooms.

#### **Site Visit Review Description:**

The team was met by two state staff, four provider agency staff, and the support coordinator and the support coordinator supervisor, in addition to the two direct service providers (DSPs) who were working their shifts. The team got a tour of the first two floors and reviewed service plans in the living room while one of the residents finished lunch. When the resident was finished eating, they came in the living room and then showed the site visit team members their bedroom. Team members spoke with provider agency management who appeared to know the residents well. The team members also spoke with the support coordinator and the support coordinator supervisor. The provider shared examples of places the two residents like to go; they enjoy spending time together and have lived together for years. They previously received services from another provider which was subsequently acquired by the current provider. The Individual Service Plan (ISP) did not include setting options. The provider shared that there is staffing and transportation available to support residents' choices in daily activities. The provider gave examples of non-verbal cues that residents provide staff to make their wishes known. Due to the location and staffing, the provider relies on Uber to have transportation available at any time; and indicated they use the ride service very frequently. There are no policies to prevent people from smoking or drinking alcohol. The provider and support coordinators also shared that the residents could leave, with support, unexpectedly/on short notice. For example, one resident's family member can come and take them home to visit; the last time the resident visited their family member was for a week. One of the residents used to go to a day program and the provider noted the resident might like to do that again. They are assisting the resident to look for options. The bedrooms had locks and were private rooms, decorated by the residents. One resident was eating lunch when the team arrived, and they went to get a snack during the visit. They knew where to get food and there were no restrictions observed related to food. Residents can have visitors and overnight visitors are allowed. The setting was accessible. Staff members were aware of the settings rule and well versed in its requirements.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	<p>The two individuals have lived together for years; they previously received services from another provider, which was subsequently acquired by the current provider. The ISP did not include setting options.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings</p>
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>The provider locks up shower caddies with toiletries in a kitchen closet because a staff member indicated that it makes the staff feel better. They did not indicate a specific safety concern. The restriction was not noted in the service plan.</p> <p>The state should ensure that the entities responsible for overseeing the development and implementation of service plans are doing so in compliance with regulatory criteria. One function of service plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>REM should ensure that any modifications for an individual are incorporated into the individual's service plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

**Facility Description:**

This setting is a two-story row house in a neighborhood outside of downtown Pittsburgh. There are two people who live in the home: the provider (homeowner) and the individual receiving services. The entry way of the home leads past the sitting room, the kitchen, and into the dining room. There are stairs to the bedrooms through the kitchen and at the front of the house. Out the back of the house there is a large outdoor area with a seating area.

**Site Visit Review Description:**

The site visit team was met by state and provider agency staff at the setting, in addition to the support coordinator and support coordinator supervisor. The team met with the individual receiving services and talked with them about their interests, activities, and day services. Two of the site visit team members received a tour of the home with the provider. The individual that lives there attends a day program several days a week and works on activities of her choosing at the program. The individual receives transportation by paratransit and from the life-sharing provider. The provider also shared plans to sign the individual up for a bus pass. The individual and the provider shared typical daily activities and interests which were consistent with the service plan. The individual has a financial representative, which is not the provider, and the individual receives assistance to manage money.

There were no issues observed with rights, respect, coercion or restraint. The site visit team member observed locks on the bedroom and bathroom doors for privacy. The individual's schedule varies and the provider shared examples of activities they do together based on the individual's interests. The supports coordinator reviews available service options with the individual to ensure there is an opportunity for choice.

The individual has a private room. There is a residency agreement that references a state code stating the person has the freedom to decorate their room. The site visit team members observed the room was decorated with personal items. The Residency Agreement references the state code that states a person has the freedom to have visitors at any time, and the service plan also referenced that. The individual didn't need any accommodation; the home was accessible for them. There were no modifications to the additional conditions of the settings criteria listed in the service plan and none noted in conversation with the individual or staff. The provider reported receiving training on the program requirements and the meaning of the HCBS requirements.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	<p>The service plan does not identify alternate settings options; however, the individual has lived there for 10 years and the plan says the team, including the individual and their guardian, agree this is where she wants to live.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings</p>
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<p>The individual has a current Residency Agreement; however, the team did not see protections from eviction and the appeals process in the agreement or referenced state code.</p> <p>PA ODP should revise the existing lease agreement to ensure it is a legally enforceable agreement that addresses eviction and appeals processes comparable to those provided under landlord/tenant law.</p>

**Achieva - Community Participation Supports, Visit Monday, February 26, 2024**

**Facility Description:**

The site visit team met at the administrative offices of Achieva. The building, which was previously used to provide habilitative and work services to those with intellectual and/or developmental disabilities, now houses office spaces for administrative services as well as conference rooms. All services provided by Achieva are now community-based.

### **Site Visit Review Description:**

The site visit team convened in a large conference room with state staff, provider administrative staff, and support coordinators. Additionally, joining virtually was a manager of compliance associated with the provider agency, Achieva. The site visit team provided an overview of the purpose of the visit and answered questions concerning the process the site visit would take. Following this discussion, the site visit team met with three individuals who receive services, accompanied by their DSP who provides habilitation services, and their support coordinator. The site visit team conducted conversational interviews with the individuals, staff, and support coordinators with the discussion focusing on the criteria of the settings rule. After the interviews, the site visit team reconvened in the conference room with state and provider staff answering questions prior to finishing the visit.

Based on staff and individual interviews, each person has a service plan that includes services as selected by the individual. For the interviews, the individuals receiving services wanted their support staff with them; it was clear they had a personal relationship with their staff support person. Individuals noted during interviews they indicate to their staff what habilitative services they want to participate in. Services are not provided in group settings; they are provided individually and in the community. Individuals noted going to parks, restaurants, movies, and sporting events as desired. Individuals noted having friends and family they spend time with as desired.

Individuals noted they, or their parents on their behalf, had selected Achieva as their provider and if they wanted to change providers, they would either let their parents or support coordinators know so that a change could be made. There was no indication that rights of privacy or respect were being violated. The team did not see any indication of coercion or restraint.

Individuals interviewed, and staff concurred, said individuals select the services they want to participate in, as well as selecting the provider (sometimes with the assistance of parents), including the DSP from the provider agency. At least two of the people interviewed lived at homes with parents, so there is a reliance on natural support or a guardian for assistance in decision making. No modifications of the additional conditions were noted during interviews or in plans.

The team noted that Achieva staff had extensive knowledge of the settings rule, including training around the criteria and person-centered planning. Staff were very aware of specific rule criteria, like person-centered planning, individual rights, access to visitors, and integration into the community.

The team did not note any findings at this setting.