

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



Disabled & Elderly Health Programs Group

December 22, 2022

Tom Wallace
Deputy Secretary, Division of Medicaid
Florida Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Dear Deputy Secretary Wallace:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from September 12-15, 2022. CMS visited several settings in Florida that were identified by the state and/or stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5) and required a CMS-conducted heightened scrutiny review to determine if they comply with the home and community-based services (HCBS) settings criteria at 42 CFR § 441.301(c)(4).

CMS appreciates the efforts of the state to prepare for our visit to Florida. We are asking the state to 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 March 17, 2023. 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 Florida, 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 state must also take into consideration that the Arc Jacksonville-The Village is a provider-controlled setting and should be, as with other similarly operated settings, assessed as such.

As described more fully in the attached report, CMS notes below several areas where issues were found to exist across several 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.
- 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 setting facilitates individual choice regarding services and supports, and who provides them.
- 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.*
- Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.

Florida's Statewide Transition Plan must describe 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 developed in the STP.

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 plan and the 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 January 25, 2023.

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Upon review of this feedback, please contact Michele MacKenzie at (410) 786-5929 or 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 Florida's successful delivery of Medicaid-funded HCBS.

Sincerely,

Melissa L. Harris, Deputy Director
Disabled & Elderly Health Programs Group

Enclosure

**Heightened Scrutiny Site Visit-Florida
Summary Review by Setting
September 12-15, 2022**

Florida Site Visit Team:

CMS Representative: Dianne Kayala

New Editions: Devon Mayer and Laura Nuss

ACL: Jill Jacobs

Florida:

Catherine McGrath (Agency for Health Care Administration (AHCA)-Miami Springs Assisted Living-Fair Haven, Irv Weissman Adult Day Center)

Lukas Tubak (Agency for Persons with Disabilities (APD)-The Haven, Arc Jacksonville-The Village)

Michael Taylor (APD Suncoast Regional Operations Manager-The Haven)

Leslie Richards + additional staff member (APD Northeast Regional Operations Manager-Arc Jacksonville-The Village)

Introduction:

The Site Visit Team visited four settings in Florida, one assisted living (AL) facility, one campus with residential (group home) and non-residential (adult day training center) services, one adult day center (ADC), and one planned residential community where the provider/landlord are separate from the residential services provider for Medicaid HCBS beneficiaries. The settings are located in and around urban areas throughout the state in Miami Springs, Sarasota, St. Petersburg, and Jacksonville. As noted in the table below, systemic issues were identified during the CMS site visits regarding several regulatory criteria.

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 Florida and identifies systemic issues noted through the settings review.

Regulation Citation	Regulation Language	Setting Name
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.	Miami Springs-Assisted Living-Fair Haven, The Haven, Arc Jacksonville-The Village
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Miami Springs-Assisted Living-Fair Haven, The Haven, Arc Jacksonville-The Village
441.301(c)(4)(iv)	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.	Miami Springs-Assisted Living-Fair Haven, The Haven
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports, and who provides them.	Miami Springs-Assisted Living-Fair Haven, Arc Jacksonville-The Village
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	Miami Spring-Assisted Living-Fair Haven, Arc Jacksonville-The Village
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.*	Irv Weissman Adult Day Center, Arc Jacksonville-The Village

Regulatory Guidance Citation	Regulatory Guidance Language	Violation Finding Based on Site Visit
Staff Training on HCBS Setting Rule Criteria: State Medicaid Director Letter # 19-001 ¹	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	Miami Springs-Assisted Living-Fair Haven, The Haven, Irv Weissman Adult Day Center, Arc Jacksonville-The Village

¹ <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10

Arc Jacksonville-The Village Apartments - Visit September 15, 2022

Facility Description:

The gated apartment community is located on state property, next to the regional APD offices, off a main road in Jacksonville. There is shopping and restaurants ½ mile from the community. The provider shared that there are approximately 121 residents who live in The Village Apartments and approximately 59 are Medicaid HCBS waiver beneficiaries receiving residential and/or non-residential services. The provider (Arc Jacksonville) does not provide any on-site services to Medicaid HCBS beneficiaries, but they may provide waiver services off site such as employment or day services. “The Lodge” is a new congregate home that is The Arc is building on the property adjacent to The Arc Jacksonville Village. The Lodge will provide wrap-around residential services to individuals with intellectual or developmental disabilities who also need mental health services.

Disability Rights Florida requested that this setting receive a review.

The Arc Jacksonville Village website has eligibility criteria listed for the apartment community including the requirement for monthly support services, a service agreement (which may be with HCBS Waiver funding or private pay), and service coordination. Interested individuals are required to have an eligibility meeting with the Arc Jacksonville in order to be deemed eligible to live at The Village, prior to being referred to the property management company for financial eligibility. The lease agreement limits visitors to three overnight stays for the term of the lease (one year); it does not specify how a stay is defined (one night, one weekend, one week).

The state determined that this setting is not provider-owned or controlled because there is a third-party property manager that is the landlord and the Arc Jacksonville does not provide on-site services to Medicaid HCBS beneficiaries; however, the site visit team found that this is a provider-controlled residence. The rule about admissions criteria is the Arc’s rule. People living in Arc Jacksonville Village must be “capable of living independently in an apartment setting without consistent staff supervision or significant support” as noted on the Arc Jacksonville’s website and “The Arc Jacksonville Village is not designed for residents who require 24/7 supervision and/or care”. A landlord would not be able to restrict people from renting based on disability, levels of disability, or need for a caregiver. Additionally, the Arc Jacksonville written policy states that service agreements are a required component of the lease and lease violations may result in eviction. The Arc Jacksonville must therefore be assessed against the entity of the regulatory criteria, including criteria for provider owned or controlled residential settings.

Site Visit Review Description:

The site visit team met with state staff (one state representative and two regional office staff) and the Arc Jacksonville President/CEO, the Vice President of the Arc Jacksonville Village, and the Director of Resident Services (Medicaid Waiver Liaison). The Arc staff shared that approximately 75% of individuals work and individuals who don’t work are typically in day services. Examples of employment locations were

Publix (grocery chain), state office clerical work, naval base, and local car wash; however, it was difficult to discern if the employment is competitive integrated employment as the site visit team did not have access to the details of individuals' off-site employment activities.

The gates are open from 8 AM to 9 PM Monday-Saturday and 10 AM-7 PM on Sunday. Individuals who live there have key codes and cards for access or to let in visitors. There is a clubhouse that is used by all residents containing individual mailboxes with keys, a dining area where meals can be purchased, a coffee shop, and various rooms such as a game room, a movie room, a fitness room, and a computer room. Outside there is an accessible pool and hot tub, which were locked. There were brochures for Disability Rights Florida available.

The site visit team received a tour of the clubhouse and outdoor area; following the tour the site visit team spoke with three individuals in the clubhouse. Interviews with the individuals covered all settings criteria; however, residents did not invite the site visit team to enter their apartments.

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>Individual access to the community may be limited based on accessibility needs. One individual shared with the team that they go on outings when a family member can take them, but cannot go grocery shopping with support staff due to lack of accessible transportation.</p> <p>Some activities are presented as being community based; however, they are done in groups containing only people with disabilities. For example, in discussion with a resident about “Project Xplore”, it seemed opportunities were fully community-based. However, in conversation with staff and state representatives later, it was learned that opportunities are at community locations, but they are done in disability-only sub-environments.</p> <p>The Arc Jacksonville must ensure their model of service delivery aligns with the regulatory criteria to support</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>participants’ full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. The Arc Jacksonville should develop policies, practices and resources to ensure that individuals have full access to the greater community.</p>
42 CFR 441.301(c)(4)(iii)	<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>One of the residents said that someone would come in your room and catch you if you tried to exceed the three-night stay limitation included in the lease agreement.</p> <p>Individuals interviewed spoke about the “Lodge” being built outside the gates to the community as a place they could be “sent” if they broke the rules. This represents a form of coercion.</p> <p>A member of the provider’s leadership team stated that people are excluded from living in the neighborhood, or their lease will be terminated (and has been, in the past) based on the kind of disability they have, and how much assistance they need associated with that disability. He also specifically stated that he would not let certain types of people in, if it were up to him, and in fact, many of these types of people are kept out are removed from the neighborhood. The list of exclusions was long. A few of them were people who use augmentative communication; people who need support to transfer into/from a wheelchair; people who need support in dressing/undressing, bathing, or eating; people who cannot independently complete their own hygiene, and anyone who cannot manage and take medication on their own.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>He said that residents ‘take advantage’ by having loved ones visit more than three days or caregivers provide overnight support more than three nights. He stated that ‘Landlord warning’ letters are issued in these cases. He didn’t have one of these letters to show the team, but said it is always used as an ‘empty threat’, to control residents.</p> <p>The Arc Jacksonville should ensure their model of service delivery aligns with the regulatory criteria to protect individuals’ rights to privacy, dignity, respect, and freedom from coercion and restraint. The Arc Jacksonville must amend practices that allow for coercive measures and ensure individuals’ rights to privacy, dignity and respect are recognized.</p>
42 CFR 441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports, and who provides them.	<p>The Arc staff shared that residents are not allowed to have regular overnight support needs; residents need to have the ability to respond in an emergency, take their own medication, be independent at mealtime and if they are not, they would need to move out. These restrictions do not allow individuals to receive services and supports they need.</p> <p>The Arc Jacksonville must ensure that individuals have access to services and supports that are available to the individual and that the individuals have the ability to choose from whom they receive those services.</p>
42 CFR 41.301(c)(4)(vi)(A)	A lease, residency agreement or other form of written agreement is in place for each HCBS participant, and that the document provides protections that address eviction processes and	After speaking with the residents, the site visit team reconvened in the meeting room and reviewed PCSPs and spoke with the Director of Resident Services (referred to as Director in the remainder of this section) who functions as a

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	<p>appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>liaison between the Arc community and Medicaid. The Director shared that if an individual's support needs increased (such as transferring, toileting, medication administration, or exhibited challenging behaviors) or if they couldn't handle an emergency independently, they would need to move elsewhere. The Director shared there is not a written policy about exit criteria (causes for eviction), but he plans to develop something for families. The Director shared that the setting is appropriate for individuals who need assistance with IADLS, but not for people who need ADL support. When asked about individuals who might want or need their support staff for an overnight shift, he referred to this as "squatting". When asked what would happen for a resident whose support needs had increased or a resident who temporarily needed an increase in assistance due to a surgery, he said it would be better to go somewhere else such as a rehab facility, a family home, or a group home. The Arc staff made it clear that individuals who violated the visitor rule, who had physical conditions or an injury that required overnight support more than three times annually, or who had behavior challenges, would receive warnings from the leasing agent about violating the lease and could be faced with eviction. The site visit team asked about the rules with the three-night stay and the Director shared that they have been enforcing it more strictly lately. When asked if two residents of the Arc community (friends, romantic partners) could spend the night in another residence more than three times, he said that would not be allowed so it was fair to everyone. He shared that Arc staff will track the visits and report that information to the property manager and the property manager will issue a lease warning or lease violation</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>notice if it happens too often. The Director shared that married couples are allowed to live in the same home, however, they would be required to move out if they had a child due to the property funding requirements.</p> <p>The Arc Jacksonville Village's written policy states that service agreements are a required component of the lease and lease violations may result in eviction.</p> <p>It is highly unlikely that the following provision in the lease complies with tenant law: The lease gives the landlord the right to assign a co-resident to any vacant bedroom without notice. Resident agrees that whether or not the Co-residents have been selected by resident, by the landlord or third party, the landlord is not responsible or liable for any claims, damages, or actions of any nature whatsoever relating to, arising out of, or connected with disputes between residents and Co-residents or between Co-residents.</p> <p>The Arc Jacksonville should revise the existing lease agreements to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.</p>
42 CFR 41.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	As described earlier, there is a limit of how many days another person can stay with them at their apartments. Each resident interviewed knew there was a three-day limit, but it was unclear whether that three-day limit was three days per month, three days per year, or three days ever. The site visit team asked if this was the rule during COVID and one resident said this is something new and it's been very strict lately. We

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>talked about if the rule applied to people who live in the neighborhood or just people who live outside the neighborhood. The residents said the rule applies to everyone, even your best friend, a good neighbor, or a boyfriend or girlfriend who live in the Arc neighborhood.</p> <p>The Arc Jacksonville should revise the visitor policy and practice to ensure that individuals can have visitors of their choice at any time.</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 state should ensure that the entities responsible for overseeing the development and implementation of person-centered service plans are doing so in compliance with regulatory criteria. One function of these plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>The Arc Jacksonville should ensure that modifications to the settings criteria such as access to the greater community should be limited only to a specific assessed need that is documented in the person-centered service plan as opposed to a blanket modification, such as restrictions on visitors, applied to the setting as a whole.</p>

Regulatory Guidance Citation	Regulatory Guidance Language	Violation Finding Based on Site Visit
Staff Training on HCBS Setting Rule Criteria:	Description of how staff are trained and monitored on their understanding of the settings criteria and the	The staff were uninformed about the settings regulation requirements and/or that the requirements apply to provider-

Regulatory Guidance Citation	Regulatory Guidance Language	Violation Finding Based on Site Visit
State Medicaid Director Letter # 19-001 ²	role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>controlled settings. Some of the leadership and staff seemed to know about them, but did not believe the regulation applied to them, as they did not consider themselves a provider-owned or controlled setting.</p> <p>The Arc Jacksonville should ensure all employees have consistent and reinforced training on the HCBS settings criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

Miami Springs-Assisted Living-Fair Haven – Visit September 12, 2022

Facility Description:

The setting is located in Miami Springs, Florida and is in the same building as a nursing facility. They are licensed for 30 residents, but they do not have a full census. The assisted living facility is housed in a three-story building; the nursing facility is on the first floor and the assisted living is on the second and third floors. There is an outdoor patio area to connect the first-floor nursing facility with the assisted living and there is a shared activity room for the nursing facility and assisted living facility in the nursing facility wing. On the lower floor of the assisted living wing, there is a dining room that can also be used for activities. There is an elevator bank on the main floor. Stairwells were also located on each floor. There are separate entrances for the assisted living and the nursing facility, however, due to PHE screening, all visitors are requested to enter through the assisted living in order to check in and do a health screening.

Site Visit Review Description:

Upon arrival, the team was provided a tour of the two floors of the assisted living facility. The team saw that some doors had names on them and there was an activity schedule posted along with signage for the Ombudsman and information on how to report abuse (signs in Spanish and English). The nursing facility and the assisted living share the activity schedule. The administrator reported that there is shared staff and shared administration between the nursing facility and the assisted living facility, however, he mentioned that there were different training requirements

² <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10

for direct care staff between the two settings. New Editions and ACL conducted conversational interviews with the administrator, two direct care staff, and two participants who receive services at the facility. The apartments are single occupancy, but there is renovation that will allow for some rooms to have double occupancy. The administrator reported that individuals could choose to live together, but there are no plans to place two individuals in the same apartment that did not request it. Two residents invited the site visit team into their apartments (New Editions staff interpreted for the team with the Spanish-speaking resident). The site visit team reviewed the admissions agreement that included extensive information about the setting and optional services and fees. The administrator said he is not charging any of the fees at this time, but they are there in case he needs to charge in the future. An independent interpreter provided Spanish/English interpretation for the staff interviews. The following findings were noted through the course of the visit and through discussions with participants, staff, and the review of the provider's care plans. The provider did not have copies of the person-centered service plans (PCSPs), and no one on staff knew what a PCSP was.

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.	The building has a van for transportation, but it is broken. The administrator is waiting for the new van to arrive. Previously Fridays were reserved for individuals at the assisted living to use the van for shopping or other activities. Staff shared that the activities coordinator talks with individuals to find out what they would like and helps to schedule things in the facility, one example is that recently they brought a mariachi band to the setting. Staff shared that there is a church service once a month on site and mass every Thursday in the chapel. They confirmed that individuals could attend other religious services off site and individuals go to community activities with friends and family members. Staff said if individuals do not have friends or family, but need assistance to get out in the community, the staff will help. The residency agreement places a limit on the distance from the facility that an activity may take place and includes the charge to have a staff member accompany the individual if needed. The residency agreement contained a provision for the use of an internal trust account versus outside banking accounts

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>Staff reported that no one residing in the assisted living works or volunteers now, but there is someone many years ago (perhaps 15) who worked. Staff said it is up to the individual to decide if they want to work.</p> <p>Miami Springs 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. The setting also should ensure that there are no restrictions placed on individuals' ability to access the broader community. Additionally, the setting should ensure that individuals are informed of their choices for competitive, integrated employment and the ability to control their finances and choose a community financial institution.</p>
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>The service plans that the team reviewed did not have information about other settings options available to individuals, including non-disabilities specific settings.</p> <p>The Florida Medicaid Agency and Miami Springs should ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including non-disability specific settings.</p>
441.301(c)(4)(iii)	<p>The setting ensures an individual's rights of privacy, dignity and respect,</p>	<p>Apartment doors were labeled with resident names thereby identifying for visitors the names of individuals receiving services in the setting.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	and freedom from coercion and restraint.	Miami Springs must ensure that individuals are afforded privacy by removing names from apartment doors.
441.301(c)(4)(iv)	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>The residency agreement contained provision such as: shower and bathing schedule; introduction to the dining director included seating and table placement requirements; and eleven different items where a person could be charged extra for services such as tray room services for food and extra charges if a support person is needed for community engagement.</p> <p>Miami Springs must amend practices to ensure that schedules are not regimented and that individuals have the opportunity to set their own schedules and participate in activities of their choosing.</p>
42 CFR 41.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>Staff initially said that that visitors were not permitted overnight, however, they said that since the apartments are the residents' individual homes and the staff would not know if they had overnight guests, they could have partners stay the night. The administrator said that individuals could have overnight visitors.</p> <p>Miami Springs should provide training to staff and residents to understand the policy around individuals' ability to have visitors at any time.</p>

Regulatory Guidance Citation	Regulatory Guidance Language	Violation Finding Based on Site Visit
Staff Training on HCBS Setting Rule Criteria: State	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent	Staff indicated they receive initial and annual training on various topics. No training specific to HCBS settings rule criteria was noted during the onsite visit, and none of the staff, to include the Administrator, had

Regulatory Guidance Citation	Regulatory Guidance Language	Violation Finding Based on Site Visit
Medicaid Director Letter # 19-001 ³	with state standards as described in the waiver or in community training policies and procedures established by the state.	heard of the settings rule. The team noted that individuals were referred to as “patients” throughout the visit. Miami Springs should ensure all employees have consistent and reinforced training on the HCBS settings criteria.

The Haven – Day Services (Adult Day Training) and Group Homes (Residential Habilitation) - September 13, 2022

Facility Description:

The campus setting is located approximately 20 minutes northeast of downtown Sarasota. The provider serves approximately 800 individuals across various programs, including day services (work and life skills programs), residential habilitation, preschool, and private school for 14–22-year-olds. Day services and residential habilitation may be paid for by Medicaid HCBS funding or private pay. Most people who attend day services reside elsewhere, either with another provider or in a family home. There are six group homes on the campus with more under development. There is a warehouse with the adult day training center; the building also held a workout room that people can use, a smaller room that can be used for skills training or a quieter place in which to work. The building next door contains the life skills program. In this same building there is a kitchen that is also used for the life skills program.

Disability Rights Florida requested that this setting receive a review.

Site Visit Review Description:

The team received a tour of the campus, including the adult day training center, the day habilitation, the kitchen, and four group homes by the President/CEO, Chief Operating Officer, and the VP of Adult Day Services. The tour started in the day training center building where individuals were working on various contracts including sorting hangers and donations for a clothing store and piece work for a hydraulics company. There were approximately 25 to 30 people with disabilities in the sheltered workshop and they are paid the state’s minimum wage (\$10/hour). In the life skills building there was a large room where it appeared that most people were doing crafts. Individuals in the kitchen were putting away groceries and consulting a menu and/or recipe in preparation to cook; they prepare meals for the on-site pre-school. The site visit team toured four homes, three of them were unoccupied during the tour. The common areas were decorated in a home-like manor and the bedrooms were decorated

³ <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10

with personalized items. There were locks on bedroom doors and on shared bathrooms. Some rooms had private bathrooms in the bedroom. Each home had a large kitchen, dining area, living room, and laundry room. In two of the homes, there were medication instructions/precautions posted (2nd and 3rd homes visited) and one of the homes had a posted schedule on the refrigerator for when the men and women should be shaved each week (2nd home visited). The team noted that one of the homes (3rd home visited) had an alarm on the back door and there was video monitoring taking place in the common living room area.

After the tour the team reviewed person-centered services plans and spoke with three individuals receiving services and four staff members. After speaking with individuals and staff members, the site visit team spoke with the administrative staff. Interviews with administration, staff, and participants covered all settings criteria.

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>An individual the team spoke with was unsure about where his pay went and staff shared that many residents get direct deposit to a shared account overseen by the provider.</p> <p>Staff and individuals report community outings, but they seem to be group outings based on collective choice, rather than individual choice.</p> <p>Staff shared that individuals do not need to use public transportation because the provider has plenty of vehicles.</p> <p>The Haven must ensure their model of service delivery aligns with the regulatory criteria to support participants’ full access to the greater community. The Haven should ensure that individuals are aware of their ability to choose a financial institution and control their finances. In order to facilitate community integration, The Haven should assist individuals to access transportation when individuals do not wish to participate only in group activities.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		Establishing partnerships with community resources and leveraging existing community transportation options should be explored.
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>Two of the homes had medication instructions/precautions posted (2nd and 3rd homes visited) and one of the homes had a posted schedule on the refrigerator for the specific day(s) of the week that the men and women should be shaved (2nd home visited). One of the homes (3rd home visited) had an alarm on the back door and there was video monitoring taking place in the common living room area (team member observed herself on the screen).</p> <p>The Haven should ensure their model of service delivery aligns with the regulatory criteria to protect individuals' rights to privacy, dignity, respect, and freedom from coercion and restraint. The Haven should consider the dignity of individuals in the home by not posting grooming schedules and ensuring that individuals' medical care and information are kept private. Remote monitoring, when allowed by a state in the delivery of HCBS should only be used when necessary and ensure the privacy of all residents.</p>
42 CFR 441.301(c)(4)(iv)	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>One individual stated that he doesn't always want to work (at the sheltered workshop), but that he goes anyway, as it was implied that he didn't have a choice.</p> <p>While there was discussion about people being able to go out and do activities on their own, no one gave a specific example or told a story of what that looks like. All stories about community activities used the word "we" or "they".</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>One of the house managers gave an example of a typical day and it was fairly regimented with everyone on the same schedule. She said everyone goes to bed by 7:30 PM.</p> <p>The Haven must ensure their model of service delivery aligns with the regulatory criteria to facilitate independence and community integration, and amend practices to ensure that schedules are not regimented and that individuals have the opportunity to set their own schedules and participate in activities of their choosing.</p>

Regulatory Guidance Citation	Regulatory Guidance Language	Violation Finding Based on Site Visit
Staff Training on HCBS Setting Rule Criteria: State Medicaid Director Letter # 19-001 ⁴	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>Staff were unaware of significant portions of the settings rule.</p> <p>The Haven should ensure all employees have consistent and reinforced training on the HCBS settings criteria.</p>

Irv Weissman-Adult Day Center – Visit September 14, 2022

Facility Description:

The adult day center (ADC) is located in a neighborhood in St. Petersburg in the same building as a nursing facility and across the parking lot from an assisted living facility. The day center uses the same entrance as the nursing facility and visitors must be buzzed into and out of the adult day center.

⁴ <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10

Site Visit Review Description:

The site visit team met with the Director and received a tour of the setting. The day center is a social model and individuals that attend must require little assistance with activities of daily living (ADLs) and be fairly independent with mobility. People can come for full or half-days. Prior to the COVID PHE more individuals used to attend the ADC, however their census has declined significantly. Participants arrive and depart through the door that leads to the hallway connecting the ADC with the nursing facility. There are two individuals who leave the ADC independently; one visits his spouse who resides in the nursing facility and another individual leaves the ADC for physical therapy. The day center is set up like a home with distinct living room and kitchen areas. There are approximately eight recliners and a television in one area, tables and chairs in an area off to the side where participants can do art or craft projects, and a kitchen area. There are two bathrooms in the ADC and they have locks on the doors. There is information on how to report abuse and neglect posted. The activity calendar and menu are posted; the ADC receives meals from the same kitchen as the assisted living and people can opt for a different main dish or a sandwich if they don't want what is on the menu. The site visit team reviewed the ADC care plans on site, they included information on individual likes and dislikes, but were predominantly related to ADL/IADL and service needs. There were no PCSPs. The state representative indicated they were on file at the MCO, but none had ever been shared with the provider. There were two individuals present who received Medicaid HCBS and the site visit team sat and spoke with individuals and asked questions.

Findings of Site Visit:

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>There is a back door that leads to a patio; individuals can go outside with staff, but are not allowed to go out alone due to the hill and water (implied due to wildlife). The front and back doors are locked and have alarms.</p> <p>The state should ensure that the entities responsible for overseeing the development and implementation of person-centered service plans are doing so in compliance with regulatory criteria. One function of these plans is to serve as the basis for documenting any modifications of the settings criteria for an individual. Irv Weismann should ensure that any relevant ADC modifications for a specific individual are incorporated into the plan, and that modifications to the</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		settings criteria, such as access to the greater community, are limited only to a specific assessed need s opposed to a blanket modification, such as locked doors, applied to the setting as a whole.

Regulatory Guidance Citation	Regulatory Guidance Language	Violation Finding Based on Site Visit
Staff Training on HCBS Setting Rule Criteria: State Medicaid Director Letter # 19-001 ⁵	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	While there are minimal findings associated with this setting, the team was unable to speak with direct support staff to determine their understanding of the regulatory criteria, as they were engaged in providing support to individuals. Irv Weissman Adult Day should ensure all employees have consistent and reinforced training on the HCBS settings criteria.

⁵ <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10