

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

October 16, 2023

Amir Bassiri
Medicaid Director, Deputy Commissioner
New York Department of Health
Empire State Plaza, Corning Tower, Room 1466
Albany, NY 12237

Dear Director Bassiri:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from July 17-20 and July 24-27, 2023. CMS visited several settings in New York 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 New York. 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 the timelines detailed in the ultimately 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 New York, 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 New York for programs funded/operated by the Department of Health (DOH).

- There is no clear case management function outside of the settings where individuals receive services and there is therefore an absence of planning and oversight, and assurance of health and welfare for individuals receiving HCBS. Should a participant enrolled in the waiver program be discharged by a provider, there is no entity to assure the continuation of services through a person-centered plan.
- Without a system of person-centered planning, there is no assurance that choice of services, supports, providers or service settings is offered, or that the person's preferences and goals are considered. Additionally, there is no assurance that the requirements of the HCBS settings rule are being implemented in these programs.
- The programs overseen by the DOH are targeted to serve individuals between the ages of 24 and 65, focusing primarily on medical needs; these programs do not address the need for habilitation supports and individuals are not offered opportunities for employment.

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.
- 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 setting facilitates individual choice regarding services and supports and who provides them.
- Each individual has privacy in their sleeping or living.
- Individual sharing units have a choice of roommates in that setting.
- Individuals are able to have visitors of their choosing at any time.
- Any modification of the additional conditions, under 42 CFR § 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.

New York's Statewide Transition Plan (STP) has not yet achieved final approval. Upon its approval, it will 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 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 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 case management and person-centered planning functions in the HCBS delivery system as noted above. CMS requests this information be submitted no later than November 16, 2023.

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 New York's successful delivery of Medicaid-funded HCBS.

Sincerely,

Melissa L. Harris, Deputy Director
Medicaid Benefits and Health Programs Group

Enclosure

**Heightened Scrutiny Site Visit – New York
Summary Review by Setting
Visit Dates: July 17-20 and July 24-27, 2023**

New York Site Visit Team Week 1:

CMS Representative: Matthew Weaver
ACL Representative: Jill Jacobs, Erica McFadden (virtually for one setting)
New Editions: Amy Coey, Vicky Wheeler
State Staff: KellyAnn Anderson, Paul Nadel, Debbie Rothman, Ellie Smith

New York Site Visit Team Week 2:

CMS Representative: Michele MacKenzie
Administration for Community Living (ACL) Representative: Nancy Thaler
New Editions: Amy Coey, Vicky Wheeler
State Staff: Ellie Smith, Alicia Matulewicz, Maria Copperwheat, John Van Dyke, Karen Walker, Debbie Pulver

Introduction:

There were two site visit teams in New York over the course of two weeks. The teams visited 12 settings across the metropolitan New York City and upstate areas. These settings included four assisted living facilities (Brookdale Hospital Medical Center, Argyle Center for Independent Living, Madison York, Cedarbrook Village), one adult home/assisted living facility (Elm York Home for Adults), three adult day health care programs (Charles T. Sitrin, St. Mary’s Hospital for Children, St. Luke’s Adult Day Health Care Programs (ADHCP)), and four day habilitation settings (United Cerebral Palsy (UCP) of Nassau, American Disabled for Attendant Programs Today (ADAPT) Community Network, Central New York Developmental Disabilities Services Office (DDSO), Ontario Co. New York State Association of Regional Councils (NYSARC), Inc.).

Promising Practices:

The site visit team noted that the Office for People with Developmental Disabilities (OPWDD) had a number of promising practices that were evident statewide. These promising practices were specific to the OPWDD and included promulgating regulations incorporating key components of the HCBS settings rule, supplying all entities providing case management services with an electronic standard person-centered plan instrument that includes offering choice, assessing health and safety needs, determining individual preferences and goals, and identifying natural supports to achieve the outcomes in the plan, providing case managers with training in person-centered planning, adopting core competencies for direct care professionals and front-line supervisors (CORE 360 – an evaluation tool based on the Core Competencies has been mandated for all providers), and OPWDD overseeing case management functions and service provision to ensure incorporation of the criteria of the HCBS settings rule. It was also notable that a state developed HCBS settings rule training was used in some OPWDD settings and as such, the HCBS settings rule criteria are observably being implemented in the settings operated by OPWDD. The link for the training website has been included:

<https://workforcetransformation.org/rcwt-resources>

Summary of Findings:

Although a distinct review of each setting is included in this report, the table below summarizes the findings related to each of the HCBS settings criteria for the entirety of the visit to New York and identifies systemic issues noted through the review. In addition to the findings below, the team noted programs funded/operated by the DOH to have systemic concerns. The most significant concern across all programs funded by DOH is the absence of any system of planning and oversight for individuals enrolled in the waiver program. There is no case management function outside of the settings where individuals receive services. The full responsibility for planning and assuring health and welfare appears to be with providers of services. Should a participant enrolled in the waiver program be discharged by a provider, there is no entity to assure the continuation of services through a person-centered plan. In response to the team's questions about the continuation of services for program participants, a DOH representative said responsibility would likely be with a hospital social worker if the participant were hospitalized, or with their current provider. Otherwise, there is no support for or assurance of the person's health, welfare, or the continuation of HCBS. Without a system of case management and person-centered planning independent of the provider, there is no assurance that choice of services, supports, providers or service settings is offered, or that the person's preferences and goals are considered. Without a system of oversight, there is no assurance of individual health and welfare or that the requirements of the HCBS settings rule are being carried out for the benefit of the participants. Additionally, the service models supported by the DOH are targeted to older individuals, yet serve individuals under 65, as young as 24. The programs are focused on medical needs only and do not address the need for habilitation supports for growth and development. Individuals are not offered opportunities for employment.

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.	Brookdale Hospital Medical Center, Argyle Center for Independent Living, Madison York, Elm York Home for Adults, Charles T. Sitrin, St Mary's Hospital for Children, St. Luke's
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.	Brookdale Hospital Medical Center, Argyle Center for Independent Living, Madison York, Elm York Home for Adults, Charles T. Sitrin, St Mary's Hospital for Children, St. Luke's, Cedarbrook Village

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Brookdale Hospital Medical Center, UCP of Nassau
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.	Argyle Center for Independent Living, Madison York, Elm York Home for Adults, Charles T. Sitrin
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	Brookdale Hospital Medical Center, Argyle Center for Independent Living, Charles T. Sitrin,
441.301(c)(4)(vi)(B)	Each individual has privacy in their sleeping or living unit	Brookdale Hospital Medical Center, Madison York, Elm York Home for Adults
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	Argyle Center for Independent Living, Madison York, Elm York Home for Adults
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time	Madison York, Elm York Home for Adults
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.	Brookdale Hospital Medical Center, Argyle Center for Independent Living, Madison York, Elm York Home for Adults, Charles T. Sitrin, St Mary's Hospital for Children

Additional Provision	Language	Setting Name
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.	Brookdale Hospital Medical Center, Argyle Center for Independent Living, Madison York, Elm York Home for Adults, Charles T. Sitrin, St Mary's Hospital for Children

Brookdale Hospital Medical Center, Assisted Living Facility– Visit Thursday, July 20, 2023

Facility Description:

Brookdale Hospital Medical Center is located in Brooklyn, NY and is an assisted living facility that shares a building with the Department of Housing and Urban Development (HUD) subsidized housing and is located across the street from Brookdale Hospital. The state identified this

¹ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

setting as a setting that is located on the grounds of or adjacent to a public inpatient institution. It's located on the first through third floors while the fourth through sixth floors are allocated to HUD housing. There are 43 total beds with 38 people being served at the time of the visit; all are enrolled in an HCBS program. The units are single, one-bedroom apartments with full kitchens and private bathrooms. Only married couples can share an apartment. There are locks on each unit, as well as on the bathroom doors. The administration of the setting has implemented a suggestion box that is checked every day by staff. The setting has a resident council to provide input to the facility administration. There is a snack refrigerator in the conference room that residents can access at any time. Residents can use Access-A-Ride or public transportation and the setting staff can help arrange transportation. The DOH reviews all lease/resident agreements to make sure they include at the 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. Residents can do their own laundry and have access to food at any time. Visitors are welcome at any time, including overnight, but must sign in and out. There is a 2-day maximum for overnight visitors established by the resident council. The facility underwent a leadership change over the last two months. Residents state that before the setting was very institutional, but has improved with the leadership change. New management is meeting with individuals and reviewing their rights with them and establishing new resident goals. The facility has staffing challenges. They currently have volunteers that are keeping their programs running and are recruiting staff.

Site Visit Review Description:

The site visit team signed in/out at the front desk at the 24-hour reception/security desk. An individual living there greeted the team and mentioned that the provider would not let them out of the setting, it was like jail, and they wanted to move out of the setting. However, other residents indicated that since the new administrator started, they are allowed to come and go freely. The ACL representative joined the visit via Zoom. The team met in the activity room with the administration team who are new to the setting and still learning about the HCBS settings rule. They have made updating policies and procedures priority in order to work towards coming into compliance with the settings rule criteria. Work is also being done to create improved person-centered care plans. There are no person-centered service plans (PCSP) in place at this location and no case manager available outside of the setting. The setting has an HCBS Resident Information Acknowledgement document that residents sign at admission and annually that covers the settings final rule criteria. The residents and staff interviewed stated that they have seen many good changes since the new administration started. During the setting tour, there was a group of four individuals talking and listening to music in the hallway; a couple of them invited the team into their living units and shared information about the setting.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	<p>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>	<p>The activity personnel has been out on leave and there are no activities happening during the day; there are only recreation activities at night. There are no planned activities in the community and very limited facilitation of transportation into the community.</p> <p>Brookdale Hospital Medical Center 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. Brookdale Hospital Medical Center should develop policies, practices and resources to ensure that individuals have full access to the greater community.</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>There were no PCSPs available for review. The provider service plans reviewed did not contain information related to settings options, including a non-disability specific setting.</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>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>A participant noted during an interview they needed staff help to get dressed and it took five hours to get staff assistance.</p> <p>Brookdale Hospital Medical Center 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. This includes facilitating dignity in supporting participants to dress.</p>
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>There were no PCSPs available for review. The documents reviewed did not contain information related to choice of services and supports.</p> <p>Brookdale Hospital Medical Center must ensure their model of service delivery aligns with the regulatory criteria that individuals have access to services and supports that the individual has been assessed to need, and that the individuals have the ability to choose from whom they receive those services and supports.</p>
441.301(c)(4)(vi)(B)	Each individual has privacy in their sleeping or living unit.	<p>Through participant interviews, it was noted that staff come in often during the day and leave the unit door unlocked when they leave. The house rules stated there are room checks every two hours.</p> <p>Brookdale Hospital Medical Center must address these issues to ensure each individual has privacy in their sleeping or living unit. As stated below for 441.301(c)(4)(vi)(F), room checks should only be performed as necessary, based on individual assessments of need.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	<p>All the bathrooms include a bathtub/shower that have not been made accessible for people who have mobility impairments. At the time of the visit, there were participants residing in the setting who use wheelchairs. Staff stated they would make accommodations when asked, but no residents had requested them. Participants are helped to get in and get out of the shower. There was no evidence that each participant had been assessed for physical accessibility or assistive technology needs.</p> <p>Brookdale Hospital Medical Center should ensure that the setting is physically accessible to the individuals residing there.</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>Through interviews with administration, it was noted that blanket restrictions had been made for all residents of the setting. For example, it was noted that it is a requirement of the setting staff to check on each resident at a minimum of every two hours, including overnight. Although some participants indicated to administration they do not need or want two-hour checks, the staff continues to make the checks as this is a facility rule. There were no PCSPs available for review. The documents reviewed did not contain information related to modifications of the additional conditions to the settings criteria.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications are based on an individually assessed need, and are incorporated into the plan. Brookdale Hospital Medical Center must adhere to the parameters of each plan.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ²	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>There was no evidence of staff training on HCBS settings criteria. There is an HCBS Resident Information Acknowledgement document that residents sign at admission and annually that covers the settings final rule criteria, however when the team showed a staff person the document they had never seen it.</p> <p>Brookdale Hospital Medical Center should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

Argyle Center for Independent Living, Assisted Living Facility – Visit Monday, July 24, 2023

Facility Description:

The Argyle Center is located in Argyle, NY and was identified by the state as presumptively institutional as an assisted living facility in the same building as an inpatient skilled nursing and rehabilitation facility. There are two wings of resident rooms: one wing contains 11 single occupancy rooms with private bathrooms and one wing contains double occupancy rooms also with half-bathrooms in each room. The total capacity of the setting is 35, with 33 individuals enrolled in HCBS. There is no age requirement to live in the setting and ages range from about 45-98. There are community shower rooms that are accessible, with roll-in showers and have locks on the doors. Participants who reside in this setting do not go to day services, work, or volunteer. Individuals are referred to the setting by hospitals or Adult Protective Services (APS). There is no case manager outside of the setting. The facility has a vehicle and participants can go on group shopping trips, baseball games, and to the fair. Individual trips are dependent on staff availability. There are mini refrigerators in each room and a main refrigerator in the kitchen area where residents can keep food. The lease/resident agreement includes the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. Units have locks and a participant reported being offered a key, but let administration know they didn't want one. The participant understood that they could request a key at any point they change their mind. Residents do not have keys to the front door. It is always locked but there is a call button that staff respond to. Staff and residents report that there are discussions about roommates and changes are made if requested. Residents may and do furnish and decorate their own rooms. The geographical location of the facility, with no access to transportation results in separation from the community without any opportunities for engagement. Beyond the facility, there is no case management function, there is no person-centered plan and there is no evidence that individuals have been offered a choice of programs. If an individual is discharged from the facility while enrolled in the Medicaid waiver, there is no function or entity to assure health and welfare or continuation of the HCBS waiver services.

² [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

Site Visit Review Description:

When the site visit team arrived, there were several individuals sitting out on the front patio enjoying the weather. We sat in the activity room to review documentation. They have a bird in the front living room that is a pet of the facility. There is a dining room with a locked refrigerator. The lock was at the request of residents so that their food would not be taken from the fridge by other people in the building. Staff have the key and are available to unlock when needed.

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>The facility is in an area 13 miles from the nearest town of Salem, which has 2,700 people. There is no access to the community, no opportunities for work or engagement in any activities in the community, and no public transportation or transportation provided by the Center available to overcome the physical separation from the community. People do not receive services in the community to the same degree of access as individuals not receiving services.</p> <p>Argyle Center for Independent Living 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. Argyle Center for Independent Living 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)(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>Individuals are referred to the setting by a hospital that knows them and from APS. Most participants rely on families to figure out services for the individual. Individuals did not have a choice of settings. There is no case management entity to implement a PCSP or offer choice. There is no evidence of a person-centered plan. A facility care plan has a standard list of activities of daily living with an indication if the person requires assistance. This list of activities is not based on personal preference. There is no assessment of the individual's need beyond the standard list that is applied to all residents. The documents reviewed did not contain information related to settings options, including a non-disability specific setting.</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>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
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>Participants are required to have a doctor's order to drink alcohol. There is a policy that no residents can smoke at the facility, however staff smoke outside. Residents noted through interviews they would like to smoke as well. The setting is operated on a schedule for meals and activities. While individuals may choose their own activities, those activities must be in the facility. There are assigned seats in the dining room, but individuals can ask to move if desired. There is little opportunity to leave the facility other than with a group.</p> <p>Argyle Center for Independent Living must ensure their model of service delivery aligns with the regulatory criteria to support participants' autonomy in making choices about daily activities. As stated below for 441.301(c)(4)(vi)(F), any modifications for an individual must be based on individual assessments of need.</p>
441.301(c)(4)(v)	The setting facilitates individual choice regarding services and supports and who provides them.	<p>Once individuals are admitted, there is no outside case management or service coordination entity available to coordinate or provide choices for additional services that the setting does not provide.</p> <p>Argyle Center for Independent Living must ensure their model of service delivery aligns with the regulatory criteria that individuals have access to services and supports that the individual has been assessed to need, and that individuals have the ability to choose from whom they receive those services and supports.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	<p>Through interviews it was noted that two residents would like to share a living unit but when they asked to do so, they were told there is a state rule that prohibits sharing of rooms unless the couple is married.</p> <p>Argyle Center for Independent Living must revise its model of service delivery to ensure that individuals sharing units have a choice of roommates.</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 director reported that there are no modifications to anyone's plans. There were no PCSPs available for review; however, there were restrictions observed (as noted above) during the site visit.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are based on an individually assessed need and incorporated into the plan. Argyle Center for Independent Living must adhere to the parameters of each plan.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ³	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>While affirming that staff are trained, there was no description of the training, who provided the training and the staff interviewed did not have knowledge of the rule or the requirements within the rule.</p> <p>Argyle Center for Independent Living should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

Madison York, Assisted Living Facility – Visit Monday, July 17, 2023

Facility Description:

Madison York is located in Flushing, NY across the street from Flushing Meadow Park and was identified by the state as located adjacent to a public inpatient institution. There is a front and back entrance with a buzzer for access. Residents come and go freely. The setting has six floors with a capacity of 226 beds, with 200 assisted living beds serving 170 HCBS participants. All participants are in double occupancy units unless they can financially afford a single room. Each room has a private bathroom for the roommates to share. There is a main floor patio for resident use. There were many residents mingling with each other throughout the setting. The dining menu is developed by a resident committee and snacks are always available. There is a refrigerator that is not locked, but the residents need to get food from the receptionist after hours. Residents may have refrigerators in their rooms as well. The facility does not have a facility vehicle; however, public transportation is close by and the setting will assist with arranging rides with Access-A-Ride. The state reviews leases/residency agreements for language around protections from eviction and appeal rights. There is no case management outside of the setting.

Site Visit Review Description:

The team sat in the administrative offices to review documentation and speak to the administrative staff. Following document review, the team was provided a tour of the setting and spoke to staff and participants who receive services.

³ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

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>Although individuals can come and go as they choose, there was no evidence that community integration was facilitated by the setting. The care plans do not reflect personal interests or community integration.</p> <p>Madison York 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. Madison York should develop policies, practices and resources to ensure that individuals have full access to the greater community.</p>
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>There is no evidence in the plan that reflected selection or setting options including a non-disability specific 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>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
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>Everyone is assigned seating in the dining area at admission. Some of the assignments are based on need; for instance, if an individual needs assistance while eating.</p> <p>Madison York 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. Madison York should revise their current practice to permit individuals to choose where to eat and with whom.</p>
441.301©(4)(vi)(B)	Each individual has privacy in their sleeping or living unit.	<p>During the tour, the staff wanted to open the bedroom doors without resident permission. The team noted repeatedly they would not enter a participant's unit without permission or invitation. Bathrooms do not have locks and are shared with roommates.</p> <p>Madison York should ensure each individual has privacy in their sleeping or living unit. This includes facilitating privacy in the shared bathroom.</p>
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	<p>Participants have roommates that are selected by administration at admission.</p> <p>Madison York must revise its model of service delivery to ensure that individuals sharing units have a choice of roommates.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(B)(3)	Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	<p>Although the administration said participants could furnish and decorate their rooms as they please, the team saw multiple rooms during the visit and all were undecorated and the walls were bare. During participant interviews it was noted that housekeeping is provided daily and residents are required to put away personal belongings daily before cleaning occurs.</p> <p>Madison York must ensure that individuals have the freedom to furnish and decorate their sleeping or living units.</p>
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>The setting does not allow overnight guests. The administration said there are no accommodations for guests.</p> <p>Madison York 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.</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>Although there were modifications noted during interviews and observed on-site, there were no modifications found in the Case Management Evaluations and Resident Care Plans. There was not a PCSP available for review.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are based on an individually assessed need and incorporated into the plan. Madison York must adhere to the parameters of each plan.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
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>There was no evidence that staff received HCBS settings rule training.</p> <p>Madison York should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

Elm York Home for Adults, Adult Home/Assisted Living Program – Visit Monday, July 17, 2023

Facility Description:

The Elm York Home is in the same building as an inpatient institution, located in East Elmhurst, NY, and is licensed for 262 beds. There are currently 164 residents and all are HCBS participants. There are seven floors, six of which are resident rooms. The reception desk is staffed 24 hours every day. There are 16 single rooms, the rest are double occupancy. Individuals can decorate and furnish their room as they please, but

⁴ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

furniture needs approval from the setting due to size constraints. When the team arrived at the setting, the residents were having a Hawaiian themed party with hula dancing and Hawaiian attire. The state reviews all the leases/residency agreements for language around protections from eviction and appeal rights. There is a refrigerator in the activities room that is unlocked and residents have access to it at any time. Overnight guests can be accommodated in unused, empty rooms. The administrator noted visitors are very infrequent, if at all. The facility does not have a vehicle; however, public transportation is close by and facility staff can help arrange rides with Access-A-Ride. Rooms have locks and residents have keys. There is no case management available outside the facility and the setting relies on families to coordinate services that are not provided by the setting, such as community activities, day services, volunteering, or working.

Site Visit Review Description:

The team sat in the administrative offices to review documentation and speak to the administrative staff. Following document review, the team was provided a tour of the setting and spoke to participants who receive services as well as staff.

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>Care plans don't reflect participants' interests outside of the facility, including opportunities for work, volunteering, or attending day services. Although there were modifications noted during interviews and observed on-site, there were no modifications found documented in the provider care plans. There was not a PCSP available for review.</p> <p>Elm York Home for Adults 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. Elm York Home for Adults 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)(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>There is no evidence in the plan that reflected setting selection or options including a non-disability specific 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)	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>Everyone is assigned seating in the dining area at admission. Some of the assignments are based on need; for instance, if an individual needs assistance while eating.</p> <p>Elm York Home for Adults 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. Elm York Home for Adults should revise their current practice to permit individuals to choose where to eat and with whom.</p>
441.301(c)(4)(vi)(B)	Each individual has privacy in their sleeping or living unit.	<p>Bathrooms do not have locks and are shared with roommates.</p> <p>Elm York Home for Adults should ensure each individual has privacy in their sleeping or living unit. This includes facilitating privacy in the shared bathroom.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	<p>Roommates are assigned at admission, and the participant can ask to move if desired.</p> <p>Elm York Home for Adults must revise its model of service delivery to ensure that individuals sharing units have a choice of roommates.</p>
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>While the administrator said visitors could come at any time, there are visiting hours posted from 9am-8pm and residents have to make arrangements with the setting for visitation outside of those hours.</p> <p>Elm York Home for Adults 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.</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>There were no modifications found in the Case Management Evaluations and Resident Care Plans. There was not a PCSP available for review. Staff and residents that were interviewed indicated a reliance on family members for access or coordination of services that are not provided by and/or in the facility.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are based on an individually assessed need and incorporated into the plan. Elm York Home for Adults must adhere to the parameters of each plan.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
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.	<p>There was no evidence staff were trained on HCBS settings rule criteria.</p> <p>Elm York Home for Adults should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

Charles T. Sitrin, Adult Day Health Care Program – Visit Tuesday, July 25, 2023

Facility Description:

Charles T Sitrin is located in New Hartford, NY. The ADHCP is on the first floor of a 3-story building. The ADHCP is within Sitrin Health Care Center which is a large campus that includes a skilled nursing facility, an assisted living facility, nine individualized residential alternatives (IRA) homes, a medical rehabilitation center, an adult day health care, and a childcare center. There are 45 individuals enrolled in the program, mostly HCBS participants. Those who live on the campus may attend this or any other day setting of their choice. The program is a medical model, but there is also a small social program on-site that serves six participants. Most of the participants at the ADHCP come from group homes that are operated by OPWDD, and those Life Care plans are shared at admission. The setting uses software called Point-Click-Care to create care plans which are highly medical. The facility has vehicles and there is no public transportation in the area. The setting provides transportation to pick up and drop off people at their homes. There are 2-3 community outings per week, coordinated by the activity staff who directs outings based on the interests of the participants. There are no participants that go out in the community independently due to the need for staff support and supervision. The setting was closed during COVID and re-opened in June 2021. The hours of operations are from 8:00am-3:00pm. The setting serves continental breakfast and lunch and there is always a snack basket available. The doorway to the stairs is alarmed with delayed egress. One participant has a wander guard and the door will lock for them because of their elopement risk. Beyond the setting, for individuals not receiving services through OPWDD, there is no case management function, there is no person-centered plan and there is no evidence that individuals have been offered a choice of programs. Most of the individuals in the setting have intellectual disabilities with an age range of 24-76. Most live in group homes operated by two agencies. The program is designed to monitor medical conditions and the Individual Plans developed by the setting are individualized, address medical monitoring needs, identify activities the person prefers, and encourages choice and decision making. However, the plans do not have information about the person’s disability and do not address the support needs of individuals or provide opportunities for learning and skill development. There are no plans to support individual engagement in the community. There are no staff with experience or training in supporting individuals with developmental disabilities. Much of the time is spent in a large day room, with individuals sitting in small groups in front of a television, listening to music or with table activities.

⁵ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

Site Visit Review Description:

The site visit team met with the administrator who oversees both the skilled nursing facility and the adult day health care program. The team met in a room that is used for social activities and meetings to review documentation. There is a main social room and lockers for participants to use so they can lock up their belongings.

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>The day habilitation setting is in a remote location requiring transportation to go into the local community, which the facility provides for small group trips at least weekly. Provider care plans do not reflect individual assessment of interests. Community integrative activities are developed by staff preference and input.</p> <p>Participants are not offered employment or volunteer opportunities. Staff noted through interviews they do not believe anyone could work.</p> <p>Charles T. Sitrin 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. Charles T. Sitrin 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)(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>There is no person-centered plan beyond the plan developed by the facility. There is no documentation of individuals being offered choice.</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>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
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>Individual plans developed by the setting are individualized based on medical needs, address medical monitoring needs, identify activities in which the person prefers to participate within the setting, and encourages choice and decision making within the setting. However, the plans do not have information about the person's needs to address their disability, such as habilitation needs of individuals or provide opportunities for learning and skill development. There are no plans to support individual engagement in the community.</p> <p>There are no staff with experience or training in supporting individuals with developmental disabilities. For example, individuals who wander or attempt to exit the facility may be an indication that the individual would prefer to leave the facility for an alternate activity; however, this has not been explored through the person-centered planning process or by providing informed choice.</p> <p>Much of the time is spent in a large day room, with individuals sitting in small groups in front of a television, listening to music or with table activities.</p> <p>Charles T. Sitrin 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>

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>There is no evidence that individuals have been offered a choice of the service or provider.</p> <p>Charles T. Sitrin must ensure their model of service delivery aligns with the regulatory criteria that individuals have access to services and supports that the individual has been assessed to need, and that the individuals have the ability to choose from whom they receive those services and supports.</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>Provider care plans are highly medical and do not have modifications documented. PCSPs were not available for review. In particular, there was no person-centered plan available for review to determine if the individual who is required to wear a device to signal when they approach an exit had been assessed to need such a modification.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are based on an individually assessed need and incorporated into the plan. Charles T. Sitrin must adhere to the parameters of each plan.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁶	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>Although the staff in the setting were aware of the HCBS settings rule, there was no evidence that the rule was being implemented in the setting.</p> <p>Charles T. Sitrin should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

St Mary’s Hospital for Children, ADHCP – Visit Tuesday, July 18, 2023

Facility Description:

St. Mary’s Hospital for Children is located in Bayside, NY in the same building as a skilled nursing facility. There are two buildings, each with five floors with a courtyard on the ground floor. The ADHCP is located on the second floor. The ADHCP has five classrooms. There are 152 total individuals currently served, most of them are HCBS waiver participants. The ages served are from 5-30 years old with participants aging out at 30 years old. The setting serves all five boroughs. Adults leave the program by 2:00 pm each day and the children arrive from school around 3:00 pm with dismissal time at 6:15 pm. The program is open Monday through Saturday and provides after- school care and care for young adults with medical needs. The setting has a medication administration room where participants are given medication and medical treatments privately outside of the classroom. The setting contracts with a vendor that provides door-to-door transportation or parents provide transportation to and from the setting. The setting gets referrals from doctors’ offices and self-promotes at schools, fairs and special events. They also conduct marketing on Facebook and other social media outlets. When the school-aged kids get to the setting, they have a snack and do homework and receive other services or participate in activities. The setting has a breakfast club and individuals volunteer there to receive vocational training and work experience. The individuals go to the public library every two weeks and go on outings such as farms, the aquarium, swimming at the YMCA, and the movies. The provider noted visitors are welcome at any time, however, they cannot go into the classrooms in order to protect the privacy of other participants. Participants typically meet in private with their visitors in alternative rooms, outside the classroom. However, there are not many visitors that come to the setting since most participants live at home. The site visit team reviewed this setting for compliance with the regulatory criteria for both children and adults.

Site Visit Review Description:

The site visit team checked into the front desk and presented our driver’s license, had our picture taken, and received a name tag. During the visit, there was one room showing a movie, there was an activity room with puzzles, and one room was low activity. Documentation was reviewed, but it was noted that not all participants have Life Care Plans, the plans developed by the OPWDD. As such, the setting does not have comprehensive plans for all individuals served. Administrative staff noted they are not always invited to attend the Life Plan meetings. Life Plans that were

⁶ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

reviewed did not indicate St. Mary's as a provider for any of the services. Care Plan Progress Reports contained medical and skill information only.

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>The activities are geared towards groups, not individuals and don't reflect individual interests. Transportation to and from community outings is provided by St. Mary's, however, transportation and staff are limited. St. Mary's uses vans for transportation and not everyone can go out at the same time because there's not enough room for everyone. Since there are some individuals who use wheelchairs, it's necessary to have additional staff attend the community outings to provide necessary support and care. Some staff must also remain to provide services.</p> <p>St Mary's Hospital for Children 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. St Mary's Hospital for Children 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)(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>Through interviews with participants, it was noted there are individuals who desire different activities that are geared towards adults rather than those focused towards children's needs. Additionally, participants, who are now adults, noted they have been attending the setting since they were children and have never been offered other options in day services. There is no evidence of setting selection or option for a non-disability specific setting. There is no outside case manager entity and families have to do the research on setting options and service coordination.</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>

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>Provider care plans that were available for review on-site did not include any documented modifications. Modifications were noted during interviews and observed on-site, however, there were no modifications found in the provider care plans. Life Plans were not available for review for all participants.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered service plan should ensure that person-centered service plans that comply with all regulatory requirements are in place for each individual receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are based on an individually assessed need and incorporated into the plan. St Mary’s Hospital for Children must adhere to the parameters of each plan.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁷	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>There was no evidence of staff training on HCBS settings criteria seen.</p> <p>St Mary’s Hospital for Children should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. In addition, this training should be incorporated into the daily activities and operations of the setting.</p>

⁷ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

St. Luke's ADHCP, Adult Day Health Care Program – Visit Wednesday, July 26, 2023

Facility Description:

St Luke's is located on a campus in Oswego, NY. The setting is located on the first floor of the building and the rest of the building is a nursing facility. The program is a medical model adult day health care program that serves 38 participants, 33 HCBS waiver participants and 5 veterans. Participants must be at least 18 years old. The age ranges currently are from about 46-94 years old. Most participants live in their own home and a few live in a group home. The participants use private transportation to get to the setting or the setting partners with Oswego transportation to assist. Individuals are referred to the setting by word-of-mouth or physicians. If individuals live in a group home that is operated by the state, St. Luke's may receive the participant's Life Plan, otherwise St. Luke's does not typically receive a copy of the Life Plan. The maximum number of participants per day is 20 individuals. Most come part-time but two individuals attend five days per week. The setting has revised their care plans recently to be more person-centered, updated their policies and completed training on the settings criteria. The setting has 3-4 group outings per month and they have a council that meets and decides where they want to go out in the community. The setting serves lunch and snacks. There is also a snack cupboard where individuals can get food at any time. There is no case management function, there are no person-centered plans and there is no evidence that individuals have been offered a choice of programs. Participants are mostly older adults: five to six individuals have intellectual disabilities; many are reported to have mental health conditions. The program is described as a medical model that provides daily health assessment and monitoring, physical rehabilitation, speech therapy, and nutritional education. Some individuals come to the facility for bathing and ADL assistance. Much of the time is spent in one large day room, doing group activities.

Site Visit Review Description:

The site visit team met in a conference room to review care plans and talk with administrative staff. Following documentation review, the team was provided a tour of the setting, meeting participants who attend the program, and doing interviews with these individuals and staff. The setting has a beauty parlor, chapel, quiet room, music room, and therapy room that program participants can access.

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 setting activities typically occur on-site; however, most participants live in their own homes and access the community and transportation independently. The review of plans did not reflect personal interests in community integration including the opportunity for work or volunteer opportunities.</p> <p>St Luke’s 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. St Luke’s should develop policies, practices and resources to ensure that individuals have full access to the greater community.</p>
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>Individuals get referred to the setting by word-of-mouth, physicians at home health agencies or advocacy groups. There is no case manager at this setting or through the state that assures choice and service coordination. Mostly rely on families to locate services for individuals.</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>

**UCP of Nassau, Day Habilitation– Visit Wednesday, July 19, 2023
Facility Description:**

The setting is located in Roosevelt, NY and was identified by the state as a setting that has the effect of isolating Medicaid HCBS beneficiaries from the broader community of individuals not receiving Medicaid HCBS. UCP Nassau offers programs on-site that include a school for children ages 2 – 21, an adult day program, residential programs, and a medical and primary care clinic. There are 60 total individuals served at the day habilitation setting and 39 are HCBS waiver beneficiaries. There are six rooms dedicated to the day habilitation program. Participants do not have to be from a UCP residence: some live in intermediate care facilities, private homes, and other outside residences. The case manager gives individuals multiple options of where to receive services. There are also two other programs in the same building if this program is not a good fit. The rooms are basically “pit stops” before the individuals choose their activities for the day. They can stay at the facility or go out into the community. Some of the activities include going to the park, movies, shopping, Jones Beach, Nautical Mile, museums, bowling, baseball games, etc. They conduct HCBS training to staff and they incorporate children that attend the program in skits. The case managers prepare the Life Plans and the setting has a copy of the plan on-site. They have a document called Procedure for Person-Centered Services that is comprehensive for each individual. An individual interviewed said they were part of the planning meetings. Staff have “cheat sheets” on all the individuals to learn about them and their interests. They have a choice of schedule and activities. They can choose to bring their own lunch or purchase lunch at the café. They offer the option to volunteer or work in the community. It was noted in the visitor policy that visitors are welcome at any time. They have a music room and have a contract with Molloy University to provide music therapy. They have a snack shop that is run by individuals receiving services.

Site Visit Review Description:

The site visit team arrived at the main entrance and checked in at a reception desk. The team met with the Director of the clinic and the Director of Adult Day Services. The day of the visit, there was a lot of excitement over the Mets game that afternoon/evening. There were 70 individuals attending the game as they were holding the Disability Pride Night event there.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>There was no privacy in the bathrooms located in the hallways. Doors were open while individuals were using them.</p> <p>UCP of Nassau 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. This includes facilitating privacy in the shared bathroom.</p>

Cedarbrook Village, Assisted Living Facility – Visit Tuesday, July 25, 2023

Facility Description:

Cedarbrook Village is located in New Hartford, NY in a two-story building and is part of a large campus, Sitrin Health Care, that contains a skilled nursing facility, an assisted living facility, nine IRA homes, a medical rehabilitation center, an adult day health care, and a childcare center. The setting was identified as having the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. There are one-bedroom and two-bedroom apartments with living room/dining room combinations and private bathrooms. There is one Medicaid participant who has a private room and all others share an apartment. The total capacity is 65 and there are currently 50 individuals living in the setting; 21 are HCBS participants. Residents must be at least 62 years old to live at this setting. The average age is 91.5 years old with the range being from ages 60-100s. There are two case managers on-site. All residents self-direct their services. Residents are allowed to have overnight guests and have hotel style rooms that individuals can reserve for their guests. There is a fee for the guest rooms, but the setting will work with Medicaid participants if they cannot afford the fee. The lease/resident agreement includes the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. All residents have keys to their apartments, private mailboxes, and the front entrance door. The setting uses Point-Click-Care for their Individualized Service Plans (ISPs) and they include both medical and personal information. Administration shares the ISPs with the direct support staff at the time of admission. The setting has a very active Ombudsman who comes to the setting often. Everyone has their own doctors in the community, no doctors come to the setting. They have an active resident council that makes many decisions about the setting. For example, they voted to have a salon put downstairs where people can have their personal hairdresser come and do their hair. There is also a hairdresser and nail technician that are available on certain days for residents to schedule an appointment with at the salon. The facility has transportation available for residents to go to medical appointments, as well as attend community outings. The DOH provided funding under the Enhancing the Quality of Adult Living (EQUAL) Program. Operators of Adult Homes and Enriched Housing Programs who provide services to individuals receiving Supplemental Security Income (SSI) and/or Safety Net benefits (SN) are eligible for these payments. These funds have helped the setting create the salon, create a garden outside for the residents to tend to, add a gym, and buy a couple of robots that help serve food in the dining room. Individuals can use the pools at Sitrin free of charge and the facility will transport them there. The facility environment, policies and practices are in full alignment with the HCBS settings rule. The environment provides apartments for two residents with private bedrooms, considerable public

space for small groups of people to meet inside and outside the facility, transportation upon request, meals offered restaurant style, extensive activities within the facility and individual plans that support privacy, choice, and personal control. However, beyond the facility, there is no case management function, there is no person-centered plan and there is no evidence that individuals have been offered a choice of programs. If an individual is discharged from the facility while enrolled in the Medicaid Waiver, there is no process in place to assure health and welfare or continuation of the HCBS waiver services.

Site Visit Review Description:

The site visit team met in a conference room to review plans and documentation, as well as interview administrative staff. Following documentation review, the team was provided a tour of the setting. During the tour, the team was invited into a resident’s apartment and spent time interviewing the resident. Additional residents were interviewed in passing, as well as direct support staff. It was noted that residents were busy, engaged in activities and people were coming and going from the setting.

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>There is no person-centered service plan beyond the plan developed by the facility. There is no documentation of individuals being offered choice.</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>

ADAPT Community Network, Day Habilitation – Visit Tuesday, July 18, 2023

Facility Description:

ADAPT Community Network is located in Bronx, NY on the third floor of a building that also houses other businesses and was identified by the state as a setting that has the effect of isolating Medicaid HCBS beneficiaries from the broader community of individuals not receiving Medicaid HCBS. The setting is accessed via elevator. Currently, there are 60 people receiving services and all are HCBS beneficiaries; participation is down from 160 since the COVID-19 PHE. Transportation to the day setting is supported by the participant’s residential placement, family, or the facility, while some participants travel on their own. Every day is different and participants choose what activities they want to do, either on-site or off-site. Activities are designed by participants, but the setting also introduces new ideas. The program manager noted that “exposure leads to interest” concerning supporting individuals being integrated into their community. The individuals served range in age from 20s-60s and are referred to this setting from the care manager or school-based transition manager. About 30% are from ADAPT residential settings and 40-50%

are from other residential settings; the rest live in the community independently or with family/friends. Visitors are welcome any time. The individuals can bring in their own food or bring money to buy something in the cafeteria. There are no schedules for eating; individuals can eat when they want. The setting does not manage personal resources. There is one resident who started selling snacks in the setting and now, years later, he has a store in the community selling snacks. The Life Plans, completed by the case manager, are very comprehensive and are the state's PCSPs. Action Plans are completed by the day habilitation staff and include individuals' habilitative goals and valued outcomes based on the Life Plans. The setting provided the HCBS-specific training for staff that was developed by OPWDD. The PCSPs are written in the first person, very comprehensive, and a promising practice the state should embrace. The setting staff help develop the Action Plans and update the goals online on a regular basis.

Site Visit Review Description:

During the tour, the site-visit team noted that all participants were engaged in various activities. There were individuals cooking spaghetti with staff, playing dominoes, playing Hot Potato, doing art, playing music, making speeches, playing games and puzzles, and some doing job coaching and learning the job application process. There was art on the wall that was done by the individuals served. The program has a photography consultant who works with individuals to learn photography skills. There was a sensory room with bean bags and dimmed lights. Each room had a different scent as the setting is exploring aroma therapy. There are lockers in the hallway that participants can put their own lock on if they want to store their belongings. There is a spa where they can get their nails done.

Findings of Site Visit:

The site visit team noted no setting rule findings for this setting.

Central New York DDSO – Day Habilitation, Visit Wednesday, July 26, 2023

Facility Description:

The setting is located in East Syracuse, NY. The state submitted this setting as a setting that has the effect of isolating HCBS beneficiaries from the broader community because of the lack of community integration and transportation. The state indicates that the setting has remediated both of those issues. There are currently 40 people served and all are HCBS beneficiaries. There is a total of 16 staff, 4 in each of the 4 rooms and there are about 8 HCBS participants in each room. Individuals can travel from room to room as they please. Individuals are referred to this setting from case managers. Most of the individuals live in state operated IRAs. This setting has a PCSP tool in addition to the Life Plan the case manager develops. The PCSP tool is used to gather information from the participant and staff to contribute to the development of the Life Plan. The setting also uses a satisfaction survey annually that incorporates the HCBS settings criteria. Participants start to arrive at the setting between 8:45-9:00 am and they meet for a morning meeting where they have morning coffee and discuss activity options for the day. There is an opportunity for individuals to go out every day and an average of about eight individuals go out per day in a group. They can also go out individually if they desire. The facility has six vans and six drivers. There are volunteer opportunities organized through the setting and many individuals like to volunteer at Meals on Wheels. The setting also has a comprehensive HCBS training that they developed that includes all the HCBS settings criteria and they also include watching the Willowbrook- The Last Disgrace video as part of the training.

Site Visit Review Description:

Following documentation review, the site visit team was provided a tour of the setting. The building is shaped like a rectangle with activity rooms around a central common area. There are four activity rooms, a sensory room, hallway bathrooms with locks, and two kitchens with full access to everyone. There is a computer area and they do virtual tours of the aquarium. There was a lively bingo game going on while the team was there. There were collage pictures of the participants throughout the hallways.

Findings of Site Visit:

The site visit team noted no setting rule findings for this setting.

Ontario Co. NYSARC, Inc., Day Habilitation – Visit Thursday, July 27, 2023

Facility Description:

Ontario Co. NYSARC is located in Canandaigua, NY. The state submitted this setting as a setting that has the effect of isolating HCBS beneficiaries from the broader community because of the lack of transportation and has since completed a remediation plan with the state to come into compliance. There are 33 individuals served, all on an HCBS waiver. The setting is open from 8:00 am-12:00 pm. There are three rooms in the building dedicated to the day habilitation program. They use the rooms as a home-base but individuals can move between rooms and activities as they please. This program serves individuals over 18 years old with high behavioral and medical needs. There is a social adult day program in the building that occupies two rooms and these programs do participate in activities together. The setting has comprehensive person-centered service plans. The setting has annual staff training on HCBS and Staff Evaluation Plans that the state has developed (<https://workforcetransformation.org/rcwt-resources>). They complete this evaluation six months after hire and then annually. Setting staff have the Life Plan from the state care coordinators and the setting also uses Therap to create a Staff Action Plan. Some individuals live at state IRA homes, some live in ARC homes, and some live with their families. This setting is Council on Quality and Leadership (CQL) accredited. The setting uses a transportation agency and has a shuttle for community outings. A handful of participants go out every day and they decide where they want to go. The setting provides a snack and also has food available at any time if needed.

Site Visit Review Description:

After reviewing documentation, the site visit team was provided a tour of the setting. There were pictures of the individuals served throughout the hallways. There was an indoor therapy pool, an art room, sensory room, greenhouse, courtyard including a swing for people in wheelchairs, and music room. The setting hired a very experienced art instructor, musician, and horticulturist to lead those activities. The art teacher informed the team that they are participating in an art exhibit and hope to have 60 pieces of art to show. The setting had an adaptive bike that individuals took turns riding throughout the hallways with staff assistance. Each room had a button individuals could push to notify staff if they wanted a snack. Each activity room also had a bathroom that locked for privacy. There were also activity boards with pictures so individuals could point to what they wanted to do at that moment.

Findings of Site Visit:

The site visit team noted no settings rule findings for this setting.