

## Indiana Site Visit Report and Remediation Updated with State Responses

This report contains the findings from the CMS Site Visit to Indiana in November 2022 as well as the responses from the state to these findings. Through work on their HCBS Settings Corrective Action Plan (CAP), the state has provided responses to the CMS findings including remediation strategies where necessary with associated timelines. As outlined in the following pages, CMS agrees with the state's approach to ensuring full compliance with the HCBS settings rule with the remediation of the non-compliance findings from the site visit and the application of remediation strategies to address the systemic findings also outlined in this report.

Site Visit Date: November 14-16, 2022

### Systemic Findings:

- CMS requests that the state provide a written response providing updated information describing how the state will remediate both the process for developing and implementing the person-centered service plan and the individual settings to ensure compliance with all of the settings criteria. CMS also requests a written response on how the state will apply this feedback to the ongoing monitoring of person-centered planning functions.
- The state should ensure that remediation strategies addressing this feedback are applied to all similarly situated settings that utilize a similar service delivery model.
- The state should ensure issues identified in this report are addressed in the state's overall assessment process of all providers of HCBS in Indiana, to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance. The state must also take into consideration that the Merici Village Apartments is a provider-controlled setting and should be, as with other similarly operated settings, assessed as such.

**State's Response:** It was noted at all Division of Aging (DA) sites that there is a lack of community integration for AL residents and that much of the burden of going out into the community was placed on the residents themselves. The DA is working with each individual site to discuss what the expectations are in the Settings Rule as it pertains to community integration, specifically that it is more than "field trips" into the community. The DA is also working on a training (will be part two of a three-part series) that will be offered to all providers on the intent of community integration as well as best practices for implementing it in AL communities. This training will be offered in or around late February 2023 ahead of full Settings Rule implementation. The training will incorporate not only feedback from the CMS site visit, but also information from webinars that CMS has posted to its website, a webinar that DA contractors attended hosted by ADvancing States, and a webinar hosted by the Association of Direct Service Professionals. We are also currently working on a process to offer financial and/or educational credits to sites for attending this training in order to increase attendance. Staff training on community integration will be built into new staff orientation as well as annual staff trainings provided by each facility. Further, ongoing compliance monitoring will take place every three years with each site subject to the Settings Rule through a recertification process. This recertification process will include robust interview questions to both staff and residents of Assisted Living communities to measure the level of community integration happening at each community. This recertification process allows the State to continue to evaluate and improve how the sites are implementing the theme of community integration. Collecting data during this recertification period will allow for ongoing compliance monitoring, best practice sharing, and provision of technical support to sites that need it.

It was noted at DA sites that residents may lack autonomy and/or independence in their day-to-day schedules and activities. The DA is creating a training (will be included in part one of a three-part educational series) to discuss the Settings Rule implementation and how sites should be integrating the policies included in the Rule in their day-to-day practices. The training will include case studies and a “day in the life” of a resident living with all the rights the Settings Rule affords. Ongoing compliance monitoring will take place with each site subject to the Settings Rule through a recertification process every three years. This recertification process will allow the state the opportunity for continued enhancement of the sites’ understanding of optimized initiative, autonomy, and independence of their residents. Additionally, as the State improves its person-centered service planning process, more details for each individual on what they require to optimize initiative, autonomy, and independence will come to light and be able to be explored by the care managers, settings, and other providers. Staff training on optimization of initiative, autonomy, and independence will be built into new staff orientation as well as annual staff trainings provided by each facility.

The DA is currently reviewing all leases/residency agreements. As DA contractors work with the sites to get the leases into compliance with the Rule, DA’s General Council is reviewing all final leases before residents re-sign them to ensure full compliance.

Before certifying providers for compliance, the DA ensures that the site ensures access to food according to Settings Rule provisions. The DA is currently working on a training (will be included in part one of a three-part series) to discuss the Settings Rule implementation and how sites should be integrating the policies included in the Rule in their day-to-day practices. All sites in attendance will hear best practices in making food available at all times to all residents.

The State is currently working with several experts as well as the care management team to adapt current processes to better reflect the care managers role to help participants drive the care planning process, and includes all providers in the discussion, specifically the sites in which they live. The Care Management team will begin to use a module in our current participant case management system that is compliant with Settings Rule requirements. This module looks similar to the DDRS form that was identified by CMS during the visit as a good standard to use. As that process is operationalized, policy will be developed and implemented with providers, including training (part three in a three-part series) to sites on how this process will play out in their sites and with their residents. The training will also focus on rights modifications and how the process to modify someone’s rights should play out in the “real world” of Assisted Living communities. In addition to training sites on the proper use of person-centered service plans, we will also train our care management team on the new policy and process that will be developed. Theory and operational training on this policy and process will be provided for this team.

As mentioned throughout this document, the DA not only provided a training module for sites to use with their own teams on the changes the Settings Rule is making to their sites specifically, but will also be conducting a three-part training for all settings to attend. The first part will focus on the “spirit of the Settings Rule” and will include discussion of the core differences between institutional and non-institutional settings. This will include a discussion of access to food at any time and what independence looks like in ALs. This will also include a discussion of general themes that not only CMS, but also our contract evaluators, are seeing during our evaluation of sites’ readiness for the Settings Rule. Part two of the training will focus on community integration, noting how sites need to facilitate residents’ full access to the broader community. Part three will focus on person-centered service plans and rights restrictions/modifications of the plans. The DA is currently researching both financial and education CEU credit options to encourage full attendance at these trainings for all sites. All training will be broken into two groups: trainings intended for direct service workers and trainings intended for executive/administrative staff members.

**The Milton Home – Assisted Living**

Regulation Citation	Violation Finding Based on Site Visit	State’s Response
<p>441.301(c)(4)(i)</p> <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>Based on resident interviews, the setting does not appear to facilitate access to the community but puts the burden on residents to gain access through walking (they are located downtown), utilizing ride-sharing options, or other public transportation (though no information on public transportation was seen posted).</p> <p>The Milton Home should ensure their model of service delivery aligns with the regulatory criteria to facilitate community integration. Establishing partnerships with community resources and leveraging existing community transportation options should be explored.</p>	<p>As noted in the systemic findings, the DA is working with each individual site to discuss what the expectations are in the Settings Rule as it pertains to community integration, specifically that it is more than “field trips” into the community. The DA is also working on a training (will be part two of a three-part series) that will be offered to all providers on the intent of community integration as well as best practices for implementing it in AL communities. The training will incorporate not only feedback from the CMS site visit, but also information from webinars that CMS has posted to its website, a webinar that DA contractors attended hosted by ADvancing States, and a webinar hosted by the Association of Direct Service Professionals. Staff training on community integration will be built into new staff orientation as well as annual staff trainings provided by each facility. Further, ongoing compliance monitoring will take place every three years with each site subject to the Settings Rule through a recertification process. This recertification process will include robust interview questions to both staff and residents of Assisted Living communities to measure the level of community integration happening at each community.</p> <p>The three-part training was conducted in early 2023 and lives on the Division of Aging’s website currently, where it is accessible to anyone who wishes to view it.</p>
<p>441.301(c)(4)(iii)</p> <p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>The residents must go down the hall to the SNF portion of the facility to take a shower or a bath and there is no privacy in those stalls (no curtains or doors).</p> <p>The facility also puts name labels on all residents’ clothing so when the staff do the</p>	<p>To address the privacy in the bathing/showering unit, the site is undertaking two modifications. First and immediately, the site will install a shower curtain in the shower stall to ensure privacy in that unit when a resident is bathing. Further, the site is working on installing a shower unit on the AL side of the building. This will not only be closer and more convenient for the AL residents but will also allow the site to install locks</p>

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	<p>laundry, they can differentiate whose clothes they are.</p> <p>The Milton Home should amend their model of service delivery to ensure individuals' rights to privacy such that individuals have privacy in bathing. At the least, curtains or lockable doors should be installed in shower stalls.</p> <p>The Milton Home should also refrain from labeling resident clothing with their names, as this is not a practice that facilitates resident dignity.</p>	<p>on the door (no doors lock on the SNF side of the building) and appropriate shower stall doors since they will not be competing with the space needed for a Hoyer lift as they are on the SNF side of the building.</p> <p>The locks and curtains have been installed in the shower room as of 12/31/2023. There is a list of the access codes that only the administrator has access to in case of an emergency.</p>
<p>441.301(c)(4)(vi)(A)</p> <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>The setting does not differentiate between AL and SNF residents which presents challenges when reviewing residency agreements and resident handbooks.</p> <p>The resident handbook notes that "daily rates will be charged to hold a bed vacant" if a resident leaves for an extended period of time. Because the handbook is for both AL and SNF residents, it is unclear if this applies to both types of residents. If a resident pays a monthly rent, it does not seem reasonable to then charge that person additional money because they chose to leave to visit family or go on vacation. The lease also does not address the appeals process.</p> <p>Other information on Medicaid in the handbook may be out of date or inaccurate. The state should review this information. State DA has their General Counsel reviewing all residency agreements/leases for assisted living facilities providing HCBS services to</p>	<p>The DA is currently reviewing all leases/residency agreements. As DA contractors work with the sites to get the leases into compliance with the Rule, DA's General Council is reviewing all final leases before residents re-sign them to ensure full compliance.</p> <p>All leases have been reviewed as of 12/31/23.</p>

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	<p>see where revisions are needed to meet HCBS criteria.</p> <p>The state should continue their efforts with their General Counsel to ensure that all leases/residency agreements across settings meet the requirements of the HCBS regulation.</p> <p>The Milton Home should revise the existing lease agreements to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.</p> <p>The Milton Home should also create separate resident handbooks for the AL residents and the SNF residents. Their needs, and their funding sources – and therefore the requirements – are different.</p>	
<p>42 CFR 441.301(c)(4)(vi)(C)</p> <p>Individuals have the freedom to control their own schedules and activities, and have access to food at any time.</p>	<p>When asked about snacks, residents said they are supposed to have them but they don't. Later, the administrator pulled out a tray with snacks in the refrigerator at the nurse's station on the SNF side. If residents wanted a snack, they have to go to the nurse's station in the SNF and ask. Some residents use Door Dash.</p> <p>The Milton Home should revise their current practice to permit individuals to have access to food at any time, including by making snack more accessible.</p>	<p>To address the issue of needing to go to the nurse's station on the SNF side of the building for snacks, the site has agreed that placing snacks in the large sunroom is a good location that is central to all AL residents. This has the added benefit of encouraging residents to interact more with one another as they go to the sunroom and congregate.</p> <p>The building added a snack station in the day room for all AL residents as of 12/31/23.</p>
<p>441.301(c)(4)(vi)(F)</p> <p>Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D),</p>	<p>During the review of the provider plans, it was noted that plans are primarily focused on medical care and did not include much information about the person's needs or wants. The provider does not have the actual</p>	<p>Finally, to address the issue of the bedroom door locks, the site is going to install keypads on each bedroom door with residents having the code to the door. This will allow the residents to lock the doors from both the</p>

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<p>must be supported by a specific assessed need and justified in the person-centered service plan.</p>	<p>service plans. The state is aware of this issue and is working on correction/alignment.</p> <p>The state should ensure that the entities responsible for overseeing the development and implementation of person-centered service plans are doing so in compliance with regulatory criteria. One function of these plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>The Milton Home should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>	<p>inside and the outside and will allow them to enter their rooms independently of staff help.</p> <p>As noted in the systemic findings, the State is currently working with several experts as well as the care management team to adapt current processes to better reflect the care managers role to help participants drive the care planning process, and includes all providers in the discussion, specifically the sites in which they live. The Care Management team will begin to use a module in our current participant case management system that is compliant with Settings Rule requirements. This module looks similar to the DDRS form that was identified by CMS during the visit as a good standard to use. As that process is operationalized, policy will be developed and implemented with providers, including training (part three in a three-part series) to sites on how this process will play out in their sites and with their residents. The training will also focus on rights modifications and how the process to modify someone's rights should play out in the "real world" of Assisted Living communities. In addition to training sites on the proper use of person-centered service plans, we will also train our care management team on the new policy and process that will be developed. Theory and operational training on this policy and process will be provided for this team.</p> <p>Keypads have been installed as of 12/31/23.</p> <p>State contractors emailed The Milton Home 3/14/23 to confirm that only necessary staff have key codes to rooms.</p> <p>The site confirmed that only the director of nursing and the executive director have the codes to the individuals' rooms so they could enter in the case of an emergency,</p>



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		but all other staff must knock and receive permission before entering.

Additional Provision	Violation Finding Based on Site Visit	State's Response
<p data-bbox="109 290 569 354">State Medicaid Director Letter #19-001<sup>1</sup></p> <p data-bbox="109 391 590 675">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>	<p data-bbox="621 290 1220 797">The administrator repeatedly shared that all staff are trained the same and are shared across the two setting types. The institutional mindset was present when the team spoke with a nurse. She referred to all residents as “patients” and only saw her role as assisting a resident with their physical care needs. Anything beyond that was the purview of other staff. The setting recently held a training on HCBS criteria, but it is not evident that any sort of understanding of that criteria, and therefore implementation, occurred. The training was prepared by the state as a template for each provider to alter as needed.</p> <p data-bbox="621 837 1220 1019">The Milton Home should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria. If the setting continues to share staff across the AL and the SNF, HCBS training is critical.</p>	<p data-bbox="1251 290 1965 1122">The DA not only provided a training module for sites to use with their own teams on the changes the Settings Rule is making to their sites specifically, but will also be conducting a three-part training for all settings to attend. The first part will focus on the “spirit of the Settings Rule” and will include discussion of the core differences between institutional and non-institutional settings. This will include a discussion of access to food at any time and what independence looks like in ALs. This will also include a discussion of general themes that not only CMS, but also our contract evaluators, are seeing during our evaluation of sites’ readiness for the Settings Rule. Part two of the training will focus on community integration, noting how sites need to facilitate residents’ full access to the broader community. Part three will focus on person-centered service plans and rights restrictions/modifications of the plans. The DA is currently researching both financial and education CEU credit options to encourage full attendance at these trainings for all sites. All training will be broken into two groups: trainings intended for direct service workers and trainings intended for executive/administrative staff members.</p> <p data-bbox="1251 1162 1965 1252">The three-part training was conducted in early 2023 and lives on the Division of Aging’s website currently, where it is accessible to anyone who wishes to view it.</p>

<sup>1</sup> [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\)](https://www.medicicaid.gov); see question 10

## Heritage Pointe at Huntington- Assisted Living Facility

Regulation Citation	Violation Finding Based on Site Visit	State's Response
<p>441.301(c)(4)(i)</p> <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 setting has a variety of activities planned daily, but it is largely in-house activities. There is a weekly outing for the residents to go shopping utilizing the facility's transportation. The facility administrator said many residents are in their 80s and 90s and don't necessarily want to go out in general. She indicated that they do have good family involvement. Residents can go out by calling the local transport (HAT bus). This bus only runs on weekdays and needs to be scheduled in advance. A resident interviewed indicated sometimes it can take two weeks in advance to schedule if they are busy. If residents wish to access church in the community on weekends, they must rely on family or friends to transport them there.</p> <p>Heritage Pointe must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Additionally, the setting should not rely on reverse integration activities to bring the community into the setting. Establishing partnerships with community resources and leveraging existing community transportation options, including options available on weekends and on a timelier basis, should be explored.</p>	<p>As noted in the systemic findings, the DA is working with each individual site to discuss what the expectations are in the Settings Rule as it pertains to community integration, specifically that it is more than "field trips" into the community. The DA is also working on a training (will be part two of a three-part series) that will be offered to all providers on the intent of community integration as well as best practices for implementing it in AL communities. The training will incorporate not only feedback from the CMS site visit, but also information from webinars that CMS has posted to its website, a webinar that DA contractors attended hosted by ADvancing States, and a webinar hosted by the Association of Direct Service Professionals. Staff training on community integration will be built into new staff orientation as well as annual staff trainings provided by each facility. Further, ongoing compliance monitoring will take place every three years with each site subject to the Settings Rule through a recertification process. This recertification process will include robust interview questions to both staff and residents of Assisted Living communities to measure the level of community integration happening at each community.</p> <p>The three-part training was conducted in early 2023 and lives on the Division of Aging's website currently, where it is accessible to anyone who wishes to view it.</p>
<p>441.301(c)(4)(iv)</p> <p>Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily</p>	<p>As noted above, the activities schedule focuses largely on in-house activities and less on going out into the community. While residents have access to a form of local transportation and use it, it is only available on weekdays. If residents do not have family</p>	<p>Specific issues noted at Heritage Pointe Huntington, in addition to the general themes noted above, include not allowing overnight guests to visit, semi-assigned seating in the dining rooms, and intercoms placed in residents' rooms without the residents being able to control the volume and frequency of announcements made over</p>



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<p>activities, physical environment, and with whom to interact.</p>	<p>or friends to provide transportation, it appears they are not able to go out on weekends, limiting those activities and with whom residents can interact. Based on interviews with residents and staff, residents are “strongly encouraged” to eat meals in the dining rooms at the scheduled times (mealtimes are listed as 30 minutes in length). Residents cannot take a tray back to their room to eat in private, unless they had a “legitimate reason” such as not feeling well. The administrator noted they want to transition to an “open dining concept” but do not have the staff to implement that. It was not clear if residents had assigned seats in the dining areas. There were name placards present, and the administrator said there were not assigned seats, but the direct support staff and at least one resident implied there was.</p> <p>Heritage Pointe must ensure their model of service delivery aligns with the regulatory criteria to support participants’ autonomy in making choices about daily activities. Heritage Pointe should revise their current practice to permit individuals to choose where to eat and with whom.</p>	<p>said intercoms. In order to come into compliance with the Settings Rule, the site will be modifying their policies to allow for overnight guests and eliminating assigned seating in the dining room (and training staff and residents on its elimination). After discussion with Heritage Pointe of Huntington, the Division of Aging learned that the name cards had been removed from the tables in the dining rooms to make it clear that individuals may sit wherever they choose to sit in the rooms. The site is working on a policy to allow residents to procure “grab and go” meals from the dining room so that they can eat in private if they choose to. The site is also exploring what it will take to remove the PA announcement system from residents’ rooms in order to facilitate a more home-like environment.</p> <p>All leases and policies were reviewed and are in compliance as of 12/31/23.</p> <p>A state contractor emailed the site on 3/14/24 to confirm what the process is for AL residents needing transportation on the weekend. The site emailed back to say that residents have access to friends’ and family members’ vehicles on the weekend, as well as being able to have a car of their own onsite. If those are unavailable to someone, staff will help coordinate a rideshare like an Uber or Lyft offsite so people can get into the community.</p> <p>The state contractor will interview residents to ensure that they have full access to the community on their own terms.</p> <p>The interviews occurred from 4/15/24-5/13/24 and are found to be sufficient in terms of the residents having full access to the community. This was a one-off interview scheduled to satisfy the CMS request for additional information and will be included in the care</p>

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<p>441.301(c)(4)(vi)(A)</p> <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>Heritage Pointe has a “Daily Care Contract” that is utilized as the residency agreement. The contract includes requirements for renter’s insurance, and residents providing their own transportation to off-site medical care. There are no provisions for resident protections from eviction, notice, or appeals.</p> <p>There are other provisions in the Application for Admission, one of which states that “overnight guests cannot be accommodated in Heritage’s multifamily residential buildings.” The application covers many different residences owned by the provider, so it is unclear which one “multifamily residential” refers to. On the last page, Section V. Residency Agreements states that once admitted, the application, the contract and other documents constitute the Residency Agreement between Heritage and the resident.</p> <p>The State DA has their General Counsel reviewing all residency agreements/leases for assisted living facilities providing HCBS services to see where revisions are needed to meet HCBS criteria.</p> <p>The state should continue their efforts with their General Counsel to ensure that all leases/residency agreements across settings meet the requirements of the HCBS regulation.</p> <p>Heritage Pointe should revise the existing lease agreements to ensure it is a legally</p>	<p>manager’s quarterly monitoring of all residents moving forward.</p> <p>The DA is currently reviewing all leases/residency agreements. As DA contractors work with the sites to get the leases into compliance with the Rule, DA’s General Council is reviewing all final leases before residents re-sign them to ensure full compliance.</p> <p>All leases and policies have been reviewed and deemed compliant.</p>

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	enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.	
<p>42 CFR 441.301(c)(4)(vi)(C)</p> <p>Individuals have the freedom to control their own schedules and activities, and have access to food at any time.</p>	<p>As noted above, there are listed mealtimes for the setting and residents are generally not allowed to eat meals in their rooms. They do have the ability to have snacks that they purchase in their rooms, or access to simple microwave meals that they purchase to heat in their rooms.</p> <p>Heritage Pointe should revise their current practice to permit individuals to have access to food at any time (regarding meal times) and to choose where to eat.</p>	<p>The site is working on a policy to allow residents to procure “grab and go” meals from the dining room so that they can eat in private if they choose to. The site has implemented this strategy as of 12/31/23.</p>
<p>441.301(c)(4)(vi)(D)</p> <p>Individuals are able to have visitors of their choosing at any time.</p>	<p>There is a provision in the Resident Application that states that “overnight guests cannot be accommodated in Heritage’s multifamily residential buildings.” The application covers many different residences owned by the provider, so it is unclear which one “multifamily residential” refers to.</p> <p>Heritage Pointe should revise their current practice to permit individuals to have visitors at any time, including through the revision of language in the Resident Application.</p>	<p>Specific issues noted at Heritage Pointe Huntington, in addition to the general themes noted above, include not allowing overnight guests to visit. In order to come into compliance with the Settings Rule, the site will be modifying their policies to allow for overnight guests</p> <p>This policy has been edited to be in compliance with the rule as of 12/31/23.</p>
<p>441.301(c)(4)(vi)(F)</p> <p>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>	<p>During the review of the provider plans, it was noted that plans are primarily focused on medical care and did not include information about the person’s needs or wants. The provider does not have the actual PCSPs. The state is aware of this issue and is working on correction/alignment.</p> <p>The state should ensure that the entities responsible for overseeing the development</p>	<p>As noted in the systemic findings, the State is currently working with several experts as well as the care management team to adapt current processes to better reflect the care managers role to help participants drive the care planning process, and includes all providers in the discussion, specifically the sites in which they live. The Care Management team will begin to use a module in our current participant case management system that is compliant with Settings Rule requirements. This module looks similar to the DDRS form that was</p>

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	<p>and implementation of person-centered service plans are doing so in compliance with regulatory criteria. One function of these plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>Heritage Pointe should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>	<p>identified by CMS during the visit as a good standard to use. As that process is operationalized, policy will be developed and implemented with providers, including training (part three in a three-part series) to sites on how this process will play out in their sites and with their residents. The training will also focus on rights modifications and how the process to modify someone's rights should play out in the "real world" of Assisted Living communities. In addition to training sites on the proper use of person-centered service plans, we will also train our care management team on the new policy and process that will be developed. Theory and operational training on this policy and process will be provided for this team.</p> <p>The Division of Aging has confirmed that the IT team has worked with the Care Management team to implement a module in the current participant case management system that is compliant with settings rule requirements. All solutions were implemented in May 2024.</p>

Additional Provision	Violation Finding Based on Site Visit	State's Response
<p>State Medicaid Director Letter #19-001<sup>2</sup></p> <p>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>	<p>Staff noted that they recently had HCBS training and seemed to convey some of the general principles of the criteria (treating people with respect, that residents have control over their lives, and that the setting is their home). However, a deeper understanding of the criteria to fully and appropriately implement it into daily practices is missing.</p> <p>Heritage Pointe should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</p>	<p>The DA not only provided a training module for sites to use with their own teams on the changes the Settings Rule is making to their sites specifically, but will also be conducting a three-part training for all settings to attend. The first part will focus on the “spirit of the Settings Rule” and will include discussion of the core differences between institutional and non-institutional settings. This will include a discussion of access to food at any time and what independence looks like in ALs. This will also include a discussion of general themes that not only CMS, but also our contract evaluators, are seeing during our evaluation of sites’ readiness for the Settings Rule. Part two of the training will focus on community integration, noting how sites need to facilitate residents’ full access to the broader community. Part three will focus on person-centered service plans and rights restrictions/modifications of the plans. The DA is currently researching both financial and education CEU credit options to encourage full attendance at these trainings for all sites. All training will be broken into two groups: trainings intended for direct service workers and trainings intended for executive/administrative staff members.</p> <p>The three-part training was conducted in early 2023 and lives on the Division of Aging’s website currently, where it is accessible to anyone who wishes to view it.</p>

**Christian Care Retirement Community - Assisted Living**

Regulation Citation	Violation Finding Based on Site Visit	State's Response
<p>441.301(c)(4)(i)</p> <p>The setting is integrated in and supports full access of individuals</p>	<p>Staff indicated that residents can go out and have access to local public transportation (WOW bus) that they can call to schedule transportation, but it is not available on</p>	<p>As noted in the systemic findings, the DA is working with each individual site to discuss what the expectations are in the Settings Rule as it pertains to community integration, specifically that it is more than</p>

<sup>2</sup> [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\)](https://www.medicicaid.gov); see question 10

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<p>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>weekends. It runs Monday-Friday 6 a.m. – 7 p.m. Staff also noted that the AL has a weekly outing for residents, some residents still drive, and some of the residents of the duplexes across the street will come and pick up friends who live in the AL to go out. One resident interviewed said they call the local transport to go to Walmart or Dollar General on their own, but wished the bus was at least available on Saturdays. However, the activities schedule posted for the week listed almost all in-house activities, including religious services available on television. If people belong to a local church, they would need to arrange their own transportation. The activities schedule listed the weekly outing as “Van Ride: Berne” (a nearby town). A schedule, flyer, or other posting of outside events to educate residents was not observed. The emphasis seems to be more on in-house activities and reverse integration (bringing community resources into the setting). The burden seemed to be on the residents to figure out how to get out in the community, rather than the facility assisting residents to do so.</p> <p>Christian Care Retirement Community must ensure their model of service delivery aligns with the regulatory criteria to support participants’ full access to the greater community. Additionally, the setting should not rely on reverse integration activities to bring the community into the setting. Establishing partnerships with community resources and leveraging existing community transportation options, including options available on weekends, should be explored.</p>	<p>“field trips” into the community. The DA is also working on a training (will be part two of a three-part series) that will be offered to all providers on the intent of community integration as well as best practices for implementing it in AL communities. The training will incorporate not only feedback from the CMS site visit, but also information from webinars that CMS has posted to its website, a webinar that DA contractors attended hosted by Advancing States, and a webinar hosted by the Association of Direct Service Professionals. Staff training on community integration will be built into new staff orientation as well as annual staff trainings provided by each facility. Further, ongoing compliance monitoring will take place every three years with each site subject to the Settings Rule through a recertification process. This recertification process will include robust interview questions to both staff and residents of Assisted Living communities to measure the level of community integration happening at each community.</p> <p>The three-part training was conducted in early 2023 and lives on the Division of Aging’s website currently, where it is accessible to anyone who wishes to view it.</p>



Regulation Citation	Violation Finding Based on Site Visit	State's Response
<p>441.301(c)(4)(iv)</p> <p>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>As noted above, the activities schedule focuses largely on in-house activities and less on going out into the community. While residents have access to a form of local transportation and use it, it is only available on weekdays. If residents do not have family or friends to provide transportation, it appears they are not able to go out on weekends, limiting those activities and with whom residents can interact.</p> <p>Christian Care Retirement Community must ensure their model of service delivery aligns with the regulatory criteria to support participants' autonomy in making choices about daily activities.</p>	<p>The DA is creating a training (will be included in part one of a three-part educational series) to discuss the Settings Rule implementation and how sites should be integrating the policies included in the Rule in their day-to-day practices. The training will include case studies and a "day in the life" of a resident living with all the rights the Settings Rule affords. Ongoing compliance monitoring will take place with each site subject to the Settings Rule through a recertification process every three years. Additionally, as the State improves its person-centered service planning process, more details for each individual on what they require to optimize initiative, autonomy, and independence will come to light and be able to be explored by the care managers, settings, and other providers. Staff training on optimization of initiative, autonomy, and independence will be built into new staff orientation as well as annual staff trainings provided by each facility.</p> <p>The three-part training was conducted in early 2023 and lives on the Division of Aging's website currently, where it is accessible to anyone who wishes to view it.</p>
<p>441.301(c)(4)(vi)(A)</p> <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency</p>	<p>The lease/residential agreement did not have the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. It also did not address the appeals process. The State Division of Aging (DA) is aware of this issue and is working with the provider to remediate this. DA has their General Counsel reviewing all residency agreements/leases for assisted living facilities providing HCBS to see where revisions are needed to meet regulatory criteria.</p>	<p>The DA is currently reviewing all leases/residency agreements. As DA contractors work with the sites to get the leases into compliance with the Rule, DA's General Council is reviewing all final leases before residents re-sign them to ensure full compliance.</p> <p>All leases have been reviewed by general counsel and are compliant with the rule as of 12/31/23.</p>

Regulation Citation	Violation Finding Based on Site Visit	State's Response
<p>agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>The state should continue their efforts with their General Counsel to ensure that all leases/residency agreements across settings meet the requirements of the HCBS regulation.</p> <p>Christian Care Retirement Community should revise the existing lease agreements to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law.</p>	
<p>42 CFR 441.301(c)(4)(vi)(C)</p> <p>Individuals have the freedom to control their own schedules and activities, and have access to food at any time.</p>	<p>It was not clear from participant or staff interviews that residents could choose when and what to eat. The posted menu did not indicate how a resident could request an alternate meal. It was observed in one resident's room that they had snacks available to them that they purchased.</p> <p>Christian Care Retirement Community should revise their current practice to ensure that residents have options in meal choices and flexibility in mealtimes.</p>	<p>Specific issues noted at Christian Care include lack of clarity around how residents could request alternate meals from the posted menu. After discussion with Christian Care, it was decided that they will implement resident training on how to request alternate meals from their "always available menu" for residents who do not prefer to eat the entrée special of the day. This training will include enhanced signage in the dining room as well as a notice going out to each resident in the form of a letter notifying them of what the process to request an alternate meal from the dining room is.</p> <p>A state contractor reached out to the site on 3/14/24 to confirm that resident input is being gathered when creating menus. The contractor confirmed that resident council meetings are held every other month at this location and the meals for the coming weeks are discussed at those meetings. Additionally, several a la carte options are always available. If a resident wants something specific, they can request the dining services team to order it for them and that request will be fulfilled.</p>
<p>441.301(c)(4)(vi)(F)</p>	<p>During the review of the PCSPs, it was noted that plans are primarily focused on medical care and did not include information about the</p>	<p>As noted in the systemic findings, the State is currently working with several experts as well as the care management team to adapt current processes to better</p>

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<p>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>	<p>person's needs or wants. The provider does not have the actual PCSPs. The state is aware of this issue and is working on correction/alignment.</p> <p>The state should ensure that the entities responsible for overseeing the development and implementation of person-centered service plans are doing so in compliance with regulatory criteria. One function of these plans is to serve as the basis for documenting any modifications of the settings criteria for an individual.</p> <p>Christian Care Retirement Community should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>	<p>reflect the care managers role to help participants drive the care planning process, and includes all providers in the discussion, specifically the sites in which they live. The Care Management team will begin to use a module in our current participant case management system that is compliant with Settings Rule requirements. This module looks similar to the DDRS form that was identified by CMS during the visit as a good standard to use. As that process is operationalized, policy will be developed and implemented with providers, including training (part three in a three-part series) to sites on how this process will play out in their sites and with their residents. The training will also focus on rights modifications and how the process to modify someone's rights should play out in the "real world" of Assisted Living communities. In addition to training sites on the proper use of person-centered service plans, we will also train our care management team on the new policy and process that will be developed. Theory and operational training on this policy and process will be provided for this team.</p> <p>The Division of Aging has confirmed that the IT team has worked with the Care Management team to implement a module in the current participant case management system that is compliant with settings rule requirements. All solutions were implemented in May 2024.</p>

Additional Provision	Violation Finding Based on Site Visit	State's Response
<p>State Medicaid Director Letter #19-001<sup>3</sup></p> <p>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>	<p>Staff noted that they recently utilized a training created by the state's DA to train their staff on the HCBS rule. Staff noted the training was fairly recent; the setting and staff needs additional training to ensure thorough understanding of HCBS criteria to implement properly and fully.</p> <p>Christian Care Retirement Community should ensure all employees have consistent and reinforced training on the HCBS regulatory criteria.</p>	<p>The DA not only provided a training module for sites to use with their own teams on the changes the Settings Rule is making to their sites specifically, but will also be conducting a three-part training for all settings to attend. The first part will focus on the "spirit of the Settings Rule" and will include discussion of the core differences between institutional and non-institutional settings. This will include a discussion of access to food at any time and what independence looks like in ALs. This will also include a discussion of general themes that not only CMS, but also our contract evaluators, are seeing during our evaluation of sites' readiness for the Settings Rule. Part two of the training will focus on community integration, noting how sites need to facilitate residents' full access to the broader community. Part three will focus on person-centered service plans and rights restrictions/modifications of the plans. The DA is currently researching both financial and education CEU credit options to encourage full attendance at these trainings for all sites. All training will be broken into two groups: trainings intended for direct service workers and trainings intended for executive/administrative staff members.</p> <p>The three-part training was conducted in early 2023 and lives on the Division of Aging's website currently, where it is accessible to anyone who wishes to view it.</p>

**Noble, Inc. – Community Habilitation (non-residential) setting**

The site visit team found this setting to be compliant with the regulatory criteria. There was one participant who was capable of working, and it is suggested the provider and coach could explore employment options with that individual. Additionally, the provider recently implemented an online training on HCBS settings criteria that they had their employees watch and document their receipt of. The provider is encouraged to make sure this is part of the new hire training and make it an annual training.

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

## The Village of Merici – Intentional Community (Non-residential and Residential)

The site visit team visited this site at the request of the state. The state reviewed this site for non-residential services only. It did not deem the residential portion of the settings as provider-owned or controlled based on criteria the state established. The criteria, per the state staff member present, is the setting must not provide daily residential habilitation services or provide more than 35 hours per week of hourly residential habilitation. The provider, Village of Merici, indicated that “they” do not hold the lease nor manage the residential setting. The provider did share documentation that “Village of Merici” is a non-profit waiver provider and serves “approximately 85 individuals within the local Indianapolis community.” The waiver services they provide include community habilitation, participant assistance & care (PAC), and residential habilitation and support, along with other services, through two waivers. This documentation also indicates that the apartments are called “Merici Village Apartments.” Per the documentation, “Merici Village Apartments G.P. (MVA) are a for-profit general partnership owned by Merchants Affordable housing and Regions Bank; Village of Merici is not part of that ownership group. Village of Merici, Inc. provides support to the tenants via a tenant investment plan per the tax credit application. Tenants are NOT required to select Village of Merici as their service provider for waiver services if they have waiver services (not required for residency).”

While the state reviewed this site for non-residential services only, the site visit team was shown this site as if it were a residential setting. All documentation related to participants were from the people who lived there. There were no plans from participants who did not live there but had Village of Merici as their waiver provider. The team did not meet any waiver participants who use Village of Merici as their waiver provider but don’t live at Merici Village Apartments.

While the provider, Village of Merici, stated they don’t hold the lease or take rent, the documentation in the residents’ binders provided showed that the residents had to apply and be approved to live there, and the application and letterhead had “Village of Merici” on it (not Merici Village Apartments). The application also has a place on the last page indicating that Village of Merici gives a final recommendation for an applicant to live there. The connection between Village of Merici (Medicaid Waiver provider) and Merici Village Apartments GP is unclear. Regardless of which organization holds the lease, it appears to be at least a provider-controlled residential setting and should be reviewed as such to determine compliance with all regulatory criteria.

The residents interviewed seemed to live very independently and as part of their community. CMS does not therefore view this as a presumptively institutional setting.

### State Response:

- BDDS defines provider owned or controlled settings to include those residential settings that are owned by a provider or in those residential settings in which individuals, who are not living in their family home, and utilize Residential Habilitation and Support – Level Two, Residential Habilitation and Support - Daily (RHS Daily), or Structured Family Caregiving.
- HCBS questions are addressed and recorded in the Monitoring Checklist as well as the PCISP. For those settings currently defined as provider owned or controlled, a systemic verification process has been embedded within the PCISP to ensure ongoing monitoring of HCBS compliance.
- As CMS noted, planned communities such as Merici Village Apartments serving individuals that do not fall within the current definition

should be designated as a provider-controlled setting and assessed as such. As a remediation strategy, DDRS will work with stakeholders who have lived experience to expand the definition of provider owned or controlled residential settings to ensure all individuals residing in such settings, regardless of service type, are properly designated and assessed to confirm compliance with the settings criteria. This process will be completed by March 17, 2024 as noted in the Settings Rule CAP Request.

- BDS conducted several meetings with stakeholders who have lived experience to expand the definition of provider owned or controlled residential settings to ensure all individuals residing in such settings, regardless of service type, are properly designated and assessed to confirm compliance with the settings criteria. The revised definition captures those residential settings that would be inclusive of provider controlled. The revised definition is below:

“Provider-owned or provider-controlled residential setting” or “POCOS” means:

- a residential setting that is owned, co-owned, leased, or rented by a provider of home- and community-based services;
- a residential setting in which individuals who are not living in their family home and utilize:
  - Residential Habilitation and Support – Level Two;
  - Residential Habilitation and Support Daily; or
  - Structured Family Caregiving;
- A residential setting that is owned or co-owned by a provider of home- and community-based services who is paid to provide a variety of services that are bundled into a single rate at that location;
- A setting in which there are three (3) or more adjacent units, apartments, or houses that are occupied by or designated for individuals receiving home- and community-based services from the same home- and community-based provider; or
- An individual’s representative payee or guardian is a non-family member and works for a home- and community-based residential services provider who is providing services to the individual.

BDS has outlined a projected date of the 4th quarter of 2024 to apply the revised POCO definition. System updates as well as education of case managers, providers, and individuals will need to take place prior to full implementation. This revised definition will ensure all Provider Owned or Controlled residential settings are appropriately identified within the system to provide the oversight needed to achieve and maintain compliance.

April 2024 response: Individuals utilizing RHS Level 1 are presumed to be residing within the family home and therefore were not added to the bulleted category. The additional categories within the definition will capture any individual utilizing RHS level 1 residing outside the family home in a provider owned or controlled setting.

May 2024 response: It is presumed that those utilizing RHS Level 1 reside in the family home due to the use of minimal staffing hours requested on an individual’s plan indicating their use of other natural supports. BDS has developed a report that can pull all individuals demographic details by waiver including individual Algo scores, current living arrangements, and POCO classifications to confirm the appropriate designation has been noted for each residential setting.

The state utilizes an individual demographic data report to identify individual’s residential living situations. The data pull verifies the individual’s living arrangement by designating if the setting the individual resides in is a family home or a provider owned or controlled



setting and is not determined by the number of hours received for a service. This report can be pulled at any time to verify the correct residential designation has been recorded.

This does not omit a one setting situation from being considered as provider owned or controlled. Meeting the criteria in any one of the above bulleted categories would require designation of a POCO.