

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

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August 26, 2024

Heather Petermann, Division Director  
South Dakota Department of Social Services,  
700 Governors Drive, Kniep Building  
Pierre, SD 57501-2291

Dear Director Petermann:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from May 13-17, 2024. CMS visited several settings in South Dakota that were recommended by advocates and the state as benefiting from a site visit, including settings identified by the state and/or stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5). CMS also met with state officials, service and supports coordinators, people receiving Medicaid home and community-based services (HCBS) and service providers to hear directly about South Dakota's strategy for implementing the regulatory criteria defining a home and community-based setting and how that strategy is carried out among the entities in the HCBS system.

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

- **Community Integration:** There is no or limited integration into the community. Assisted living settings rely heavily on group activities with limited opportunities for individuals to do their own activities. Lack of staff and transportation present barriers to individuals' community integration opportunities. The site visit team noted an opportunity for the state to introduce a non-medical transportation service and communicate to individuals and case managers the availability of the existing Adult Companion Service to support individuals in accessing the broader community. The state will need to consider how to develop and promote options for community integration, including access to transportation to facilitate these options.
- **Setting Selection Including an Option for a Non-Disability Specific Setting:** The team noted the state's reliance on provider owned or controlled, facility-based settings, including reliance on assisted living settings as non-disability specific settings in lieu of developing sufficient non-congregate non-disability settings. Additionally, there is a lack of providers in general, and day services providers specifically in the state, especially in the more rural areas, that are available to provide not only day programming, but more importantly integration into the community. Assisted living providers noted lack of day services as a reason individuals were home during the day. The state should consider developing and promoting options for community-integrated activities including identifying each person's preferred community integration activity through the person-centered planning process and leveraging community services to support community integration. The state will need to consider how to develop and promote options for non-disability specific settings.
- **Leases/Residency Agreements:** There is no due process or appeal rights in many of the leases/residency agreements and there are no clear protections against eviction. There are concerns with providers discharging participants from services as also noted in stakeholder calls prior to the site visit. The state will need to ensure that providers of HCBS comply with this regulatory criterion by having a legally enforceable agreement with each individual that either comports with landlord/tenant laws or provides comparable protections on evictions and appeals.
- **Modifications to the Additional Conditions of the HCBS Settings Rule:** Provider documentation to support modifications/restrictions was not available, nor provided to case managers. Service plans contained a specific section for modifications to additional conditions of the settings rule but was not used. The team saw behavioral support plans that placed restrictions on individuals and/or applied modifications that were not addressed in the service plans and did not include the requirements of the HCBS Settings Rule for documenting modifications. The state will need to work with case managers and providers to ensure that modifications to the settings criteria are applied based on an individual's specific assessed need, documented in the person-centered service plan, and comply with the regulatory documentation requirements.

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

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

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

CMS requests that the state provide a written response providing updated information describing how the state will remediate both the process for developing and implementing the person-centered service plans and the issues identified in individual settings to ensure compliance with all of the settings criteria. CMS also requests a written response on how the state will apply this feedback to the ongoing monitoring of person-centered planning functions and settings in the HCBS delivery system as noted above. CMS requests this information be submitted no later than September 26, 2024.

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

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

Sincerely,

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

Enclosure

**CMS Site Visit - South Dakota  
Summary Review by Setting  
Visit Dates: May 13-17, 2024**

**Site Visit Team:**

CMS Representatives: Anthony Borges Nazari, Shawn Zimmerman. Michele MacKenzie participated on the virtual meetings with case managers and the state exit meeting.

ACL Representative: Louise Ryan and Nancy Thaler participated on the virtual meetings with case managers and the state exit meeting.

New Editions: Devon Mayer, Amy Coey, Vicky Wheeler

**Introduction:**

South Dakota has four Medicaid 1915(c) waivers managed by the Departments of Social Services and Human Services. The Community, Hope, Opportunity, Independence, Careers, Empowerment, Success (CHOICES) waiver provides home and community-based services (HCBS) to individuals with intellectual/developmental disabilities and is operated by the Department of Human Services, Division of Developmental Disabilities (DDD). The Home and Community-Based Options and Person Centered Excellence (HOPE) waiver serves individuals who are aging and/or have disabilities and is operated by the Division of Long Term Services and Supports (LTSS) within the Department of Human Services. The site visit team visited the following types of settings where HCBS recipients receive services:

- Settings providing services under the CHOICES waiver: day services, group home, and a supervised living setting.
- Settings providing services under the HOPE waiver: two assisted living facilities and a community living home.

One setting, an assisted living facility, was identified by the state as presumptively institutional and submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review. The State Long Term Care Ombudsman recommended that the site visit team visit an assisted living facility as well. The state recommended that the site visit team visit two group home settings. The site visit team was scheduled to visit seven HCBS settings in South Dakota; however, one of the settings (Black Hills Works) was identified upon arrival for the visit as not having any individuals who receive HCBS in that setting. The team met with service coordinators and support coordinators, as well as with representatives from the state operating agencies. The site visit team spent time with the DDD case managers who work with individuals served under the DDD waiver, and time with the LTSS case managers who work with individuals served under the LTSS waiver. The team also met with representatives from the State Medicaid Agency and the waiver operating agencies.

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

**Program Strengths:**

South Dakota is rural and large; however, the state, with limited resources, has implemented the Settings Rule statewide even with those inherent challenges. Through the development of comprehensive materials, the state has informed and trained providers about the Settings Rule. The site

visit team also noted that some providers do trainings for individuals who receive waiver services. For those individuals enrolled in DDD waivers, it was noted that service plans contained detailed information about the individuals' wants and needs, and the small support coordination caseloads provide support coordinators with time to meet personally with individuals they serve and monitor their services. The state has an Adult Companion Service, in the HOPE waiver, which supports individuals who need assistance with community integration activity. The site visit team encouraged the state to develop strategies to make more people aware of this service and use it to facilitate additional community integration for individuals.

### **Case Management/Person Centered Planning Discussion Highlights Used to Inform this Report:**

#### **DDD (CHOICES)**

The site visit team met with three contracted case management agencies; Benchmark, RHD, and LifeScape. The caseload for Benchmark case managers is about 35-40 people; RHD is about 20-29 and LifeScape is about 30-34. All three agencies use the same case management platform designed in line with the principles of person-centered planning, to create the service plans.

Case managers in the CHOICES Waiver noted challenges in the system. The biggest challenge is notifications of incident reports. Case managers are notified via phone when incidents occur; however, they are not able to see the details of the records until they are approved in the system after the investigation process is completed. This often results in individuals being evicted due to behavioral health related issues that could have been addressed. Case managers further noted a need for more robust behavioral health services as it's difficult to advocate for individuals when services are not readily available.

Case managers also noted that leases/residency agreements were not always clear and noted a need for standardization for resident protections against eviction and appeal rights.

Finally, case managers indicated they don't always have proper documentation to support restrictions, noting not all case management agencies use the case management platform in the same manner and the case manager has to learn how each agency uses the program.

#### **LTSS (HOPE)**

LTSS case managers are state employees. They have large caseloads; specific examples provided were 102 people (56 HCBS waiver participants), and 93 people (58 HCBS waiver participants). Referrals to LTSS case management are made to Dakota At Home and after assignment, the case manager does a phone call with the individual to determine eligibility of services.

Case managers roles to assist individuals with locating alternative settings and providers when an individual needs/wants to make a change are not clearly defined. Regarding setting selection, LTSS case managers noted it's the responsibility of the family to help find placement in an assisted living facility. The case manager gives families a list of facilities and acts as a resource and families are required to take individuals to facilities to tour/visit. The case managers noted that if they felt individuals were coerced by the guardian or family, they would report their concern to Adult Protective Services. During the care coordination meeting, it was noted there is an expectation among case managers that providers of HCBS assist

with finding new settings for program participants. Although offering the choice of setting selection, including an option for a non-disability specific setting is the responsibility of the case manager, it was noted that this responsibility is placed on providers.

For individuals who do not have family support, case managers authorize the Adult Companion Service and individuals can choose which agency they want to use. The Adult Companion Service may assist individuals if they want to go into the community. However, this service is not broadly known to all individuals enrolled in LTSS waivers, nor is it typically authorized by case managers for individuals if family support is available. The state compels reliance on the person's natural supports rather than assessing for needs and authorizing services, such as the Adult Companion Service which is available to all individuals within the LTSS waivers.

There is a lack of day service providers in the state; especially in rural areas. This impacts the ability of case manager to authorize these services for individuals.

Through the review of service plans it was noted that there was a lack of overall detail in the service plans for those enrolled in LTSS waivers.

In the case management platform, there was a specific section for modifications to additional conditions, but it was not used. The team saw behavioral support plans that placed restrictions on individuals that were not addressed in the service plans and did not comply with the documentation requirements of the HCBS Settings Rule.

### **Systemic Findings:**

#### **Community Integration:**

Individuals experience no or very limited integration into the community. Assisted living settings rely heavily on group activities with limited opportunities for individuals to do their own activities. Lack of adequate of staff and transportation present barriers to individuals in accessing community integration. The site visit team noted an opportunity for the state to introduce a non-medical transportation service and communicate to individuals and case managers the availability of the existing Adult Companion Service to support individuals in accessing the broader community. The state will need to consider how to develop and promote options for community integration, including access to transportation.

#### **Setting Selection Including an Option for a Non-Disability Specific Setting:**

The team noted the state's reliance on provider owned or controlled, facility-based settings, including reliance on assisted living settings as non-disability specific settings in lieu of developing sufficient non-congregate non-disability settings. Additionally, there is a lack of providers, including day services providers, in the state, especially in the more rural areas, that are available to provide not only day programming, but more importantly integration into the community. Assisted living providers noted lack of day services as a reason individuals were home during the day. The state should consider developing and promoting options for community-integrated activities including identifying each person's preferred community integration activity through the person-centered planning process and leveraging community services to support community integration. The state will need to consider how to develop and promote options for non-disability specific settings.

**Leases/Residency Agreements:**

There is no due process or appeal rights in many of the leases/residency agreements and there are no clear protections against eviction. There are concerns with providers discharging participants from services as also noted in stakeholder calls prior to the site visit.

**Modifications to the Additional Conditions of the HCBS Settings Rule:**

Provider documentation to support modifications/restrictions was not available, nor provided to case managers. Service plans contained a specific section for modifications to additional conditions of the settings rule but was not used. The team saw behavioral support plans that placed restrictions on individuals and/or applied modifications that were not addressed in the service plans and did not include the requirements of the HCBS Settings Rule including the person-centered planning regulations.

**Summary of Findings:**

Although a distinct review of each setting is included in this report, the table below summarizes the findings for the entirety of the visit and identifies systemic issues noted through the review. In addition to remediating settings specific to the findings in this report, states should also be sure to remediate systemically for all findings identified in this chart.

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.	DakotAbilities, The Victorian, LifeScape, Avera Brady.
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction	DakotAbilities, The Victorian, Avera Brady, Living Well Community Home



Regulation Citation	Regulation Language	Setting Name
	processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	
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.	DakotAbilities, The Victorian, LifeScape

**DakotAbilities, Group Home (CHOICES Waiver) – Visit May 13, 2024**

**Facility Description:**

Located in Sioux Falls, SD, the setting serves 15 HCBS beneficiaries; 13 individuals have Benchmark case managers and 2 have LifeScape case managers. All individuals in the home are HCBS beneficiaries. The setting provider also operates a day services setting where most of the residents attend. The administration noted individuals could choose other day services providers, but none currently do. Service plans reviewed were developed by the case managers. The setting has all private rooms with four communal bathrooms located in the hallway. All the bathrooms had locks on the doors, with the exception of the newly remodeled one. The provider noted the locks will be installed soon. The provider owns the building, but their goal is to relocate as the setting is in an industrial area and looks large and institutional rather than like a home. The intention is to buy or build a duplex or duplexes that can accommodate the individuals currently residing in this setting.

**Site Visit Review Description:**

The team was met by state staff and setting staff. The team spoke with administrative staff and reviewed service plans and lease/residency agreements. The team received a tour of the setting and spoke with four individuals receiving services.

Individuals can manage their personal resources. One person puts money on a debit card to spend and keeps it in the safe in the office.

The provider shared that the front door is unlocked, however, the automatic door opener was not working on the day the team visited. People need to be buzzed in to enter through the back door. One individual has a remote to open the door automatically. There is a sensor on the front door that beeps when it is open, however there is no delayed egress. Individuals can come and go as they please, they are not required to be accompanied by staff.

Individuals choose their providers, and the facility will take them to their appointments. There is no smoking in the setting, but individuals can smoke outside if they choose. Alcohol is permitted, but it is kept in the medication room for safety reasons. Individuals have private rooms, there are locks on the bedroom doors and individuals have keys. Staff knock on the door before entering. People can and do have relationships and can have privacy in their rooms. The provider has a roommate choice document that individuals would sign if they wanted one. Individuals can decorate and furnish their living unit how they want. There is a menu that the provider sets at the organization level, and food is prepared from that menu. There are other items available if individuals want something different. There is also a pantry that is stocked and available for everyone and individuals can eat where they choose.. Visitors are welcome at any time and overnight guests are permitted, but the staff said that doesn't happen.

The setting was accessible in the shared spaces, living units, and bathrooms, as well as the entrance areas. Setting staff were trained on the HCBS Settings Rule.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<p>No individuals are employed in the community and there was no evidence through interview or service plan review that individuals were offered opportunities to seek employment or work in competitive integrated settings.</p> <p>DakotAbilities should ensure that individuals are informed of their choices for competitive, integrated employment.</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>Two individuals interviewed indicated they don't want to live at the facility; they would prefer a non-disability specific setting such as an apartment or house. They have resided together many years and were moved to this facility because they lost their previous housing, and other options were not available to them. There was no indication in these individuals' service plans about options for settings provided, including an option for 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>
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	The newly remodeled bathroom does not have a lock on the door.

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>DakotAbilities 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>
441.301(c)(4)(vi)(A)	<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>No due process or right to appeal eviction was included in the residency agreement. The agreement states that when Community Support Provider Services (i.e., HCBS waiver services) are terminated the lease is void.</p> <p>DakotAbilities must ensure that a lease, residency or other written agreement is in place for each individual and that the agreement provides protections from evictions and appeals processes that are comparable to those in the jurisdiction's landlord tenant laws.</p>
441.301(c)(4)(vi)(F)	<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>In the case management platform, there was a specific section for modifications to additional conditions of the regulatory criteria. The site visit team did not see it used but did see behavioral support plans that placed restrictions on individuals that are not addressed in the service plan.</p> <p>The "other rules and regulations" terms of the service agreement prohibit "boisterous" and "objectionable" behavior, implying restrictions without defining either term or assessing individually for the restriction.</p> <p>The state Medicaid Agency, and the entity that ensures the development of the person-centered service plan should ensure that person-centered</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		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 incorporated into the plan and DakotAbilities must adhere to the plan.

**The Victorian Assisted Living, Assisted Living (HOPE Waiver) – Visit May 15, 2024**

**Facility Description:**

Located in Rapid City, SD. The assisted living is licensed for 48 people and there are currently 34 total residents, 15 are enrolled in Medicaid HCBS. The building is a two-story building at the top of a steep hill. Upon entering there is a large open area with a fireplace, pool table, couches, and a television. Each unit has one-bedroom and half bath. There is a shower room in each hall.

**Site Visit Review Description:**

The team was met by state staff and started the visit with a discussion with administrative staff. The team reviewed service plans in one of the unoccupied rooms. The team spoke individually with two staff (a medication technician and the dietary manager) and got a tour of the setting. The team spoke with two individuals receiving services. The front doors remain unlocked at all times and people can come and go as they please. All unit doors have locks and individuals have keys. The locks were installed one week before the site visit. The bathrooms in the rooms also have a keyless lock that’s on the inside of the bathroom door. Staff knock and request permission before entering an individual’s private unit. All units are single rooms except for married couples. There is a mother and daughter who share a two-bedroom unit and there are some two-bedrooms that are private pay. There is a meal menu, but alternatives are available. There is a meal schedule and people can eat at other times or locations such as their room if they choose. There is an “always menu” as well and individuals can keep snacks in their rooms. The setting has a dietician, and they meet with residents to get feedback and requests for menu items. There is a kitchen on the 2nd floor that individuals may use if desired with staff supervision or if the setting assesses them as capable of doing so independently. Individuals can have visitors at any time and overnight guests are allowed. There is an upstairs apartment that guests can use as well. Individuals are able to decorate their unit to their liking. The setting was physically accessible. The setting had a binder on the HCBS Settings Rule. Staff were trained recently, and staff interviewed were aware of the rule.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in	There is very limited integration into the community. There are a lot of group activities in-house but limited opportunities for individuals to do their own activities. Individuals interviewed indicated they would like to get out

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	<p>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>in the community but have no way to do so. There are religious services at the setting and people can also attend services outside the setting. One person interviewed said they attend religious services outside the setting because other church members volunteer to provide transportation to and from the services. The facility van is used for medical appointments and had seats removed to transport meals between buildings so it can only accommodate three people. There are no outings in the community. The provider said they can help arrange transportation for individuals but most of them like to stay at the setting. There are taxi numbers posted, and some residents can still drive and have their own car. There is a service called Dial-a-Ride that individuals can use if they have funds to pay for it. As noted below, individuals at this setting typically do not have funds on hand available to pay for transportation. As such, there is only one person who uses the service.</p> <p>The setting is on a steep hill and not really walkable without the assistance of staff.</p> <p>No one works or volunteers outside the setting. One person volunteers at the setting by watering the plants.</p> <p>The setting does not manage money for residents. Either the residents manage their own money, or they have a Power of Attorney (POA) to do so. Most individuals were noted as having the same POA. The setting recommends residents keep no more than \$50 cash on hand or have a safe in the room. However, the Resident Rights document states that individuals should have no more than \$25 on hand for spending. Individuals noted being told not to bring jewelry to the setting or put it in a safe. Individuals indicated they did not have money on hand and did not know they could have a safe.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>The Victorian Assisted 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. The Victorian Assisted Living should develop policies, practices and resources to ensure that individuals have full access to the greater community. Additionally, the setting should ensure that individuals are informed of their choices for competitive, integrated employment, and the ability to control their finances and choose a community financial institution.</p>
441.301(c)(4)(ii)	<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>The provider said individuals hear about their setting by word of mouth or marketing they have done, and it is up to families to find a place to live. POAs were also noted as entities that refer individuals to this setting for placement. Case managers are state employees for LTSS and give families a list of resources for them to find a setting and do not provide an option for a non-disability specific setting. A resident interviewed was unaware of having a case manager.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iv)	<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>The shower schedule for the shared showers is based on staff availability, and people are scheduled for two showers per week. People can ask to change the schedule.</p> <p>The Victorian Assisted Living must ensure their model of service delivery aligns with the regulatory criteria to</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		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.
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<p>There was no eviction protections or right to appeal noted in the residency agreement.</p> <p>The Victorian Assisted Living should revise the existing lease agreement to ensure it is a legally enforceable agreement that provides comparable appeal rights and protections against eviction as those provided under landlord/tenant law.</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>In the case management platform, there was a specific section for modifications to additional conditions of the regulatory criteria. The site visit team did not see it used.</p> <p>The provider has a blanket requirement for individuals to have a doctor's note in order to consume alcohol.</p> <p>The provider has a blanket requirement for bed checks every two hours.</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</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		receiving Medicaid-funded HCBS. The entity responsible for the person-centered service plan should ensure that all modifications for a specific individual are incorporated into the plan and The Victorian Assisted Living must adhere to the plan.

**LifeScape, Day Services (CHOICES Waiver) – Visit May 13, 2024**

**Facility Description:**

Located in Sioux Falls, SD. The setting is in an industrial area and the provider has several buildings at the location. The team visited the day services building, which has a large main room and several smaller rooms. There is a fenced-in area behind the building with some planters and a basketball hoop. There are two bathrooms, with the doors propped open. Sixty-five HCBS beneficiaries are served at this setting. Some staff are shared between LifeScape residential settings and this day services location.

**Site Visit Review Description:**

The site visit team was met by state and provider staff. The team sat in the large room and reviewed service plans, and interviewed administrative and direct support staff, as well as individuals that received services within the setting.

The team reviewed individual service plans (ISPs) developed by Benchmark, a contracted case management organization for the CHOICES waiver. The ISPs developed by Benchmark were detailed and included things that were important to and important for the person such as how a person likes to be assisted, what different reactions mean, how to best communicate, and how someone likes to dress. The LifeScape plans the team reviewed contained basic information, but lacked detail about the person and what is important to them, and how they want care delivered.

As individuals arrive at the setting, they sign up for the activities they are interested in doing for the day. There are morning and afternoon community outings. Individuals are able to give input on activities that interest them, and the staff make the schedule. The staff also review the service plans for individuals’ interests. Staff shared they suggest activities that they think people will like and encourage people to try new things. Sometimes they can add a requested activity on the same day, but other times they have to schedule it for a different day due to transportation and staffing availability. One individual shared they get to pick the activities which include group outings to parks, movies, and restaurants. Staff reported there are four employment specialists that assist individuals with various employment activities including: helping with research, assisting with interviews, and accompanying individuals to jobs in the community. Case managers make referrals and interests are based on the service plan. Individuals have control over their personal resources. One individual who was interviewed had their money on them to spend as they chose. The provider has vans for transportation.

Individuals have access to the entire setting as observed during the site visit, including between rooms and buildings. Staff report that people can go outside alone, they are not required to have staff accompany them.



There is a lunch menu posted, including a la carte options, or food can be brought from home. Individuals can have visitors at any time, and the setting was noted to be accessible in the shared program space as well as the bathrooms and entrance areas.

The staff were trained on the HCBS Settings Rule. The setting shared their training materials which were state, as well as provider-developed. The training was comprehensive. The provider also used a model where the staff trained the individuals and would go over a PowerPoint presentation. Staff training is conducted at hire and annually. The provider also uses the California Tri-Counties Regional Center training videos as a method of training staff.

The site visit team interviewed one participant in the day setting who also receives services from LifeScape Residential. Through the conversation, the individual noted they are required to attend day service five days a week and cannot control their daily schedule. They want a different roommate or want to live alone as they are not compatible with their roommate and the setting has electronic/video monitoring in their living space although they do not want it. The site visit team did not visit the LifeScape residential setting; however, the state must assure the setting referenced by the individual is in compliance with the Settings Rule. Based on the feedback provided by the individual interviewed, the setting has possible challenges related to rights restrictions, regimenting autonomy and independence, setting selection, and choice of roommate.

**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.	As noted through interviews with staff and individuals, outings are always done in groups without the opportunity for individual outings. One individual noted they used to have a job and would like to have a job again but was not currently being supported to attain employment.  LifeScape 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. LifeScape should develop policies, practices and resources to ensure that individuals have full access to the greater community. Additionally, the setting should ensure that individuals are informed of their choices for competitive, integrated employment.

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>One individual indicated their understanding is that there is a state requirement to attend the day setting 5 days a week and people can only stay home if they are sick. The individual noted this is enforced by the residential and day service provider staff. They also noted they prefer not to attend day services every day of the week and would prefer a different schedule but would not be permitted to do so. Staff confirmed individuals can go home early if they are sick, if they live in a staffed residence.</p> <p>LifeScape 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>
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>In the case management platform, there was a specific section for modifications to additional conditions of the regulatory criteria. The site visit team did not see it used but did see behavioral support plans that where restrictions are noted. This was not addressed in the service plan.</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 incorporated into the plan and LifeScape must adhere to the plan.</p>

## Avera Brady, Assisted Living (HOPE Waiver) – Visit May 14, 2024

### Facility Description:

Located in Mitchell, SD. There are six individuals who receive HCBS in this assisted living setting that serves a total of 24 people. The assisted living facility is attached to a skilled nursing facility. On a separate wing of the building, there are independent living services. Staff are not shared between the nursing facility and the assisted living facility.

### Site Visit Review Description:

The team met in a conference room with staff and state staff and reviewed plans and other accompanying documents. The team interviewed staff and individuals. Through the course of conversation with the state staff and provider, it was noted that there is an opportunity for developing a non-medical transportation service, as well as increasing provider capacity to include day service opportunities for individuals residing in rural areas. Additionally, for those individuals who need assistance with community integration, it would also be an opportunity for the state to strategize how the Adult Companion Service could be advertised to case managers so that individuals could have the service authorized in their service plans.

The setting has a large, shared area at the entrance of the setting where individuals gather to socialize, listen to musical performers, and participate in group activities. The room has comfortable tables and chairs as well as a pub where individuals can have alcoholic drinks. Individuals all have their own doctors and dentists in the community. The facility van is used for medical appointments. All unit doors have locks, individuals have keys and only staff on duty have keys. Individuals also have keys to their individual mailboxes. All units are single, unless individuals choose to share the unit with a spouse/partner. Rooms can be furnished and decorated by individuals. Most meals are prepared in the nursing facility and brought over to the assisted living. Food is available 24/7. There are alternate meals each meal and there is an “always available” menu. Individuals can come and go as they please. The provider put stars on the walls to show a route through the facility for an individual to visit her husband in the nursing facility. Visitors are allowed at any time and overnight guests are welcome. There are empty units for guests to use at their discretion. In Therap, there was a specific section for modifications to the additional conditions of the settings rule. However, the site visit team did not see it used and also did not note any modifications being implemented in practice. The setting is accessible as observed during the site visit staff have been trained using the state-approved PowerPoint. They are trained at hire and annually.

### 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.	There is very limited integration into the community. There are a lot of group activities but limited opportunities for individuals to do their own activities. There is no one that works or volunteers. There is no public transportation, and the facility van is used for medical appointments. Individuals can hire Palace Transit, which operates curb to curb public

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>transportation to anyone of any age in Mitchell but is only available at defined times.</p> <p>Avera Brady 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. Avera Brady 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 is no evidence of options of settings offered in the service plan. The state indicated they consider assisted living settings to be non-disability specific settings.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(vi)(A)	<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</p>	<p>There was no protections from eviction or right to appeal noted in the setting's residency agreement.</p> <p>Avera Brady must ensure that a lease, residency or other written agreement is in place for each individual and that the agreement provides protections from evictions and appeals processes that are comparable to those in the jurisdiction's landlord tenant laws.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	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.	

**Living Well Community Home, Community Living Home (HOPE Waiver) – Visit May 14, 2024**

**Facility Description:**

Located in Sioux Falls, SD. This is a shared setting between the individual and provider. The condominium building includes people with and without disabilities. The provider is the owner of the condominium which has two-bedrooms and two-bathrooms providing the individual with a private bedroom and bathroom. The kitchen, dining area, and living room are shared spaces between the individual and provider.

**Site Visit Review Description:**

The site visit team met with the individual, provider, and state staff in the living room of the home, reviewing the service plan, provider policies, and residency agreement, as well as completing conversational interviews to gather information. The individual has a job at a local car dealership that the provider assisted in finding and uses a bike for transportation to and from work. It was noted that the job is only two hours per day and the individual desires more work, so the provider is assisting in securing additional job options locally for the individual. The provider assists the individual with managing finances. The provider bought the individual a cell phone, so he has more independence. He also created a Facebook account for him to reconnect with family. The individual does his own laundry, cooks, and cleans independently. The team noted a respectful relationship between the individual and provider. Grievance information and rights were posted by the front door and the individual was aware of the information and how to access assistance if needed. The individual chose the setting, which was noted in the service plan. The community living model requires the individual to find the setting. If they are not happy with the provider, they would have to move since the provider owns the home. The individual’s bedroom and bathroom have locks and the individual has a key. The individual also has a key to the front door and can come and go as he pleases. The individual can decorate his room, bathroom, and shared space as he desires. The individual has full access to the kitchen when desired and enjoys cooking. The setting is accessible. Prior to the site visit, the provider noted he had participated in HCBS Settings Rule training.

**Findings of Site Visit:**

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or	The individual has a residency agreement with the provider which the individual has signed, but the provider has not signed. The provider has a policy document “Admission, Transfer, and Discharge Policies” that includes appeals information for the individual. However, the appeal information is not included in the residency agreement.

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	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.	Living Well Community Home should revise the existing lease agreement to ensure it is a legally enforceable agreement that provides comparable appeal rights and protections against eviction as those provided under landlord/tenant law.
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	Visiting hours are noted in the residency agreement.  Living Well Community Home should revise the visitor policy and practice to ensure that individuals can have visitors of their choice at any time.

**LifeQuest, Supervised Living (CHOICES Waiver) – Visit May 14, 2024**

**Facility Description:**

Located in Mitchell, SD. Services are provided in scattered apartments throughout a two-story apartment building that is open to the community. The team planned to visit two individuals receiving supervised living services, however, only one was available that day.

**Site Visit Review Description:**

The team met with the provider in one of the apartments the provider uses as an office. The provider staff explained that they serve a number of people in various locations across the city. The provider shared that there are no other providers in town that provide the same services. The provider rents two apartments to use as offices and also manages one apartment with a specialized program for people with Prader-Willi syndrome; the other individuals served in this location rent their own, individual apartments. After speaking with the provider staff and reviewing ISPs, the team met with one individual receiving services in their apartment. The individual gave the team a tour of their home and talked with the team.

Individuals live in their own, private apartments with no roommates in an apartment building that rents to people with and without disabilities. People receiving supported living services manage their own money, pay bills, buy groceries, make meals, do laundry, etc. People can work, attend day services, and/or spend time in the community doing the activities of their choosing. The team spoke with an individual who gets support to grocery shop and receives support to purchase items and prioritize necessary items before buying recreational items but otherwise has control of their resources. The individual has a job in the community several days a week. One person has their own car and drives independently. People can use the bus or get rides from the provider or from family. The team observed staff speaking with people respectfully. The individual the team spoke with would tell staff if they did not like how they were being treated. The provider supports people with the schedules they want. People can decide to stay home from the day program if they do not want to go. The provider offers one weekly community meal and schedules outings, but

people do not have to participate if they do not want to. People have standard leases with the apartment community. The provider is not on the lease and does not impose any restrictions on individuals. Most people live alone and have privacy in their two-bedroom apartments. They can choose to have a roommate if they wish. People have their own keys to their apartments. The provider has a key, but only uses it when people invite them in or in the event of an emergency. The team observed an apartment that was furnished and decorated based on the interests of the individual who lives there. People have control over their own schedules and have access to food at any time. The setting is physically accessible to the individuals living there. The building has two stories, and the provider shared that people with mobility needs can ask for a ground level apartment. Individuals can have visitors at any time. There were no indications that modifications were being implemented during the visit. The provider staff was knowledgeable about the settings criteria and recently did a training for staff and people receiving services.

#### **Findings of Site Visit:**

There were no findings for this setting.

#### **Black Hills Works, Group Home (CHOICES Waiver) – Visit May 15, 2024**

##### **Facility Description:**

This setting is located in Rapid City, SD. The setting is a house on a campus, which the provider refers to as a compound. The house is situated behind the provider transportation area and is not visible from the street.

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

The site visit team was met by the provider and the state staff in the parking lot of the home. It was noted that no Medicaid HCBS are provided on-site to any of the three individuals who reside in the home. There is one individual who is enrolled in HCBS for day services and receives all of those services in the community. The state has no intention of licensing the home as an HCBS setting due to its secluded location. The site visit team explained the purpose of the site visit is to provide feedback on HCBS settings regarding compliance with regulatory criteria, rather than an opportunity for the provider to appeal the state's decision to not recognize the setting as an HCBS setting. One site team member visited with the individual who receives HCBS in the community. The individual indicated they do not want to live at this residence and is the process of finding an apartment where he can live without roommates. The service plan reflected this as well, and the state staff and provider noted the individual intends to move.