

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



Disabled & Elderly Health Programs Group

November 9, 2022

Adaline Stromolo
Commissioner
Department of Vermont Health Access
280 State Drive
Waterbury, VT 05671

Dear Commissioner Stromolo:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) on August 4, 2022. CMS visited Heartbeat Lifesharing, a home and community-based services (HCBS) setting in Vermont that was identified by the stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5). Specifically, stakeholders raised concerns that this setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

CMS appreciates the efforts of the state to prepare for our visit to Vermont. We are asking the state to apply remediation strategies addressing our feedback to the Heartbeat Lifesharing setting. We also note that HCBS settings criteria identified in the report that are followed by an asterisk require the state to go beyond ensuring that the Heartbeat Lifesharing setting has completed necessary actions; specifically, complying with person-centered planning requirements and ensuring individuals have a choice of setting require further direction from the state to, and collaboration with, the entities responsible for overseeing the development and implementation of the person-centered service plans and with the HCBS provider community that is responsible for implementing services and achieving the objectives outlined in the plans.

CMS notes that the state of Vermont did not determine this setting to have the effect of isolating individuals receiving Medicaid HCBS from the greater community of individuals not receiving Medicaid HCBS and did not submit this setting to CMS for a heightened scrutiny review. CMS is not making a formal determination of whether this setting should have been identified as presumptively institutional; rather, the feedback enclosed is provided to the state to identify needed remediation required to ensure compliance of Heartbeat Lifesharing with the settings criteria at 42 CFR § 441.301(c)(4) by March 17, 2023. The state should ensure that remediation strategies addressing this feedback are applied to all similarly situated settings that utilize a similar service delivery model. Finally, the state should ensure application of this feedback into

the overall assessment process of all providers of HCBS in Vermont, to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance.

As described more fully in the attached report, CMS has identified several 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 an individual's needs, preferences, and for residential settings, resources available for room and board.*
- The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
- Individuals are able to have visitors of their choosing at any time.
- Modifications of additional conditions in provider owned and controlled residential settings under 42 CFR 441.301(c)(4)(vi)(A) through (D) must be supported by a specific assessed need and justified in the person-centered service plan.*

Vermont's Statewide Transition Plan (STP), approved on March 3, 2022, describes 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.

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 Heartbeat Lifesharing 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 assessment of settings in the HCBS delivery system as noted above. CMS requests this information be submitted no later than December 9, 2022.

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

Thank you for your continued commitment to the state of Vermont's successful delivery of Medicaid-funded home and community-based services.

Sincerely,

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

Enclosure

Heightened Scrutiny Site Visit - Vermont
Summary Review by Setting
Visit Date: August 4, 2022

Vermont Site Visit Team:

CMS Representative: Ondrea Richardson (attended virtually)

New Editions: Amy Coey and Kelly Eifert

ACL: Nancy Thaler

Vermont: Jennifer Garabedian, Chris O'Neill, and Nicole Marabela

Introduction:

The Site Visit Team visited one setting in Vermont, Heartbeat Lifesharing. The setting is located in the northern region of Vermont, licensed as a Therapeutic Care Residence currently providing Medicaid home and community-based services (HCBS). The setting has 6 houses with 18 licensed beds; only 14 are occupied. Eleven of the 14 people residing at Heartbeat are receiving HCBS. In the table below is a list of regulatory criteria the team determined Heartbeat Lifesharing has not met in order to assure compliance with the HCBS Setting Rule. Details around the criteria are provided later in this report.

Rule Citation	Rule Language
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.
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.

Rule Citation	Rule Language
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
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.
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.
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
42 CFR 441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities, and have access to food at any time.
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time
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.
Additional Provision	Language

Rule Citation	Rule Language
State Medicaid Director Letter #19-001 ¹	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.

Hearbeat Lifesharing – Therapeutic Care Residence

Facility Description:

The setting is in the northern portion of Vermont, about an hour and 20 minutes east of Burlington, and five miles to the closest town of Hardwick. There are fourteen residents, eleven of whom are enrolled in HCBS waivers. The setting is a farmstead affiliated with the Camphill Association of North America. There are six houses on the grounds, with no more than four residents living in any of the homes. Two of the homes are joined together and create a sense of one large home. Each home also has a “householder,” who is paid staff that lives in the house and is the supervising staff of the home. There are also live-in “co-workers” in each home that are paid staff. The householder (and potentially their family), the co-workers and the participants (called “friends”) all live in the homes, all in their own separate bedrooms. The campus also includes the Hall which houses administrative offices, a mixed-use performance/gathering space, a library, a licensed kitchen, and an art studio. There is a woodworking shop on the grounds along with a barn, a greenhouse, and livestock (cows, chickens).

Each home has shared living space that included a living room, basement space to “hang out,” and a large kitchen and eating space. The site visit team saw part of one home with a large kitchen, dining table, and living space on the main floor. This home also had an elevator. The team toured another home, guided by one of the “friends” who lives in that home. This home was essentially two homes joined together. One home had four friends living there in addition to staff; the other had room for two friends, but only one, our tour guide, lived there in addition to staff. The larger home had a large kitchen and dining table, and a living room, all of which are available to all people who live in both homes. The smaller connected home had a kitchen that was smaller but available to all residents in addition to a living room. Both homes had a basement that connected. The smaller home’s basement had a gathering space used for games, puzzles, reading, crafting, or just “hanging out.” There was a separate (connected) space for laundry, and then through another door was the other home’s basement that had a large space for exercise, with equipment available for all residents to use. The top (second) floor housed all the bedrooms. The friend’s room was private and was decorated with her personal belongings including a mural she had someone paint for her on one of the walls. She shares a bathroom with one staff member and that staff member’s child. While bedroom doors were not lockable, the bathroom door was.

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

Site Visit Review Description:

Upon arrival, the team answered COVID screening questions and took a rapid COVID test provided by the setting. The team then provided an overview of the purpose of the visit to select members of Heartbeat: a parent who is also on the setting’s Board, a long-term senior householder staff member (also on the Board), and an administrative office staff member. The team then reviewed person-centered service plans (PCSPs) made available by the provider. The entire team was provided a tour of the setting. The team was able to assure that CMS participated via Zoom in most of the setting tour, only losing Wi-Fi connectivity briefly between homes. The team conducted conversational interviews with one long-term householder staff who also serves on the Board, two direct care staff members, an administrative office staff member, and one participant who receives services at the setting. Seven other participants were away at camp while the team was onsite, limiting the opportunities to speak with participants during the visit. The team also had an informational conversation with a parent who serves on the setting’s Board. State staff were present during interviews, but did not contribute to, or participate in the conversation. One participant provided the team a tour of her home and room. Interviews with administration, staff, and participants covered all settings criteria.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i) and 441.301(c)(4)(iv)	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.	Based on staff and participant reports and review of individual service plans (ISP), engaging in activities outside of the facility is currently limited. Staff noted that prior to the Public Health Emergency (PHE), participants were going into the community 3-4 times a week. Currently, staff stated participants go into the community 2-3 times a week. This is an increase since the pandemic started, but staff noted community outings are still not as often as they were pre-pandemic. Staff noted that if a participant wanted to go to a community event, either as a group or individually, staff would organize it. An interview with the direct support staff described the need “to have a conversation” at the Monday meeting to discuss a participant’s request to go out to the community, which seems to contradict other staff statements. A participant interviewed stated she had the ability to

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	<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>go to places on her own, with staff providing transportation, but most errands were done as a group. The example she provided was if she needed personal items like toiletries, the staff would ask if anyone else in the home wanted or needed to go and then the trip to the store would be made as a group.</p> <p>Participants' records (ISP, annual meeting notes and progress notes) had few references to individual plans for engagement in community activities and little to no documentation of any activity occurring. When plans mention community activities, there is no record of follow through. The residents do not have the same degree of access to resources in the community as individuals not receiving Medicaid HCBS.</p> <p>Documentation later provided by the facility shows a record of requests by participants to go somewhere, the dates they wished to go, and the dates the request was submitted and subsequently approved. Reviewing the dates indicate either poor documentation or inconsistent procedures on "review and approval."</p> <p>It is unclear how opportunities to seek competitive, integrated employment are provided. Overall, the ISP, progress notes, and annual notes do not reference employment. There is no record of job exploration, an employment goal, an employment service, discussions</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>about work experience for those working, including hours and whether the person was interested in a change. Staff stated that 3 participants have jobs in the local community, but only one employment location was named. Staff noted that not all employers were open yet to receive its employees back to work. Service plan documentation for one participant noted she wanted to go back to work for one employer, but if it did not work out, she would consider working for another employer. No details were provided in the plan for the type of work that was available with either employer or what the person’s job would be.</p> <p><i>Heartbeet should be supporting each resident to engage in community activities based on individual interests and needs. The state should ensure that the entities responsible for overseeing the development and implementation of person-centered service plans are exploring individuals’ interest in employment through person centered planning and provide individuals who express an interest in employment a choice of employment providers.</i></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	<p>Review of the service plans does not indicate how setting choice was offered to participants, nor was it documented that it was reviewed at least annually. The residential provider should support the person’s choice.</p> <p>Conversation with one participant indicated that they were able to do a trial run of the setting before ultimately deciding to go back and live</p>

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	<p>individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>there. The parent of a second resident reported that her daughter was not happy about moving there but after 4 days the resident called and said that she “loved it” there and was staying.</p> <p><i>The state should ensure that the entities responsible for overseeing the development and implementation of person-centered service plans offer individuals informed choice of settings and document those choices, including non-disability specific settings, in their person-centered service plans.</i></p>
441.301(c)(4)(iii)	<p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint</p>	<p>One participant shared that she does not have a cell phone but can make calls using the house phone (the team did not verify the location of the house phone and therefore cannot attest to the privacy of the location). However, she is scheduled to make her calls on Sundays. If she wanted or needed to make calls on other days, it would have to be important.</p> <p>Bedroom doors in the home we toured did not have locks. The resident indicated it was for fire safety purposes. It was noted that the state review found that locks on bedrooms doors depended on the home.</p> <p><i>Heartbeet should install locks on the doors and provide residents with access to a telephone and a private space to use the phone as desired.</i></p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
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>The provider has an Admission Agreement which serves as the “legally enforceable agreement.” It does not appear to meet all requirements:</p> <p>Documents reviewed onsite in the participants’ files stated that participants are required to leave the setting 4 weeks every year, including Thanksgiving and Christmas week. Staff indicated that participants could stay if they were unable to leave, but that exception is not included in the agreement. Heartbeet provided the team with a different blank Admissions Agreement after the site visit; this information was absent on that version, too.</p> <p>The Admissions Agreement reviewed onsite in participants’ files included several appendices, one of which was “resident’s rights.” The content is more a list of obligations placed on the residents such as the requirement that everyone work in some capacity on the farm. There is no reference to payment for this work.</p> <p>The Admissions Agreement language is unclear on the responsibilities of the provider regarding eviction/dismissal. One section, “Transfer and Discharge,” notes that the provider will give “A minimum of 30 days’ notice,” but it is not clear that same notice applies in the “Discharge Policies and Procedures” section. The document reviewed onsite indicated residents must contribute through work on the grounds. The document provided after the visit only indicates that</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>people participate in community activities as part of the Heartbeet Lifesharing community.</p> <p><i>Heartbeet should revise the Admissions Agreement to ensure it is a legally enforceable agreement that provides comparable protections against eviction as those provided under landlord/tenant law. The Admissions Agreement and practices should also be revised to remove requirements that individuals must work on the farm and must leave the setting 4 weeks every year.</i></p>
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<p>Bedroom doors in the homes we toured did not have locks on the doors. The resident indicated it was for fire safety purposes. The state's assessment of the setting found that locks on bedrooms doors depended on the home. No modifications or restrictions were noted in any of the participants' plans or related documentation that would justify noncompliance with this regulatory criterion.</p> <p><i>As specified above, Heartbeet should install locks on the unit doors.</i></p>
42 CFR 441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities, and have access to food at any time.	An interview with one staff member indicated that the setting was very scheduled oriented. This assertion seems supported by the interview with a participant who stated she had a specific day for making her phone calls (since she did not own a cell phone) and a specific day for doing her laundry.

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>An interview with direct support staff indicated residents could not access food (snacks) between meals (or staff was unsure if they could). Meals were at set times and served family style, though some staff indicated participants could eat at different times or request different meals other than those planned. Conflicting information makes it unclear if policy and practice align or not. One staff member noted that meals are planned out monthly to allow residents the opportunity to make other plans or request different meals.</p> <p>As noted previously, the ability to control schedules is unclear based on information provided about mealtimes, as is the ability of a person to have planned and spontaneous outings/activities in which they wish to engage.</p> <p>At the time of the visit, all residents on the property and all employees were in one home to eat the mid-day meal. They did not return to their own home but were congregated as a very large group in one home.</p> <p><i>As described above, Heartbeet should ensure access to a telephone as desired, permit activities such as doing laundry and accessing the community as desired while not regimenting these activities. Heartbeet should also ensure consistent access to food at any time.</i></p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time	<p>There was conflicting information from both staff and participants on rules regarding visitors, but in both staff and participant interviews, interviewees noted restrictions on visitors. Participants indicated they need to ask staff permission for overnight visitors. One staff indicated that participants needed to have “conversations” with staff regarding overnight guests before an overnight guest would be permitted. However, other staff stated that participants have access to family and friends at any time. No examples of visits were shared. It is unclear what is happening in practice and what is understood by staff and participants. The document reviewed onsite indicated there are limits on visiting hours. When we asked staff onsite about that, they said that “was more for people who are just checking the place out.” Staff stated that the residents have “access” to family and friends at any time. There is no mention of visitors or visiting hours in the admission agreement that was provided after the visit. That information may have been in an appendix which was not provided.</p> <p><i>Heartbeet should ensure consistency in individuals’ access to visitors of their choosing at any time.</i></p>
441.301(c)(4)(vi)(A) through (D)	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>Plans that were reviewed by the site visit team were scant with regard to information.</p> <p>Bedroom doors in the home we toured did not have locks on the doors. No modifications or restrictions were noted in any of the participants’ plans or related documentation. There were no</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>modifications in the plans to support the lack of free access to a phone or the need to “have a conversation” when a resident requested an overnight visitor or an individual special activity.</p> <p><i>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.</i></p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ²	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>Different staff seemed to have different understandings of the requirements. Staff with more longevity seemed to understand principles of the rule, while staff with a year or less of experience seemed to have less understanding. No one specifically mentioned receiving HCBS training.</p> <p><i>Heartbeet should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</i></p>

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