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# 2023-2024 HCBS Annual Review Process Updates

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- **HCBS Program Evaluators Meeting News – 11/9/2023**
- **HCBS Reviews Underway/Upcoming**
- **CMS California Heightened Scrutiny Report – Trends that will impact QA, Vendors and Case Management**

# Agenda

## The HCBS Journey So Far...

Review of activities to date including the 2022-2023 Validation and Remediation Process

## Accessing California's Heightened Scrutiny Report

Where to find it, how to read it  
Links to other important documents

## HCBS Program Evaluators Meeting

Review of information provided by DDS during the 11/9/2023 meeting  
Additional planned meetings with DDS  
Directives and Trainings

## Heightened Scrutiny

Trends  
Impacts for VMRC  
Impacts for Vendors

# Introduction

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As we move into our first year after the compliance deadline of March 17<sup>th</sup>, 2023 our processes for obtaining, maintaining and monitoring compliance with **The Final Settings Rule** continues to evolve. DDS presented information related to ongoing compliance monitoring for our vendor community during a meeting on November 9<sup>th</sup>, 2023. They also shared that the heightened scrutiny report based on visits completed by CMS in June of 2023 to a number of vendored settings had been posted. This report informs practices for our vendors, case management staff and quality assurance departments across all regional centers. This presentation will provide this important information for VMRC staff and our vendor community on what to expect moving forward.



A black and white photograph of a young plant seedling with two large, smooth leaves emerging from a mound of dark, textured soil. The seedling is positioned on the left side of the frame. The background is dark and out of focus.

**The Journey  
So far...**

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# 2022-2023 HCBS Assessment Process

- Provided ongoing training and support to our vendor community regarding the validation and remediation process
- Vendors worked hard to submit documentation to support compliance
- Desk reviews were completed for all vendors with day program, group employment program or residential service codes whose programs opened prior to March 2021
- VMRC's vendor community achieved compliance through desk review the week prior to final implementation
- The State of California and many other states apply to Centers for Medicaid Services (CMS) for a Corrective Action Plan (CAP) for some regulations due to the ongoing workforce shortage
- September 28<sup>th</sup>, 2023 California received approval of their CAP which details ongoing HCBS assessments to be completed in person, lays out milestones for that work and includes a deadline for completion of December 30<sup>th</sup>, 2024. <https://www.medicaid.gov/sites/default/files/2023-09/ca-appvd-cap.pdf>
- Regional Centers are informed of the approval of the CAP and planning for implementation begins

## HCBS Program Evaluators Meeting with DDS 11/9/2023

- DDS has until December 31<sup>th</sup>, 2024 to submit all compliance information to CMS
- Milestones for regional centers include 25% of sites visited in person for HCBS assessment by February 29<sup>th</sup>, 2024, 50% by April 30<sup>th</sup>, 2024, 75% by June 2024, with completion of all HCBS assessments by August 31<sup>st</sup>, 2024
- Vendors found to not be in compliance during onsite HCBS reviews will potentially receive a CAP, a directive from DDS granting regional centers the authority to issue CAPs related to non-compliance was issued on November 22<sup>nd</sup>, 2023, DDS will hold a meeting with Regional Centers on November 30<sup>th</sup> to provide additional information and respond to questions
- By September 30<sup>th</sup>, 2024 all vendors who received a CAP must have completed their remediation and shown proof to VMRC of that correction
- DDS is looking at providing additional trainings for vendors and also individuals served by RC's and their support persons
- DDS is also planning an HCBS Newsletter that will feature upcoming trainings, best practices for vendors and important updates regarding HCBS implementation and monitoring

## DDS Directive to Regional Centers dated 11/22/2023- Key Highlights

- Regional Centers have until August 31<sup>st</sup>, 2024 to complete all onsite HCBS assessments for residential, day program, WAP's and group employment programs, final CAP must be completed by September 30<sup>th</sup>, 2024
- RC's must post their assessment templates used during the assessment online and provide training for providers of this. (VMRC will share this information during December's [HCBS Training for Residential Providers](#) on December 12<sup>th</sup>, at 10am and [HCBS Training for Day/Employment Providers](#) on December 13<sup>th</sup> at 3pm, register at the links included.
- During the onsite visit any issues that cannot be remediated during the visit will require VMRC to issue a CAP for the provider, exceptions can be made for minor findings such as missing documentation that can be quickly remedied
- The CAP will be provided within 10 days of the visit findings.
- Vendors will have 30 days to remediate and complete the work on their CAP.
- There will be an appeals process included with the CAP that is in alignment with [California Code of Regulations, Title 17 section 54380 et. Seq.](#)
- Sanctions will be utilized if a provider does not remediate during the timeframe of the CAP
- Further steps will be taken progressively for continued non-compliance including SC's meeting with all program participants or residents to offer alternative options
- Regional Centers will then begin withholding 50% of funds until such time as the setting has remediated, those funds will be released to the provider upon successful remediation.

# Accessing CMS Heightened Scrutiny Report for California Site Visits

## Centers for Medicaid Services HCBS Reports

- [California State Heightened Scrutiny Report](#) – report from CMS visits to sites deemed institutional in nature
- [Reports for all States](#) – statewide transition plan, CAP's, heightened scrutiny reports
- [California Approved CAP](#) – corrective action plan submitted by California and approved by CMS allowing additional time for compliance and detailing steps to get there
- [Approved California Statewide Transition Plan](#) – plan that details how the State will achieve HCBS compliance across all Medicaid Waivers held by various State Departments

## Important Details on the Heightened Scrutiny Report

- CMS visited sites overseen by various State agencies
- 12 sites were visited, 6 in N. CA and 6 in S. CA
- 7 sites were large assisted living facilities with 40+ beds, funding is under the Assisted Living Waiver
- 1 site was 6 bed RCFE
- 1 site was a WAP
- 2 sites were Specialized Residential Facilities (with both secured perimeter and delayed egress)
- 1 site was an Adult Residential Facility (ARF)



# Reading the Report

- The report is divided into Northern and Southern California sites visited
- 5 of the 12 sites visited are specific to the DD Waiver, 7 are administered by the Assisted Living Waiver. All site reports provide valuable information for how CMS interprets the HCBS Final Settings Rule when evaluating settings
- Each section of the report has a Summary of Findings section, pg. 5-7 for N. CA and pg. 36-38 for S. CA

Regulation  
Cited



Settings Not Meeting Regulation  
Cited



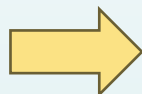
Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	People's Care Ferrero, People's Care Covina, Holy Hill
441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities, and have access to food at any time.	People's Care Ferrero, Country Villa Terrace Assisted Living Center
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time	People's Care Ferrero, People's Care Covina, Country Villa Terrace Assisted Living Center, Beverly Hills Loving Care, Holy Hill
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	Country Villa Terrace Assisted Living Center, Beverly Hills Loving Care
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.	People's Care Ferrero, People's Care Covina, Country Villa Terrace Assisted Living Center, Beverly Hills Loving Care, Holy Hill, Hamilton House



Full Language of the CFR Cited

# Reading the Report

- Each site visited has a Facility Description

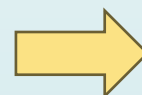


## People's Care Covina, Specialized Residential Facility (SRF) – Visit Tuesday, June 6, 2023

### Facility Description:

The state defines this setting as “Secured Perimeter and Delayed Egress.” There are two gates around the setting. The first closest to the home is delayed egress, meaning if the resident attempted to open the gate by pushing on it, the alarm would notify the staff and then would release/open after 30 seconds. The second gate/fence around the property has a microphone where visitors must be “buzzed” in. To get out, there is a key pad with code that must be entered. The Admission Agreement Addendum states the facility is for “Delayed Egress and Secured Perimeters.” IPPs note that persons placed in this type of setting must be done so through court order or by signing consent in the Admission Agreement. The house is large and open with two living rooms, a large kitchen and dining room, back patio, and laundry room. Residents of this setting have all had court involvement. All entrance/exit doors to the home are delayed egress and require a code. Only staff have the code; no residents have the code, including the code for the door at the rear of the house that goes to a patio and yard. There are four adult male residents and all receive Medicaid HCBS. There are four single occupancy bedrooms and two bathrooms. There are three staff on shift during the day and two overnight. This setting has a thorough HCBS training that was provided to staff in November 2022 and March 2023.

- And a Site Visit Review Description



### Site Visit Review Description:

The site visit team arrived prior to the residents arriving home from day programming. Provider administration staff, along with two direct support staff, met with the team in the dining room while ISPs were reviewed. Staff noted the home is staffed 24/7 and typically has three staff during awake hours and two staff overnight. One resident returned from day programming and was interviewed by site visit team members. The resident also provided a tour of the setting as well as their bedroom.

# Reading the Report

- Each site visit has detailed findings for each regulation as cited.
- The Violation Finding states what was observed by the reviewers that did not meet the expectations of CMS
- Settings with violations will need to remediate and show proof of that remediation

Regulation  
Cited



Language Detailing Findings  
Against the Setting



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>The Personal Rights document stated visitors were allowed during waking hours. House Rules state visiting hours are from 9 AM - 5 PM. No overnight visitors are allowed per the Residency Agreement; however, residents interviewed said that they have seen overnight visitors there.</p> <p>Country Villa Terrace Assisted Living Center should revise the visitor policy and practice to ensure that individuals can have visitors of their choice at any time.</p>
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	<p>The egress to the outdoor area has a door that is not easily operable by individuals using wheelchairs.</p> <p>Country Villa Terrace Assisted Living Center should ensure that the setting is physically accessible to the individuals residing there.</p>



Full Language of the CFR Cited

## Summary of Violations 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.”

**11 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“activities may not happen if the person cannot manage their behavior and it interferes with activity participation... outside perimeter of this setting is locked... individuals cannot leave without a 1:1 support... it is stated in the care plan document that the resident should be redirected first before accompanying him if he wanted to leave the facility... nothing related to community integration or support for integration that was noted or addressed in the ISPs”

“The setting is locked and residents must be accompanied by staff in order to be involved in community activities Personal resources are managed by the provider. Residents attend a day program. There was no noted option for work. Information related to these restrictions is not included in the ISPs”

“One of the residents interviewed indicated they wanted to make money. However, their ISP was not focused on obtaining employment or integrated work as an option; rather they worked in the provider owned 14c program doing janitorial work. This person also indicated a desire to go out more and see friends.”

“The setting assesses the individual upon intake and bases community integration on doctor’s orders.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(i)

## Vendors

- Competence of residents/participants should be assumed, use modifications when a lack of competence is shown
- Lack of staffing, behaviors are not reasons to exclude individuals from accessing the community. Providers are responsible for finding ways to meet community integration regardless of challenges
- Redirecting someone expressing a desire to go out into the community is unacceptable
- Participants/Residents only working in vendor provided work groups did not show choice in employment

## Quality Assurance

- Can the vendor show that despite challenges with logistics or behaviors of individuals that every effort is being made to integrate individuals into the community?
- Ask residents if they are able to go where they want and when in the community, ask them if the provider has any restrictions, do they have to earn access to the community with good behavior?
- When interviewing participants/residents, are the only opportunities for employment at a provider owned and controlled site?

## Case Management

- Ask similar questions of your clients during annual reviews and at quarterlies as QA has been directed to do. Submit alerts if you have concerns.
- Day programs are experiencing some push back from licensing regarding independent access to the community based on the licensing form the physician fills out. If that form is an inaccurate representation of the level of independence your individual has, advocate for them, contact the doctors office, have them revise the form

## Summary of Violations 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.”

### 11 out of 12 providers had violations for this requirement

#### Examples of statements from CMS showing why the vendor was out of compliance

“no evidence in the ISP (sic IPP) that the setting was selected by the individual with an option of a non-disability specific setting”

“instances when individuals were able to live in less restrictive settings, they were moved to other People’s Care homes”

“There is no evidence this setting was selected by the individual, including an option for a non-disability specific setting. Choice of setting is not identified in the ISP. A resident who was interviewed said they want to move due to other residents’ behaviors and their ISP indicated they wanted to move. However, they have been waiting a while to move with no scheduled date to move or options offered for a different setting.”

“One of the residents interviewed said they were told by their care coordinator that this setting was their only option. Options were not documented in the service plans”

“There was no evidence the setting was selected by the individual from among setting options including non-disability settings. The provider/owner mentioned that some of the residents were placed in her home because family members were aware she provided services to the elderly and asked if she would take care of their family member.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(ii)

## Vendors

- When providing tours of your program or home, ensure that the individual knows they have choice and ask if they have toured/plan to tour other sites/homes
- During annuals and quarterlies, review choice with the individual and offer to facilitate contact with the SC if it is indicated that they would like to change
- When you receive the annual IPP or addendum for your program ensure that the objective for your services discusses choice of setting, request the SC update if it does not

## Quality Assurance

- When checking IPP's during annual visits review the objective for residential/day program to ensure choice is shown

## Case Management

- Be sure to review choice with your individuals served at every during annuals and quarterlies
- Update your objectives for day programs and residential to include what choices were explored with the individual
- With regards to conservatorship, unless the right to fix residence is granted, our individuals served still have choice over their residences and programs attended



## Summary of Violations 441.301(c)(4)(iii)

“The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.”

### 5 out of 12 providers had violations for this requirement

#### Examples of statements from CMS showing why the vendor was out of compliance

“There were no locks on the bedroom doors and no evidence that individuals have keys to entrance doors of the home. There were alarms on all doors including bedroom doors. Staff noted the alarms were placed so that staff know where residents are at all times.”

“The facility rules state that the facility staff can enter resident rooms when the resident is not there. In addition, the site visit team watched a staff person walk into various residents’ rooms without knocking.”

“Residents’ service plans indicated the potential for chemical restraint. The plans noted how residents were more compliant with their care after being prescribed certain medications, and four plans reviewed noted the medications are given on a regular schedule rather than as needed.”

“large calendar on the wall with medical information on it including information about resident instrumental activities of daily living and activities of daily living.”

“A phone is available in the lobby for residents to use to make personal calls; however, there is no private space for individuals to talk on the communal phone.”

“The bathrooms in the rooms do not have locks on the doors. Residents must request a lock. This presents a privacy issue as many of the rooms are shared rooms.



# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(iii)

## Vendors

- You must have a plan for privacy that covers all aspects of privacy including privacy in the bedroom, in communications, distributing medication/discussing private information about residents/participants
- Locks on bedroom doors should be keyed or have pin codes, it is not sufficient that residents are able to lock doors while in their bedroom, they must be able to secure belongings and prevent entry while out of their bedrooms
- Residents should have keys to front doors
- Bathrooms must be able to be locked by the individual using them

## Quality Assurance

- During annual reviews ensure that the provider has a clear privacy policy in place and that they can show staff have been trained on it
- Check that all bedrooms have doors that can lock as well as bathrooms
- Determine if residents have a key to the front door in order to let themselves in
- Are individuals ever given medication to change their behavior and make them more manageable for staff? If so, is there a modification in place to document and did the individual consent to the modification?

## Case Management

- During communication with your individuals served check in with them about their rights, do they have adequate privacy, do they feel respected by staff?
- Have you completed a modification of rights if an individual served receives PRN medication for behaviors to calm them down?

## Summary of Violations 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.”

**7 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“There are house rules that restrict individual choice. Staff noted the rules were not enforced. The house rules state residents have to be properly attired and dictates what should be worn, there should be no alcohol or drugs, and visits should be during reasonable times of 3 PM to 8 PM during the week and 10 AM to 9 PM on weekends. Arrangements for visitors can be made outside of those times. House rules also indicate that phone calls must not interfere with normal business operations.”

“Residents cannot come and go. They are locked inside and need a staff with them to leave. This was not documented in the ISPs. One wanted to see friends more but couldn’t. The same resident claimed that the residents were regimented on when they could smoke, only being permitted to do so once an hour. The staff took all of them fishing but the resident noted being allergic to fish. Residents are not permitted to drink alcohol. All doors are locked and key codes needed to go in or out, including to the backyard. No residents have the code. A resident interviewed stated that they cannot eat in their room, they are only allowed to eat at the dining room table.”

“The facility rules state that residents must have permission before having alcohol and that individuals in shared rooms cannot use a television or audible devices. Additionally, the facility requested that residents “avoid overt displays of affection in common areas.”

“A resident interview noted staff pick out clothing and activities. A resident was sitting in front of a finished puzzle, a word-find, and a Bible but was not engaged with anything.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(iv)

## Vendors

- You may not restrict visitors or include language that restricts visitors even if they are not enforced
- You cannot restrict alcohol consumption or smoking, people have the right to make choices that others don't agree with
- You cannot regiment interactions between residents or residents and their guests that are consensual and don't violate the rights of others
- You cannot regiment the clothing choices of residents that don't violate the rights of others

## Quality Assurance

- During annuals check to ensure that there is no language restricting visiting hours or whom individuals may visit with
- Ask residents if they are able to smoke, drink if they feel like it
- Ask residents if they are able to freely express themselves through how they dress
- Ask individuals if they are able to have a significant other over, spend time alone, display mutual physical affection for each other

## Case Management

- During intake at a new care home or program, ask to see documents like house rules and visitors policies, question anything that doesn't meet the standards of the HCBS regulations
- Ask your individuals served similar questions to the ones listed for QA
- Always do an alert when you feel a rights violation is taking place

## Summary of Violations 441.301(c)(4)(v)

“The setting facilitates individual choice regarding services and supports and who provides them.”

**2 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“There were members there that were in different day programs, but it appears that there was a preference to stay with People’s Care residential and day options, although the provider said they did have a choice. When discussing with staff a person’s ability to move, staff referenced residents moving to a different home that is owned/operated by the same provider.”

“Residents don’t have a choice over their home health care agencies who provide services in the setting, with the exception of two or three options offered by the provider. The Administrator noted choice is limited due to concerns about fraud. The residents are permitted to select other care providers such as their primary care physician.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(v)

## Vendors

- Individuals served should have multiple options for choice amongst staff that they work with, providers are expected to know what each person's preferences are and make accommodations accordingly

## Quality Assurance

- During annual reviews ask to see documentation that shows that providers know what the staffing preferences of participants/residents are and proof that those preferences are enacted

## Case Management

- Choice over services and who provides them begins with person centered planning and ensuring that a setting will be a good match for an individual. What makes a good fit may need to be explored regularly as people change and grow and their preferences change with them. Be sure to talk about choice over services and who provides them regularly with the individuals you serve and respond with options for alternatives when needed

## Summary of Violations 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.”

### 7 out of 12 providers had violations for this requirement

#### Examples of statements from CMS showing why the vendor was out of compliance

“The Residency Agreement is between the setting owner/operator, the regional center, and the individual. It does not include protections for eviction, appeal rights, or timelines for giving a resident notice to move or for eviction.”

“The residency agreement indicates that residents “can’t make any alterations or decorations to the unit.” A deposit may be required to return it to the prior condition if changes are allowed. The setting required the residents to maintain their personal appearance and hygiene. If they did not, they could be evicted.”

“The Residency Agreement is between the setting owner/operator, the regional center, and the individual. It does not include protections for eviction, appeal rights, or timelines for giving a resident notice to move or for eviction. Individuals also risk being evicted if they violate staff-written house rules around daily responsibilities of residents.”

“The admission agreement allows for a room change/eviction with 24-hour notice for safety or care reasons, however, the care reasons are not defined.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(A)

## Vendors

- All residency agreements must be compliant with HCBS regulations. From time to time, providers have their own residency agreement in addition to the one utilized by VMRC's case management. It is your responsibility to ensure that any vendor residency agreement is compliant and includes protections against eviction and does not include restriction like not being allowed to furnish and decorate the unit, or that restricts visitors

## Quality Assurance

- Ask to review any vendor specific residency agreements that are used, ensure they include protections against eviction and don't violate other HCBS rights like the right to have visitors

## Case Management

- If a vendor asks your individual served to sign a residency agreement other than the VMRC Admissions Agreement, take a moment to read it to ensure it provides adequate protections against eviction and doesn't violate any HCBS rights

## **Summary of Violations 441.301(c)(4)(vi)(B)**

“Each individual has privacy in their sleeping or living unit.”

**2 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“There are no cameras in the residents’ rooms, however the Facility Rules state the residents consent to cameras in their rooms. Shared bathrooms do not have locks on the doors. The rooms have no privacy within the sleeping area in shared rooms.”

“Each individual has their own room, but noted all doors are kept open so the provider can keep eyes on the residents in case they need her care.”



# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(B)

## Vendors

- Individuals have a right to privacy within their bedroom, including the ability to visit privately with their guests.
- Residents cannot be asked to keep their doors open for the convenience of staff and are not obligated to allow staff to enter at any time
- Cameras are never allowed in residents bedroom or bathrooms and may only be utilized on the exterior of the home facing away from areas where privacy can be expected

## Quality Assurance

- Ask residents if they have privacy in their bedrooms. Can they close and lock their doors? Can they spend time alone in their room with a guest?

## Case Management

- Talk to your individuals served about the right to privacy, what does that mean to them? Are they able to have as much privacy as they want? Do they have to let staff in their rooms or can they say no and staff respect that choice?
- Complete an alert if a resident's rights are being violated

## **Summary of Violations 441.301(c)(4)(vi)(B)(1)**

“Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.”

**8 out of 12 providers had violations for this requirement**

**Examples of statements from CMS showing why the vendor was out of compliance**

“The resident rooms all had keyed locks on the doors but it was not clear if residents had keys to their rooms.”

“Resident rooms had a push button locking mechanism in the levered handle for the door. Residents are only able to lock the door while inside their room.”

“Staff stated there are no locks on the room doors; residents must request a lock.”

“Individuals did not have keys to their bedrooms. Resident interviewed said that they wanted a key to their room but have been waiting a long time for a locksmith to come.”

“There are no locks on bedroom doors and nothing to indicate individuals have keys to the doors of the home.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(B)(1)

## Vendors

- Locks on bedroom doors should not have to be requested, they should automatically have them, they should have keys or pin code so residents can feel secure knowing no one will enter while they are gone
- Residents should also have keys to the front door, they should not have to wait for staff to allow them to enter

## Quality Assurance

- Ensure during site visits that all bedroom doors have keyed locks or pin code locks
- Ask residents if they have a front door key

## Case Management

- Discuss the right to have a lock on the bedroom door with your individual served, discuss the right to privacy and the importance of it
- Ask your individual served if staff ever enter their room without permission
- Complete an alert if you feel a resident's rights are being violated

## Summary of Violations 441.301(c)(4)(vi)(B)(2)

“Individuals sharing units have a choice of roommates in that setting.”

**4 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“Setting staff indicated that roommates are paired initially by staff, but residents do have the ability to request roommate changes. Residents do not choose their roommates upon move in.”

“Staff indicated that residents are paired with roommates by staff based a variety of criteria. Residents do not choose their roommates upon move in.”

“Staff indicated that residents are paired with roommates based on staff knowledge of their personalities, assistance needs, behaviors and preferences. Staff noted there is a new procedure for room and roommate changes but it appears that currently residents do not choose their roommates upon move in.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(B)(2)

## Vendors

- When potentially filling a vacancy in a shared room it is important to have the potential incoming resident and the current resident meet. Facilitate discussions about interests and needs. Do both individuals like to go to bed early or is one a night owl, do both prefer a tidy room, think about things that will make a good match. This is the initial stage of choice over roommate and it can make a big difference in how happily two individuals can cohabitate together.

## Quality Assurance

- When completing annuals check in with the provider about what their procedure is for matching roommates and what is the policy for facilitating if individuals want to change roommates.

## Case Management

- Choice in roommates begins during the placement process and it is important to facilitate two individuals sharing a space be a good match. Person-Centered Planning has great tools to use in these circumstances. Be sure to document these efforts in the residential objective.

## **Summary of Violations 441.301(c)(4)(vi)(B)(3)**

“Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.”

**1 out of 12 providers had violations for this requirement**

**Examples of statements from CMS showing why the vendor was out of compliance**

“The residency agreement indicates that residents “can’t make any alterations or decorations to the unit.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(B)(3)

## Vendors

- Generally this wasn't an issue across settings visited by CMS. Be sure to facilitate individuals expressing themselves through their surroundings.

## Quality Assurance

- When doing annuals check for rooms being personalized rather than similar across the board. Ask residents if they are happy with their rooms, do they get to decorate them with things that match their style, things that are important to them?

## Case Management

- Ensure that your individuals served are aware they can decorate their rooms how they want.
- For individuals who struggle to articulate their likes and interests, provide as much information to the home as possible so they can assist the individual to make the room a place they love.

## Summary of Violations 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.”

**4 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“Residents are redirected from leaving if they decide they want to leave at a time that is different than what is on the calendar, although the staff said they were free to change what was on the calendar.”

“Residents are allowed to have mini-fridges in their rooms, but in some of the shared rooms, there isn’t enough space to do so. The residents state that snacks are distributed at a certain time and that there are not enough snacks for the building to go around and there is limited access to food. They rely on vending machines if they have money. The snack shop in the setting is not open very often.”

“Residents interviewed indicated that it is hard to get food outside of mealtimes other than from the vending machine. Residents additionally noted that while the large television in the lobby indicates that meals are not scheduled, they actually are. The alternative meal offered to residents is a sandwich.”

“The team saw modifications in service plans that prohibited access to food at any time due to sharp knives in the kitchen. The justification to restrict access to food did not appear to relate to the risk noted.”



# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(C)

## Vendors

- Food cannot be restricted at any time, kitchens must be accessible to all residents.
- If an individual receiving services cannot access the community independent of staff and will need to be redirected from leaving a modification is necessary. **Further discussion with DDS will be necessary.**

## Quality Assurance

- When completing annuals determine if residents have access to both food and the kitchen at all times. Review policies like house rules to determine if there are restrictions on when, where or what individuals eat.

## Case Management

- Modifications will be necessary if an individual cannot access the community independently and must wait for staff to be available to take them out into the community.

## Summary of Violations 441.301(c)(4)(vi)(D)

“Individuals are able to have visitors of their choosing at any time.”

9 out of 12 providers had violations for this requirement

### Examples of statements from CMS showing why the vendor was out of compliance

“House rules state that visitors are allowed during reasonable hours and they ask them to visit from 3 PM to 8 PM if possible, Monday-Friday and 10 AM to 9 PM on the weekends..”

“The **Personal Rights** document stated visitors were allowed during waking hours. House Rules state visiting hours are from 9 AM - 5 PM. No overnight visitors are allowed per the Residency Agreement; however, residents interviewed said that they have seen overnight visitors there.”

“Administrative staff initially noted individuals can have visitors of their choosing at any time. When discussed further, staff indicated the Administrator is on-call 24/7. If staff has questions about whether any particular visitor poses a safety risk, they contact the Administrator to get approval for the visitor. Additionally, a **Resident Rights** document notes visitors are allowed during reasonable hours. The House Rules include recommended visiting hours from 8 AM to 8 PM seven days per week. Residents must sign in and get permission from the site Administrator before allowing a visitor after 8 PM. Administration stated this is due to safety and security. Residents’ families as overnight guests also require prior coordination with the facility; Administration noted this is to assure all residents are comfortable. There is nothing mentioned in the policies about non-familial guests being allowed to stay overnight.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(D)

## Vendors

- Visitors must be allowed at all times. Any language in house rules or visitors policies that encourages visitors between specific hours must be changed to reflect “at all times” as that language has the effect of limiting visitors.
- It appears from CMS’s interpretation that asking for advanced notice of overnight guests is prohibitive of the right to visitors. **Further discussion with DDS will be needed regarding this.**

## Quality Assurance

- Review policies for visitors and house rules to determine if language exists that can be reasonably interpreted to restrict visitation to certain hours.

## Case Management

- Facilitate discussions with the individuals you serve about their rights to visitors including overnight guests.
- Complete alerts if there are restrictions to the right to visitors.

## Summary of Violations 441.301(c)(4)(vi)(E)

“The setting is physically accessible to the individual.”

**5 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“The egress to the outdoor area has a door that is not easily operable by individuals using wheelchairs.”

“There is a ramp with a handrail that allows residents access to the patio. Residents from the other building also have to use this ramp to go to the activity area. It was observed that staff had to help residents with walkers up and down the ramp. If residents do not have assistance, they are limited from either accessing the patio area or the activities in the other building.”

“Provider staff noted that individuals use the courtyards accessible from bedrooms, however, the ground is unlevel with many tripping hazards.”

“The front door to the setting did not have an accessible door entry button (for wheelchair access). The team observed several residents in wheelchairs as staff brought them to the dining room for lunch. House rules prohibit electric wheelchairs/scooters; staff noted they can make exceptions. The team also saw two residents using electric wheelchairs in the setting, one of whom had to have someone hold the front door open for them as they left the setting for an appointment.”

“The doors to the interior courtyard did not have an accessible door entry button (for wheelchair access). The team observed several residents who used wheelchairs or four-wheeled walkers for mobility; opening the doors without the accessible entry would be challenging.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(E)

## Vendors

- A good practice for providers is to regularly go through your home to look for things that may negatively impact the mobility of the individuals you serve.
- Ensure hallways and walkways through rooms are free of obstructions, doors can be easily opened, bathrooms are accessible without staff assistance.

## Quality Assurance

- When touring the home during annual reviews check for obstructed walkways, doors that are difficult to open, bathrooms where an individual who can assist themselves is unable to due to the structure of the bathroom, similar for the kitchen and other areas of the home.

## Case Management

- When touring for new placements keep an eye out for how easily your individual served accesses the setting. Consider alternatives if the setting is difficult for the individual to access.

## Summary of Violations 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.”

**11 out of 12 providers had violations for this requirement**

### **Examples of statements from CMS showing why the vendor was out of compliance**

“There were many restrictions/modifications noted through discussion with staff, but none were noted in the ISPs. For example, some cabinets were locked in the kitchen, including all sharp objects. Individuals were prohibited from going outside the home to the back patio or yard without assistance to unlock the door and supervision by staff, and individuals who smoked were placed on a schedule, directed by staff about when they can go outside to smoke.”

“No modifications were noted in the ISPs even though modifications were noted through discussions with staff and residents.”

“Modifications, particularly those associated with medications, alcohol, visitors, and going out of the facility, were verbally noted by staff, but not included in the ISP. The Administrator noted that modifications/restrictions are identified by the physician and/or family. Administration noted that residents are allowed to drink wine or beer if they have permission from a doctor, but no other alcohol. The resident policies state that residents can have microwaves if their “state of minds allow.”

“Holy Hill should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.”

# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(F)

## Vendors

- Any modification to an individual's HCBS rights is serious and all care and consideration must be taken to ensure that the modification is necessary and that it is documented appropriately.
- CMS cited providers for both modifications that were unnecessary as well as ones that may have been necessary but were not appropriately documented.
- Be sure to work closely with the IDT to make sure that modifications are both necessary and documented.

## Quality Assurance

- When reviewing files check that any modifications have been documented and that the provider continues to take data to support the modification is ongoing.

## Case Management

- Modifications are documented in the IPP. It is important to work with the provider to attempt to meet the individual's needs without requiring a modification of the individual's rights. Once a modification is in place it should be reviewed for appropriateness no less often than quarterly. The provider should be able to show you ongoing collection of data that supports the modification is working, is still necessary or can be dropped.

# Summary of Violations - State Medicaid Director Letter #190011

“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. .”

**11 out of 12 providers had violations for this requirement**

## **Examples of statements from CMS showing why the vendor was out of compliance**

“The People’s Care Ferrero trainer stated that they conducted trainings for all of their facilities in the fall and spring. However, based on the findings of the site visit, HCBS settings final rule criteria are not being implemented in the setting.”

“The provider agency has a division within the company that develops and presents training; the HCBS settings criteria was the most recent staff training and evidence was included in the training file. However, the implementation of the rule was not evidenced in the setting’s operations or ISPs.”

“There was no evidence of HCBS settings final rule training.”

“There was no evidence of HCBS settings rule training. The provider’s daughter-in-law who is also an HCBS provider stopped by during the visit and noted she assisted the provider/owner with understanding HCBS settings requirements and the purpose for our visit. It appears the provider/owner had a conversation with the state regarding the HCBS rule as they were out of compliance and had to remediate in several areas, but no training occurred. The same areas they had to remediate around visitors and facilitating access to the community are still concerns on this visit.”

“Staff indicate awareness of the HCBS settings rule but also have voiced concerns about individuals having independence and freedom due to the need for staff being responsible for residents’ safety. There is no evidence of specific HCBS training.”



# Finding Impacts for VMRC and Vendors on 441.301(c)(4)(vi)(F)

## Vendors

- All staff should be trained on the HCBS regulations. They should be able to answer questions related to individuals HCBS rights when interviewed by VMRC staff, DDS or in the event that CMS conducts a site visit.
- Keep records of when the staff received their training and have a log where you document the training was completed and staff sign that they received it.

## Quality Assurance

- All staff should be able to answer questions about HCBS rights, not just administrators.
- Ask to see training logs related to HCBS when you review training logs for other requirements.

## Case Management

- Complete an alert if any staff are observed to be violating the HCBS rights (or any other rights) of an individual you serve.



**Thank you for your  
commitment to  
ensuring the rights  
of all individuals  
served by VMRC!**

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Please direct any questions to Anna Sims, HCBS Program  
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