

Heightened Scrutiny Evidence Packet

Setting Information

Provider Name:

Finger Lakes Developmental Disabilities State Operations Office, Site 1

Location of Setting: Phelps NY 14532

Type of Setting: Day Habilitation

Medicaid Home and Community-Based Services Being Provided at the Setting: Day Habilitation

Heightened Scrutiny Prong

Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment.

Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.

Prong 3: Setting has the effect of isolating individuals from the broader community.

Qualification for Prong

Describe briefly below how the setting meets the prong indicated (what facility is it in or located on the grounds of, or adjacent to, etc.):

The setting is in the same building as a facility that provides inpatient institutional treatment (an inpatient senior living facility). Services at this site are currently suspended. OPWDD is presenting this setting for Heightened Scrutiny in the event the program is reinstated.

Provider Compliance Summary

Requirements for All HCBS Settings

Compliant?	Federal Requirement	Summary
<p><i>42 CFR 441.301(c)(4)(i)</i></p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	<p>Settings are integrated and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>Individuals at this day habilitation site are encouraged and supported to participate in local community life and they have full access to their own personal resources. This is supported by interviews of four individuals at the program. The option to explore choice of employment and work is also routinely discussed with individuals as part of person-centered planning discussions with individuals and is also discussed at their annual Life Plan reviews.</p>
<p><i>42 CFR 441.301(c)(4)(ii)</i></p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	<p>Settings are selected by the individual from among setting options including non-disability specific settings and an option for</p>	<p>This is a day habilitation site. Alternative settings options are discussed with individuals as part of the person-centered planning process and</p>

	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.	are discussed at annual Life Plan reviews. Additionally, OPWDD requires Care Managers to discuss alternative non-disability specific settings with individuals as part of the Life Plan review process. Care Coordination Organizations (CCOs) are reviewed for this requirement annually as part of DQI's quality review survey of Care Management.
42 CFR 441.301(c)(4)(iii) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No	Settings ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.	The agency has policies and procedures on protection of individual rights and rights are reviewed with individuals on an ongoing basis. They also have policies and procedures in place that are appropriately implemented and documented. As evidenced in Individual Experience Interviews conducted with individuals at the site, individuals at this program report they are treated with dignity and respect. Privacy is maintained in all aspects of the day such as intimate care, medication administration, and other services that are provided.
42 CFR 441.301(c)(4)(iv) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No	Settings optimize, but do 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.	As evidenced in Individual Experience Interviews conducted with individuals at the site, Individuals at this program are supported to make choices in their daily activities and who they would like to spend their day with. The program does not utilize regimented schedules. The program works with individuals on an ongoing basis on increasing their independence, as evidenced by their Staff Action Plans and valued outcomes. The program strives to offer a person-centered experience in which each participant is encouraged to explore their current interests as well as discover new activities that they enjoy by having regular person-centered discussions with individuals on a daily basis about choice of activities.
42 CFR 441.301(c)(4)(v) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No	Settings facilitate individual choice regarding services and supports, and who provides them.	Person Centered Planning tools are utilized to assess each person's likes and dislikes as well as discover new interests. These tools help participants make known to anyone who works with them what they like, where they enjoy going and what activities they enjoy

		regularly. The tools are updated at least every six months and copies are distributed to the Care Coordinator and residential team as well as interested family. Each person is involved in their Life Plan development through regular reviews as well as ongoing daily discussion with clinical staff in their rooms.
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Additional Requirements for Provider-Owned or Controlled Settings

Standards for Provider-Owned or Controlled Residential and Non-Residential Settings

Compliant?	Federal Requirement	Summary
<p>42 CFR 441.301(c)(4)(vi)(C)</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	Individuals have the freedom and support to control their schedules and activities; and have access to food any time.	Person Centered Planning tools are utilized to assess each person's likes and dislikes as well as discover new interests. These tools help participants make known to anyone who works with them what they like, where they enjoy going and what activities they enjoy regularly. The tools are updated at least every six months and copies are distributed to the Care Coordinator and residential team as well as interested family. Each person is involved in their Life Plan development through regular reviews as well as ongoing daily discussion with clinical staff. They can access food at any time but typically prefer to eat together during lunch time at this day program. This is supported by interviews conducted with four individuals at this site.
<p>42 CFR 441.301(c)(4)(vi)(D)</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	Individuals are able to have visitors of their choosing at any time.	Individuals are supported to have visitors at any time. Seniors from the Senior center often visit with individuals at this program on a regular basis as well.
<p>42 CFR 441.301(c)(4)(vi)(E)</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	The setting is physically accessible to the individual. (Not modifiable)	This setting is barrier-free. Individuals at this site have access to all areas of the facility. The majority of individuals attending this program are elderly and require barrier free access.

<p>42 CFR 441.301(c)(4)(vi)(F)</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	<p>Any modifications of the additional conditions under 441.301(c)(4)(vi)(A) through (D) for provider-owned and controlled settings must be supported by a specific assessed need and justified in the person-centered service plan.</p>	<p>Review of Behavior Support Plans show that rights modifications are justified, supported by an assessed need and all protections as well as consent of the individual are met and documented in the individual's person-centered plan.</p>
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Standards for Provider-Owned or Controlled Residential Settings Only

Compliant?	Federal Requirement	Summary
<p>42 CFR 441.301(c)(4)(vi)(A)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable</p>	<p>The unit or dwelling is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city, or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law.</p>	<p>Not Applicable, as this is a certified day habilitation site and not a residential site.</p>
<p>42 CFR 441.301(c)(4)(vi)(B)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable</p>	<p>Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>Not Applicable, as this is a certified day habilitation site and not a residential site.</p>

Recommendation

As required by 42 CFR 441.301(c)(5), the State of New York submits this request for heightened scrutiny review for the setting identified above. The State has compiled evidence that the setting is integrated in and supports full access of individuals to the greater community, is selected by the individual from among disability and non-disability specific settings, ensures individual rights, and promotes individual initiative, autonomy, choice, and independence.

Instructions for Completing Sections One through Four

The following four (4) sections may be expanded in length to capture evidence of HCBS Final Rule compliance. However, a complete heightened scrutiny packet may be no longer than ten (10) pages in length. The ten (10) pages should include documentation that demonstrates support of the statements made here. Any additional supporting documentation should be kept by agencies/offices/units for the recommended amount of time.

Section One

On-Site Visit Observation

Date Conducted: 7/21/2021

State Agency/Entity that Conducted the On-Site Visit: NYS Office for People With Developmental Disabilities (OPWDD) – Division of Quality Improvement (DQI)

Description of the Setting:

The Phelps Day Habilitation site, which is certified to serve 25 people, is located in the village of Phelps. The resident cat, Charley, greets visitors as only a cat will do, on his terms. The Day Habilitation setting is attached to a senior living residence and is unique in that it was created to serve a senior population and function as a Senior Rec Center. The atmosphere is relaxed with three large rooms and a kitchen where folks can move freely from area to area depending on the activity that they choose to participate in. The site has several bathrooms and a laundry room as well. Occupational Therapy, Physical Therapy and Speech Therapy are available at the Phelps Day Habilitation Site. There is a lovely garden at the entrance to the site and there is a patio set where people can enjoy the warm sun in the summer months. There are also glider swings for people to use. Phelps day habilitation is located just outside of the beautiful historic center district of the village where there are numerous restaurants and stores. The site is within walking distance to a lovely waterfall area and an ice cream parlor. Only a short drive away are a family style restaurant and a garden center. Just around the corner from the garden center is the area where Phelps holds its annual Sauerkraut Festival. A slightly longer drive takes people to a neighboring village and also a small city situated on Seneca Lake.

Section Two

Community Integration Observations and Input from Individuals Served (without observation by staff), Family Members/Guardians, and Staff

Individual Interviews:

All individuals requested and received assistance from support staff in order to respond to questions on the Individual Experience Survey. All individuals responded with their own content. Individual A reports that they enjoy seeing their friends at the day habilitation site and likes to dine out at restaurants and help with Meals on Wheels. They report that they often choose to do math activities the most at the program. They also choose to go on walks, shopping, and bowling. Individual A reports that they prefer to do these things every week. Individual A prefers to spend their money on paper, markers and pens, and food when they access the community. Individual A often elects to go to Tim Horton's, and Walmart when attending this day program. This site facilitates Individual A's choice to do volunteering through Meals on Wheels and they enjoy the fact that the people that they give the food to are nice to them, and it makes them feel good. Individual B reports that they often choose going out in the community a lot as their daily activity while at this program, expressing they love to go out to eat, see people, and go to the parks. Individual B reports that they have attended this program for a very long time. Individual B reports that day habilitation staff will often support their preference to go to Family Dollar and Goodwill and likes to spend their money on food and soda, and

reports that they are supported by staff to spend their money whenever they want to. Individual B reports that the staff at this day habilitation site are good to them, they like going there, and likes spending time with staff. When asked if they would like to have a job and work, individual B joked that they are too old for work now, but instead prefers volunteering and helping out at this program. Individual C reports that they enjoy going out in the community while attending this day habilitation program and that it is fun, and especially enjoys going out for coffee. Individual C has been attending this program for a long time. Individual C reports that they have gone out to Burger King and Goodwill with day habilitation staff support. Individual C often chooses to spend their money on food and coloring books when the site offers opportunities to make purchases in the community. Individual C also reports that they often elect to do crafts at the program and chooses to help out with Meals on Wheels. Individual C reports that they are not interested in a job and prefers this program instead. Individual C looks forward to coffee and donut days on Fridays. Individual D reports that they enjoy visiting with the cat at the program and seeing their friends at the program. Individual D reports that they often choose to go into the community and prefers grocery shopping, going out to eat, and especially shopping for makeup. They choose to spend their money on makeup the most when they are out making purchases, with day staff support. Individual D says that they have attended this program for a long time because the people are nice there and it feels like a home. Individual D reports that they chose to go to the Dollar Tree, Walmart, Subway, Wendy's, and Meals on Wheels when asked what specific activities they have participated in when attending this day habilitation program. Individual D has day habilitation valued outcomes to be more involved in recreational and community activities, improve the quality of their relationships by learning calming techniques, and to explore available options of activities that interest Individual D.

Employee Interviews:

OPWDD's Division of Quality Improvement survey staff report that although the site may be in the same building that a Senior Living Center is located, the individuals are actively involved in the community. The residents in the Senior Living Center enjoy having individuals from the Phelps Day Habilitation program around, and they occasionally spend time together outside on the patio surrounded by a beautiful garden. Individuals enrolled in this program are consistently out in the community at various places including stores, restaurants, libraries, and volunteering with Meals on Wheels. Individuals are not isolated from the broader community. Administrators of this day habilitation site report that person-centered planning continues to be integrated into each person's staff action plan. Person-centered planning tools are utilized to assess each person's likes and dislikes as well as discovering new interests. This tool helps participants make known to anyone who works with them what they like, where they enjoy going and what activities they enjoy regularly. The tool is updated at least every six months and copies are distributed to the Care Coordinator and residential team, as well as interested families. Each person is involved in their Life Plan development through regular reviews and ongoing daily discussions with clinical staff in their day program rooms. Privacy is maintained in all aspects of the day such as intimate care, medication administration, and other services that are provided. The program strives to offer a person-centered experience in which each participant is encouraged to explore their current interests and discover new activities that they enjoy. Several of the people are now enjoying use of a Therapy Pool at a nearby site. The benefits of the warm water and activities presented in the pool are of great comfort to stiff, aging joints. Some of the people who receive services also receive pay for light housekeeping work at the site. Presently, no one is involved in the Pathway to Employment Program, but one person is on the waiting list. For the last two years, several participants from Phelps, as well as others from private agencies and other service providers attend the "Night to Shine" sponsored by the Tim Tebow Foundation. Everyone dresses up in their best outfits (some even get tuxedos and gowns) including crowns and tiaras and walk the red carpet to enjoy an evening of music and dancing in a celebration of uniqueness. Staff from the Phelps site, other IRAs, and other community volunteers dance the night away while

meeting new people and rekindling old friendships. Participants arrive each morning to a “Coffee and Calendar” group where they can enjoy the beverage of their choice with a light snack. Sometimes residents from the senior living residence join in depending on what they choose to do in the morning. This time is spent making person-centered choices regarding how they would like to spend their day. Activities at the Phelps Day Service site vary each day. Regularly scheduled activities each week include grocery shopping, bowling at a local bowling alley, and personal shopping at various vendors. Other community-based activities include nature walks at the Ontario Pathways trail and making and delivering snacks for “Blessings in a Backpack”, an organization founded by Hillary Duff which provides food to local children in need. Throughout the year, the individuals at Phelps Day Services also make and send boxes of gifts to Operation Christmas Child in addition to baking and delivering treats to a local youth group. In the fall, the group participates in a clothing drive for the Rochester International Academy which supports students and families who are refugees from other countries. They collect canned goods for the local food pantry and make lap blankets for the patients at the House of John. Just down the street is a wonderful ice cream parlor and people can be seen enjoying a cool treat in the hot summer months. Since this site serves a mainly senior population, individuals choose a combination of community and site-based activities on a daily and weekly basis. This is discussed with individuals using the agency’s person-centered planning tool regarding how they prefer to spend their day and what activities are meaningful to them. Off-site activities are offered daily. In addition, people can choose to bake, complete a craft activity, watch a favorite old time TV show, watch a Western movie, or listen to music.

Section Three

Additional Evidence

The following evidence has been compiled that demonstrates the setting is integrated in, and supports full access of, individuals receiving HCBS into the greater community.

1. Staff Action Plan for Individual C
2. Staff Action Plan for Individual D
3. Region 1 Policy and Procedure for Individual Rights and Objection to Services
4. Satellite View of Surrounding Community and Shops (This supports how the program is situated in the broader community in the vicinity of local shops and businesses)
5. Individual Experience Survey for Individual A
6. Individual Experience Survey for Individual B
7. Individual Experience Survey for Individual C
8. Individual Experience Survey for Individual D
9. Email with photos of the site’s exterior and entrance

Section Four

Public Comments Summary

Public Comment Period	
From: Click or tap to enter a date.	To: Click or tap to enter a date.
Summary of Public Comments Received for the Setting	

Summary of the State's Response to the Public Comments Received

Click or tap here to enter text.