



COLORADO

Department of Health Care
Policy & Financing

**Colorado Home- and Community-Based Services
Heightened Scrutiny Evaluation**

Non-residential Setting Summary Sheet

Heightened Scrutiny Identification Number	HS-035
Provider Name	Lifting Spirits
Setting Name	
Setting Address	WITHHELD
Compliant as of Date	Expected to submit remaining evidence of compliance this summer, to be verified by December 31, 2021
Date of This Evaluation	May 11, 2021 <i>for public comment; updated July 28, 2021 for CMS. Updates are in italicized green font.</i>

Setting Type

- Adult Day Services (Not IDD Specific) Basic
- Adult Day Services (Not IDD Specific) Brain Injury Waiver
- Adult Day Services (Not IDD Specific) Specialized
- Day Habilitation for Individuals with IDD Prevocational Services
- Day Habilitation for Individuals with IDD Specialized Habilitation
- Day Habilitation for Individuals with IDD Supported Community Connections (SCC)
- Day Treatment under Brain Injury Waiver
- Supported Employment Group Supported Employment

Waivers Served

- Children's Extensive Support (CES)
- Community Mental Health Supports (CMHS) for Persons with Major Mental Illness
- Elderly, Blind, and Disabled (EBD)
- Persons with Brain Injury (BI)
- Persons with Spinal Cord Injury (SCI)
- Persons with Developmental Disabilities (DD)
- Supported Living Services (SLS)

Reason(s) for Heightened Scrutiny

- Located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (such as a hospital, nursing facility, ICF/IID, or IMD);
- Located in a building on the grounds of, or adjacent to, a public institution; or
- Has the effect of isolating individuals receiving Medicaid home- and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS



Setting Description

Lifting Spirits is a small agency that serves some older adults receiving HCBS. The setting currently has chimes/alarms at entrances/exits, and individuals receiving services do not get to spend much time in the greater community. Most activities entail doing arts and crafts. The provider advertises many of the craft items available for sale but does not include individual's participation with the sale of the items for purchase. The provider works closely with each individual's family member and explained during an interview with state staff that their goal is to provide services for caregivers (families) as a way to give them a break.



Compliance Summary

Compliant?	Federal Requirement	Summary of Evidence of Compliance
<input type="checkbox"/> Yes <input type="checkbox"/> Partial <input checked="" type="checkbox"/> No	<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 C.F.R. § 441.304(c)(4)(i).</p>	<p>During the site visit on 10/18/2018, state staff observed the setting provided only in-house arts and crafts activities. The provider did not offer any community activities. Individuals at this setting mostly interact with staff and occasional visitors. A calendar was submitted in April 2021, consisting of two community activities in a month (the library and an ice cream shop). The calendar indicated individuals went into the community one to three times a month. The provider will submit a plan to increase opportunities to access and be integrated into the community.</p>
<input type="checkbox"/> Yes <input type="checkbox"/> Partial <input checked="" type="checkbox"/> No	<p>The settings 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. 42 CFR § 441.301(c)(4)(ii)</p>	<p>During the site visit, the provider was not able to provide state staff any documentation of individuals' choice of setting. The provider will obtain the individuals' service plans, indicating choice of program.</p> <p>In Colorado, case management agencies are responsible for</p> <ul style="list-style-type: none"> • working with the individual to ensure that the setting is selected by the individual from among setting options including non-disability-specific settings and, where residential supports will be provided, an option for a private unit in a residential setting; • ensuring that setting options are identified and documented in the person-centered support plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board; and • supplying the person-centered support plan to provider agencies for implementation. <p>Provider agencies are responsible for implementing the person-centered support plan. They are also responsible for referring individuals to their case management agency if they want to request a different provider or setting.</p> <p>As part of the site-specific verification process, the state verified that providers complied with their responsibilities relating to informed choice. This process included verifying that settings did not have</p>



		compliance issues such as telling individuals that they must receive services there, even if they would prefer something else.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partial <input type="checkbox"/> No	The setting ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint. 42 CFR § 441.301(c)(4)(iii)	While there is no coercion or physical restraint at this site, the provider will need to address how they ensure staff approach the individuals in services with dignity and respect. The admissions policy reviewed at the site only communicates with caregivers, not individuals. The provider stated alarms/chimes have been removed and policies regarding their use of these have been revised. The provider will be submitting the updated documents as well as evidence of these being removed. The provider will be submitting a policy revision to allow individuals to self-administer their own medications, for those with this skill. The provider has submitted a policy on Rights of Persons that is person-centered. The provider will submit proof of staff training on person-centered thinking. The updated Grievance procedure allows individuals to file an anonymous complaint.
<input type="checkbox"/> Yes <input type="checkbox"/> Partial <input checked="" type="checkbox"/> No	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. 42 CFR § 441.301(c)(4)(iv)	During the site visit in 2018, the provider did not have a schedule of activities or supporting documentation of choices in daily activities. The provider will submit a plan that demonstrates that individuals' choices about their daily activities, including in the community.
42 CFR § 441.301(c)(4)(v) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No	The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR § 441.301(c)(4)(v)	Individuals work with their case managers to decide who they choose to provide their services and supports.
<input type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable	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 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	This a nonresidential site, so this requirement does not apply.



	<p>where landlord-tenant laws do not apply, a lease, residency agreement, or other form of written agreement is in place for each HCBS participant providing protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant law. <i>42 CFR § 441.301(c)(4)(vi)(A)</i></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. <i>42 CFR § 441.301(c)(4)(vi)(B)</i></p>	<p>This a nonresidential site, so this requirement does not apply.</p>
<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	<p>Individuals have the freedom and support to control their schedules and activities and have access to food any time. <i>42 CFR § 441.301(c)(4)(vi)(C)</i></p>	<p>Yes, individuals at this setting can control their schedules and activities and can eat any time.</p>
<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	<p>Individuals are able to have visitors of their choosing at any time. <i>42 CFR § 441.301(c)(4)(vi)(D)</i></p>	<p>Individuals may have any visitors at this site whenever they wish.</p>
<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partial <input type="checkbox"/> No</p>	<p>The setting is physically accessible to the individual. <i>42 CFR § 441.301(c)(4)(vi)(E)</i></p>	<p>Yes, the site is fully accessible to all individuals.</p>
<p><input type="checkbox"/> Yes <input type="checkbox"/> Partial <input checked="" type="checkbox"/> No</p>	<p>Any rights modifications are supported by a specific assessed need and justified in the person-centered service plan. The following criteria are documented in the person-centered service plan:</p>	<p>The setting includes an alarm on the front and back doors. The provider explained they have had these due to determining some individuals may need supervision. However, the provider did not modify rights to support this specific need in any individual's service plan. The provider has submitted a statement they removed all alarms and revised their</p>



	<ul style="list-style-type: none">(1) A specific and individualized assessed need.(2) The positive interventions and supports used prior to any rights modifications.(3) The less intrusive methods of meeting the need that were tried but did not work.(4) A clear description of the rights modification that is directly proportionate to the specific assessed need.(5) A plan for the regular collection and review of data to measure the ongoing effectiveness of the modification.(6) Established time limits for periodic reviews to determine whether the modification is still necessary or can be terminated.(7) The informed consent of the individual.(8) An assurance that interventions and supports will cause no harm to the individual. <p>42 CFR § 441.301©(4)(vi)(F)</p>	<p>policy. The provider will be submitting proof, such as pictures of where the alarms used to be, demonstrating they have been removed.</p>
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Summary of Findings from Desk Review and/or Site Visit(s)

The state reviewed the Provider Transition Plan (PTP) and supporting materials submitted by the provider for this setting. Through an iterative process, the state worked with the provider to ensure that the PTP accurately identified all compliance issues and heightened scrutiny triggers and reflected resolution of all such issues (or a plan to timely finish doing so).

The state reviewed the following materials submitted by the provider:

- Rights of Persons Handout
- Grievance/Complaint Policy
- Medication Policy
- Mistreatment Policy
- Physical Intervention Policy
- Incident Reporting Policy
- Dispute Resolution Policy
- Recent Month Calendar of Community Activities (uploaded April 2021)
- Security Alarms (4/13/2021)

If the provider updated any of these materials, findings in this evaluation reflect the most recent version of each item.

Summary of individual interviews: One individual was present during the site visit on 10/18/2018. The individual was also working on a craft project during the entire visit and appeared to be content with the activity.

The provider has completed the revisions to policies for grievances and abuse and neglect.

Once the provider has submitted evidence of community integration, state staff will complete another visit to this setting, to verify that individuals have the opportunity to be active in their community with non-disabled, non-staff persons.

Summary of Stakeholder and Public Input; Department Responses

The Individuals, Families and Advocates (IFA) survey results were reviewed and no comments were submitted for this setting.

Remediation Plan (If Not Already Implemented) & State Oversight to Verify Implementation

To overcome lack of community integration, the site needs to make these specific changes:

- Have provider/staff participation in community integration education and outreach.
- Develop programs that increasing opportunities for community integration.
- Increase support for individuals to leave the setting and engage with the community.
- Train individuals on how to access the greater community.

To address issues regarding individual rights, state staff have requested the setting:

- Provide proof that audio monitors/devices that chime have been removed.



Additional Comments

The Department received several comments, via email and public meeting, from family members of individuals who attend/attended this program expressing their support for the program. Family members stated that the individuals who attended the program enjoyed the activities provided and the socializing with other attendees and that both the individuals and their family members greatly enjoyed the “community inside a community” that the program established.

The Department appreciates that so many individuals and family members value this program. At the same time, compliance with the HCBS Settings Final Rule is not a matter of subjective consumer satisfaction; rather it is a matter of objectively demonstrating that specific federal criteria are met. These criteria include supporting individuals to engage not just with other program participants (although these activities may be enjoyable), but also with other members of the community. The Department believes that the provider can meet these criteria by making the changes described above.

In response to one commenter’s concern that the Department plans to require the provider to “load up the people and take them out to events,” the Department wishes to clarify that the requirement is for the provider to offer individuals more support to engage in typical community life. While this could include helping groups of individuals attend an outside event, it could also include supporting one or two individuals in an outside activity, helping individuals communicate via email and/or join typical online classes or virtual events, and so on. Individuals are not required to participate in outside events if they wish to remain at the center.