

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

April 10, 2019

Suzanne Bierman
Medicaid Administrator
Division of Health Care Financing and Policy
Las Vegas Medicaid District Office
1210 S. Valley View, Suite 104
Las Vegas, NV 89102

RE: Heightened Scrutiny Review of:

Highland Manor of Fallon; 550 North Sherman Street, Fallon, NV 89406

Dear Ms. Bierman:

This letter is in reference to settings submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review, in accordance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710 (a)(1)(2). Nevada submitted an assisted living facility that is located in the same building as a privately operated skilled nursing facility. The evidentiary package was submitted by the state of Nevada to CMS for heightened scrutiny review on October 26, 2017.

CMS provided the state its initial "Summary of Findings" on June 8, 2018. The state provided its response to CMS on July 19, 2018. CMS appreciates the efforts of the state to provide a comprehensive evidentiary package regarding the setting's characteristics. While the information demonstrates compliance with many of the HCBS settings criteria, additional information is needed before CMS can make a final determination as to whether the setting has overcome its institutional presumption and has met all of the HCBS settings criteria. It is anticipated that receipt of this final additional information will permit CMS to conclude our review.

CMS has attached an updated Summary of Findings, which outlines the initial questions CMS raised and the state's responses and the additional information CMS is requesting. 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 call with the CMS team to discuss next steps or request technical assistance.

CMS would also like to thank the state of Nevada for participating in the heightened scrutiny review pilot. Your participation in this review process has provided helpful and invaluable feedback, and has helped CMS to identify a clear and concise way to provide the states with feedback during the review process.

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

Sincerely,

/S/

Ralph F. Lollar, Director
Division of Long-Term Services and Supports

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Highland Manor of Fallon

Address: 550 North Sherman Street, Fallon, NV 89406

Type of Setting: Residential Assisted Living Facility

HS Category: Setting is in the same building as a private nursing facility

Date Submitted: October 2017

Brief Description of Setting: Highland Manor is a continuing care community that offers assisted living services and skilled nursing services in the same building. The campus also consists of an apartment retirement community.

Support Submitted by the State to Demonstrate Setting's Progress in Overcoming the Institutional Presumption

- The licensing requirements for the institutional setting and the assisted living show differences between the service definitions, administrative regulations, quality requirements, admission and discharge procedures and plan of care requirements.
- Individuals can participate in activities of their choosing either on or off site.
- Transportation is available through local paratransit and through the facility in addition to facility transportation to medical appointments. Friends and family also provide transportation for individuals into the greater community.
- The Nevada Division of Health Care Financing and Policy (DHCFP) observed that food is available at any time in the facility.
- Individuals are permitted to furnish and decorate their sleeping/living units reflective of their personal preferences.
- Individuals sharing rooms have a choice of roommates in that setting.

Initial Determination

- Evidentiary Package requires additional information before a final decision can be made.

Additional Information Requested to Confirm Setting is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

- Verification that each individual receiving Medicaid HCBS has a person-centered plan that is reflective of their personal needs and preferences [42 CFR 441.301(c)(4)].
 - State Response: DHCFP obtained a sample copy of the person-centered service plan signed by recipient. Aging and Disability Services Division (ADSD) Case Managers ensure that each waiver recipient has a service plan tailored to their needs and preferences.
 - **CMS agrees that the state response is sufficient.**
- Clarification that the setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community and control of their personal resources to the same degree as individuals not receiving Medicaid HCBS [42 CFR 441.301(c)(4)(i)]. Note: the provider self-assessment indicates that the facility has gates, locked doors, and other barriers preventing access/exit from areas in the setting; however, individuals have access to laundry facilities in the setting and access to the backyard.
 - State Response: DHCFP noticed upon arrival that the front door was not locked and no visiting hours were posted. The facility locks the front door at night, however, per the Administrator, the recipients know the code as well as the families who visit. They lock the front door for the residents' safety, but for fire safety, all doors automatically unlock (including the memory care area) when the alarm goes off.
 - During this site visit, it was noted that the sleeping quarters have no locks on the doors. However, in talking to a Medicaid recipient and her roommate, she stated she is fine with not locking the door and gets along with her roommate. The room is spacious and with a private

- bathroom. There are 2 bedrooms separated by a wall and a sitting area. Both recipients appeared happy and content and indicated no issues relating to privacy. Each room was decorated and when asked, one recipient stated that she can decorate her own room. It was observed that the facility has a common area i.e. where all residents congregate and socialize, as well as activities are posted on the board.
- Because the facility is located in a small town, shopping and other amenities are within close proximity. The setting also has a facility van that takes residence shopping and/or to do other activities if so desire. The Administrator added that residents' relatives also come and would take their family out.
 - **CMS requests the following additional information: Please provide clarification in regard to the locked and gated perimeter as indicated by the provider to demonstrate that individuals have access to the greater community. As noted below, please provide remediation to ensure individuals' units have lockable doors.**
- Description of the state's assessment of the setting independent of the provider self-assessment, including the interconnectedness (i.e. administrative functions, personnel providing clinical and HCBS services) between the nursing facility and the assisted living facility to ensure adherence to the settings criteria by the assisted living facility, including through the use of any shared staff [42 CFR 441.301(c)(5)].
 - State Response: The setting is adjacent to the NF and next to (separate building) the hospital. Automatic double doors separate the 2 settings. Each setting has its own designated Administrator and personnel; however, when one setting is short staffed, the other setting's personnel would cover. Both settings are owned and operated by the same owner.
 - **CMS requests the following additional information: It is unclear if staff employed in the nursing facility are trained in HCBS rules for when they provide staff coverage. Please provide information describing how the staff in the nursing facility who also work in the assisted living facility understand how to operationalize the home and community-based settings criteria.**
 - Attestation from the state that the setting is selected by the individual from among a variety of setting options including non-disability specific settings [42 CFR 441.301(c)(4)(ii)]; and that the individuals who are interested have opportunities to work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
 - State Response: Fallon Nevada is a small town with only two Assisted Living facilities available to the residents who choose to live in this type of setting. In talking with one of the Medicaid recipients in the facility, she stated that Highland Manor was her choice to be her permanent residence and was satisfied with her choice. Prior to admission to the facility, ADSD case managers discuss "Statement of Choice" with recipients or authorized representative/relative, where recipient is given a choice between living in the community or Assisted Living (depending on their level of care needs) and nursing facility. The "Statement of Choice" form must be signed by recipient or authorized representative (AR).
 - **CMS agrees that the state's response is sufficient.**
 - Assurances the specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement that includes the same or comparable protections to those provided under the jurisdiction's landlord tenant law [42 CFR 441.301(c)(vi)(A)].
 - State Response: The setting has a standard lease agreement and DHCFP obtained a blank copy of the agreement. The lease agreement is in compliance with the landlord-tenant law and it is universal.
 - **CMS requests the following additional information: Please provide an attestation to indicate that each individual has a lease with the provider.**
 - Confirmation that restrictions placed on individuals are supported by a specific assessed need documented in the individual person-centered plans [42 CFR 441.301(c)(4)(vi)(F)].
 - State Response: Each waiver recipient/resident has a person-centered plan that was developed with the recipient/AR or family. The person-centered plan is designed to include recipient's

needs, preferences and services. If there's any special instructions or restrictions, it will be clearly stated in the service plan.

- CMS agrees that the state's response is sufficient.
- Confirmation through a review of person-centered service plans and/or interviews with the individuals that the individuals have freedom and support to control their schedules and activities [42 CFR 441.301(c)(4)(i)].
 - State Response: According to the service plan, recipient enjoys shopping at Walmart. Family is also involved in recipient's care, provides transportation and takes her out for outdoor activities. When DHCFP approached the recipient, she was on her way to the dining room to eat, despite the fact, it appeared lunch was over. Her roommate was sitting in their living room and crocheting, also indicated that they eat whenever they want to and they come and go as they please.
 - CMS agrees that the state's response is sufficient.
- Confirmation that each individual has privacy in their unit, that units have lockable doors to which only appropriate staff have keys [42 CFR 441.301(c)(4)(vi)(B)(1)-(3)] .
 - State Response: The unit is large and has two separate private bedrooms, a decent size common living room and 1 shared bathroom just outside their bedrooms. Each room has a door, however, no lock was noted. When recipient was asked about the doors not able to lock, both individuals replied that they were okay with that. The administrator was aware about the new federal ruling about the different settings, she indicated that they will not add locks to the door. However, prior to leasing the room, the administrator would go over the leasing agreement, provide a tour of the facility and the shared or private rooms. Future tenants and relatives are aware the bedroom doors are not lockable. The administrator added, employees knock first before entering the room.
 - CMS requests the following additional information: Please provide a remediation strategy to ensure that units have lockable doors.
- Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)]. Note that the provider self-assessment indicates that visitors are allowed at any time but also that there are limitations on visiting hours.
 - State Response: The front door is open during the visiting hours. For the safety of the tenants, the front door is locked after dark; however, the door has a key pad, where you enter the combination number. The tenants know the combination number and can provide to their families who wish to visit after dark. Also, there is a buzzer and a staff is available to open the door.
 - CMS requests the following additional information: Please clarify if the setting has "visiting hours" as indicated by this response by the state, or if individuals can have visitors of their choosing at any time.