

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



**Medicaid Benefits and Health Programs Group**

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December 9, 2024

Stacie Weeks  
Medicaid Administrator  
Nevada Department of Health and Human Services  
Division of Health Care Financing and Policy  
1100 East William Street, Suite 101  
Carson City, NV 89701

RE: Heightened Scrutiny Review of:

- Highland Manor of Fallon, Fallon, NV 89406 (Assisted Living Facility)
- Opportunity Village, Las Vegas, NV 89113 (Jobs and Day Training (JDT) and Supported Employment)

Dear Administrator Weeks:

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) and (5). Nevada submitted one assisted living facility in the same building as a privately operated skilled nursing facility and one Jobs and Day Training (JDT) and Supported Employment setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

CMS provided the state its initial “Summary of Findings” for Highland Manor of Fallon and Opportunity Village to which the state responded. CMS had several conversations with the state in regard to additional information needed to make a determination of the settings’ adherence to the settings criteria. Based on the information contained in the initial submissions and the additional information the state provided, CMS agrees with the state’s determination that these settings have overcome any institutional presumption and meet all of the HCBS settings criteria. In the pages that follow, the initial CMS feedback to the state is provided, as well as the state’s responses, and CMS’ reaction to those responses.

Upon review of this feedback, please contact Michele MacKenzie at (410) 786-5929 or [michele.mackenzie@cms.hhs.gov](mailto: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. Thank you for your continued commitment to the state of Nevada’s successful delivery of Medicaid-funded HCBS.

Sincerely,

Curtis J. Cunningham, Director  
Division of Long Term Services and Support  
Medicaid Benefits and Health Programs Group

## Heightened Scrutiny Summary of Findings

### Setting Information

Name of Setting: Highland Manor of Fallon

Address: 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.
- The state considered the following evidence to demonstrate Highland Manor of Fallon is integrated and supports full access to the greater community by the individuals: an individual's person-centered service plan, multiple onsite visits, an interview with the house manager, a discussion with the administrator, lock installation proof of purchase submitted by the setting, an interview with an individual, the setting's lease agreement template, and the setting's procedures.

### 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)].
  - **Nevada Response:** DHCFP obtained a sample copy of the person-centered

service plan signed by recipients. Aging and Disability Services Division (ADSD) Case Managers ensure that each waiver recipient has a service plan tailored to their needs and preferences.

- **CMS Response:** 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.
  - **Nevada Response:** During a state onsite visit 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 do 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.
  - The facility is located in a small town; shopping and other amenities are within close proximity. Highland Manor also has a facility van that takes residents shopping and/or to do other activities if they so desire. The recipients have access to free transportation available any day that can be reserved for life enrichment programs, library visits, restaurants, shopping etc. It was noted that there is a movie theatre and shopping center nearby for recipients to access as well. The Administrator added that residents' relatives also come to take their family members out.
  - The State conducted a follow-up site-visit on August 5th, 2021, and noted the facility does not have a locked gate surrounding the perimeter. Caregivers always knock before entering a recipient's room and are trained on the residents' right to privacy.
  - **CMS Response:** CMS agrees that the state response is sufficient.
- 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)].
  - **Nevada Response:** Highland Manor is the same building as a NF and next to (separate building) a hospital. Automatic double doors separate the ALF and the NF. Each setting has its own designated Administrator and personnel. The state conducted a follow-up site-visit on August 5th, 2021, and noted the ALF does not share staff with the nursing facility and that they are completely separate.
  - **CMS Response:** CMS agrees that the state response is sufficient.
- 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)].

- **Nevada 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 the 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.
- **CMS Response:** 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)].
  - **Nevada 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. The state conducted a follow up site-visit on August 5th, 2021, and verified that Medicaid recipients are issued an individual lease agreement that is in compliance with the landlord-tenant law.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.
- 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)].
  - **Nevada Response:** Each waiver recipient/resident has a person-centered plan that was developed with the recipient, authorized representative, or family. The person-centered plan is designed to include the recipient’s needs, preferences, and services. If there are any special instructions or restrictions, it will be clearly stated in the service plan.
  - **CMS Response:** 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)].
  - **Nevada Response:** According to a service plan, one recipient enjoys shopping at Walmart. Family is also involved in this 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 that 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 Response:** 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)].
  - **Nevada Response:** On May 24, 2024, the state conducted a site visit to Highland Manor. The state met with a house manager who assisted and took state staff to Medicaid recipients' rooms. The State discovered that doors were not lockable. State staff informed the house manager that doors must be lockable to comply with settings requirements. The ADSD Quality Assurance team provided education regarding the importance of being compliant with the settings requirements particularly "the right to a privacy." The Administrator agreed to install locks on all the doors. On June 28, 2024, the Administrator provided ADSD proof of purchase of locks and pictures that locks have been installed the doors. ADSD Quality Assurance team conducted a site visit to validate that all Medicaid recipients' doors had locks on September 13, 2024.
  - The Administrator of the facility indicated that only the medication technician has the master key.
  - **CMS Response:** CMS agrees that the state response is sufficient.
- 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.
  - **Nevada Response:** The State conducted a follow up site-visit on August 5th, 2021, and noted the Administrator indicated that there is no restriction to visiting hours. The doors are locked from 7pm to 7am for the residents' safety. There is a keypad at the door with a code that residents can provide to their visitors. The Administrator also stated that visitors just have to ring the doorbell, and the visitors will be allowed into the facility.
  - **CMS Response:** CMS agrees that the state's response is sufficient.

## Heightened Scrutiny Summary of Findings

### Setting Information

Name of Setting: Opportunity Village

Address: Las Vegas, NV 89113

Type of Setting: Non-residential - Jobs and Day Training (JDT) and Supported Employment

Heightened Scrutiny Category: Setting has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

Date Submitted: November 7, 2023

Brief Description of Setting: Opportunity Village (OV) is the state's largest provider of non-residential services to individuals with intellectual and/or developmental disabilities, serving 1,100 people (approximately 800-850 of whom are Medicaid waiver recipients). Programmatic activities include both on and off campus interactions. Approximately 200-230 of the 1,100 individuals are receiving services in off-campus activities, while the remaining 900 are receiving services at one of OV's campuses in facility-based settings.

Approximately 143 of all people primarily supported at an OV JDT setting have not given documented permission to engage in non-JDT setting activities/involvements. The recipients receive at least an annual discussion/conversation to revisit additional non-JDT setting activities/involvements.

OV Retail (Thrift) JDT setting incorporates public integration for all 29 people served.

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

- The state reported that approximately 188 of all Medicaid Waiver recipients served at OV are not based at any OV owned/operated setting, being 100% supported at a community location, with an integrated/public dynamic. The recipients receive at least an annual discussion/conversation to revisit additional non-JDT setting activities/involvements.
- All OV JDT settings are located proximal to Regional Transportation Commission (RTC) public fixed route bus services, and simultaneously located within RTC Paratransit areas. Public bus stops are immediately adjacent to each location. The public transportation and facility transportation provides opportunities for individuals who desire to go to the store or other off site social activities or seek outside employment opportunities such as other JDT facility – non-affiliated with OV. Through a fleet of 16 vehicles, regular daily transportation is provided to facilitate involvement in enrichment, education, health and wellness, skills training, and other meaningful and relevant person-centered offerings.
- During the Person-Centered Service Plan (PCSP) development, an individual/designated representative/Legally Responsible Individual (LRI) and/or any other participants of recipient's choosing is provided a "Statement of Choice" form and is given a list of providers to choose from. Once selected, it is written in the PCSP and includes individual's preferences, desires, and goals.
- During the site visit, state staff observed and interviewed Medicaid recipients and

responses were positive in regard to liking the setting, the people they interact with, and the physical environment. There were no restrictions in the interactions with other recipients or where recipients can go within the facility except for where there are hazardous materials or equipment present.

- The state confirmed during the site visit that no visitation hours were noted on the front door.
- The state considered the following evidence to demonstrate Opportunity Village is integrated in and supports full access to the greater community by the individuals: State staff conducted site visit to include review of provider's internal process, interview of providers and recipients to ensure recipients are receiving services based on their needs, preferences, choices and goals and as laid out in the Nevada State Transition Plan to comply with the HCBS Settings Requirements.

### **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:**

CMS requests the State of Nevada provide the following:

- Verification that individuals have control over their own schedules, and that the variation and frequency of engagement in community activities of individuals' choosing (including group and individual outing options in the broader community) are consistent with the preferences and desires outlined in each individual's person-centered plan as identified through a review of the person-centered service plan, setting activity records/notes and/or direct on-site observation [42 CFR 441.301(c)(4)(i)]. The state did not provide how it determined this criterion was met.
  - **Nevada Response:** Opportunity Village ensures that individuals are aware of the various locations, community engagement opportunities, and hours services are available. Options are made known and reviewed at each annual Person-Centered Plan (PCP) meeting and more frequently as requested, as changes arise, or when individual preferences are communicated with the PCP team for action and/or support for best outcomes. Individuals schedule their own arrival and departure times for access to services. Individuals are given opportunities to share/express personal choice for community engagement opportunities and to access such choices to the maximum extent possible. Staff review and acknowledge individual plans to promote maximum awareness and alignment with preferences and desired outcomes for each individual. All staff are trained and undergo regular retraining to support individual rights through a person-centered approach. Individuals are able to eat/drink snacks and meals at their preferred times and are provided support as needed. ADSD validates this criterion through the provider certification process. The provider certification includes all settings criteria which are non-negotiable items that generate its own settings score. This score is factored into the overall certification score. Items that do not meet standards result in a plan of improvement with specific timelines for completion that is validated by ADSD Quality Assurance staff. The certification process also includes



environmental reviews which consists of observations as well as staff and individual interviews.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  - **Nevada Response:** Opportunity Village has various community partners that offer competitive employment to individuals and ensures individuals are aware of the different options. Options are made known and reviewed at each annual PCP meeting and more frequently as requested, as changes arise, or when individual preferences are communicated with the PCP team for action and/or support for best outcomes. Individuals are given opportunities to share/express personal choice for competitive integrated employment and to access such choices to the maximum extent possible. ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that the setting supports full access of individuals to control their personal resources [42 CFR 441.301(c)(4)(i)].
  - **Nevada Response:** Opportunity Village provides sufficient ADA accessible metal lockers that accommodate private locks for individuals to safely secure their personal/private belongings while attending Opportunity Village JDT settings. These lockers are located in unrestricted accessible common areas at each setting. Individuals can access their locker at any time while at Opportunity Village. ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation from the state through the review of person-centered service plans and/or interviews with individuals residing in the setting that:

The setting is selected by the individual from among setting options including non-disability specific settings [42 CFR 441.301 (c)(4)(ii)]. The state did not provide how it determined this criterion was met.

  - **Nevada Response:** Through the person-centered planning process and identification of the person's preferences and goals, the individual is offered a choice of available providers that can provide the services and supports to meet the person's desired outcomes. A vendor referral is completed by the service coordinator that describes the services requested and support needs of the person that does not include any personal identifying information. The referral is submitted to specific providers of the service(s) requested. Providers respond if they have the availability, (e.g., staffing, vacancy, or skillset), to support the person. The service coordinator facilitates provider interviews with the person

which includes a discussion of setting options including non-disability specific settings. Site visits are also coordinated for the person to tour the service provider's location of services. The person's choice and preference for how services are delivered is included in the Person-Centered Plan and corresponding habilitation plans. The person's choices and preferences are reviewed on a quarterly basis by the service coordinator. ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation that the setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. [42 CFR 441.301(c)(4)(iii)]. The state reported that use of a restraint procedure is viewed as an exception or extreme event for any recipient. While the state's summary explains the process for implementing restraint, it does not demonstrate how the state determined the criterion has been met for the setting.
  - **Nevada Response:** This criterion is met through ADSD service coordinator observation of staff interactions with individuals and interviews with both staff and individuals. In addition, ADSD quality assurance staff review incident reports and as applicable any corresponding restraint and denial of rights forms to ensure that all interventions are appropriate.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that 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)]. The state did not provide how it determined this criterion was met.
  - **Nevada Response:** Opportunity Village fully supports person centered driven approaches to all programs and services, and trains/retrains staff to appropriately support individuals according to their plans. Individuals are intentionally given opportunities to share/express personal choice for enrichment, engagement, and/or employment goals and to be supported in their access and pursuit of such choices to the maximum extent possible. JDT settings provide flexible access to the resources and spaces that align with individual choice and provide opportunities to access community options to the maximum extent possible. ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that individuals have a choice in selecting their services and supports [42 CFR 441.301 (c)(4)(v)].
  - **Nevada Response:** Through the person-centered planning process and identification of the person's preferences and goals, the individual is offered a

choice of services and supports to meet the person's desired outcomes. The person's choice and preference for how services are delivered is included in the Person-Centered Plan and corresponding habilitation plans. The person's choices and preferences are reviewed on a quarterly basis by the service coordinator. ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that individuals have the freedom and support to control their own schedules and activities, and have access to food at any time (<https://www.medicaid.gov/sites/default/files/2019-12/exploratory-questions-non-residential.pdf>).
  - **Nevada Response:** Opportunity Village ensures that individuals are aware of the various locations, community engagement opportunities, and hours of JDT services available, that options are made known and reviewed at each annual PCP and more frequently as requested, as changes arise, or when individual preferences are communicated with the PCP team for action and/or support for best outcomes. Individuals schedule their own arrival and departure times for access to JDT services. Individuals are given opportunities to share/express personal choice for community engagement opportunities and to access such choices to the maximum extent possible. Staff review and acknowledge individual plans to promote maximum awareness and alignment with preferences and desired outcomes for each individual. All staff are trained and undergo regular retraining to support individual rights as per person centered approach. Individuals are able to eat/drink snacks and meals at their preferred times and are provided support as needed. ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Confirmation that individuals are able to have visitors of their choosing at any time. The state did not provide how it determined this criterion was met. (<https://www.medicaid.gov/sites/default/files/2019-12/exploratory-questions-non-residential.pdf>).
  - **Nevada Response:** Opportunity Village allows individuals to have visitors during times present at JDT settings in a manner that does not conflict with the rights and privacy of other individuals receiving services (e.g. family member sharing lunch/meal with individual in cafeteria or outside picnic table). ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.
  - **CMS Response:** CMS agrees that the state's response is sufficient.

- Attestation that the setting is physically accessible to the individual (<https://www.medicaid.gov/sites/default/files/2019-12/exploratory-questions-non-residential.pdf>).
  - **Nevada Response:** The setting had to be reviewed and approved by ADSD quality assurance unit to ensure accessibility prior to opening the location. In addition, the setting is reviewed during regular onsite visits by the ADSD service coordinators and during environmental reviews conducted by quality assurance staff to ensure ongoing accessibility. This is also included in the Provider Standard of Service Provision as part of the provider certification. If a concern arises regarding the setting being physically accessible to individuals, the provider is issued a plan of improvement with an identified timeframe to address and correct the issue. ADSD quality assurance staff validate the plan of improvement with a follow-up site visit to verify the correction has been completed as outlined.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
  
- Confirmation that restrictions placed on individuals are supported by a specific-assessed need and are clearly justified and documented in the individual person-centered plans including restraint exceptions mentioned in the state's summary (<https://www.medicaid.gov/sites/default/files/2019-12/exploratory-questions-non-residential.pdf> ). The state did not provide how it determined this criterion was met.
  - **Nevada Response:** Opportunity Village works with the PCP team to ensure that any restrictions or restrictive interventions follow due process which includes the appropriate consents and plans reviewed by the ADSD Desert Regional Center human rights and the behavior intervention committees. The assessed need is determined through the PCP process and identifies whether restrictions are needed for health and safety. Opportunity Village ensures all staff are trained annually in identifying individual rights and potential restrictions. ADSD validates this criterion through the provider certification process and conducting environmental reviews which includes observations and staff and individual interviews.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
  
- Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>).
  - **Nevada Response:** The ADSD quality assurance team created a standardized HCBS Settings Rule Training that was conducted at each regional center provider meeting. A copy of the training was shared with providers as a requirement to use for their new hire orientation and annual training on the topic. The training is also a mandated training in the Provider Standard of Service Provision that ADSD uses to certify providers. Providers are required to maintain signed/dated training records for their staff that are reviewed by ADSD quality assurance staff during certification or as needed.
  - **CMS Response:** CMS agrees that the state's response is sufficient.