

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



Medicaid Benefits & Health Programs Group

October 1, 2024

Maureen Corcoran
Director, Ohio Department of Medicaid
50 West Town Street, 4th Floor
Columbus, OH 43215

RE: Heightened Scrutiny Review of:
Van Wert Manor, Van Wert County, Ohio

Dear Director Corcoran:

This letter is in reference to the setting 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). Ohio submitted a new Assisted Living setting that is located in a building that provides inpatient institutional treatment. An evidentiary package was submitted by the state of Ohio to CMS for heightened scrutiny review on December 3, 2020.

CMS appreciates the efforts of the state to provide comprehensive information regarding this setting's characteristics. Based on the information contained in the initial submission, and the additional information the state provided, CMS agrees with the state's determination that this setting will overcome the institutional presumption and meets all the HCBS settings criteria. In the pages that follow, the initial CMS feedback to the state is provided, as are the state's responses and proposed future actions, and CMS' reaction to those responses.

Since there are currently no individuals receiving Medicaid-funded HCBS in this setting, CMS requests that the state provide, within its Corrective Action Plan milestone reporting to CMS, the date when the setting begins to provide Medicaid-funded HCBS to individuals, along with an assurance that individuals have a person-centered service plan that meets requirements outlined at 42 CFR Section 441.301(c)(1)-(3) in place at that date.

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 conference call with the CMS team to discuss next steps or request technical assistance.

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

Sincerely,

Curtis Cunningham, Director
Division of Long-Term Services and Supports

Heightened Scrutiny Summary of Findings

Name of Setting: Van Wert Manor

Address: Van Wert County, OH

Type of Setting: Residential – Assisted Living

Heightened Scrutiny Category: Setting located in a building that also provides inpatient institutional treatment.

Date Submitted: December 3, 2020

Brief Description of Setting: Assisted living setting sharing a building with a skilled nursing facility located in rural Ohio. The assisted living and the nursing facility have separate entrances and separate signage.

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

- The assisted living is approximately two miles from a retail pharmacy, a high school, middle school and several churches. There are also shops and restaurants nearby. The setting is also located near local banks, the Van Wert Civic Theatre, the YMCA, as well as private residences. Individuals living in the assisted living have the same proximity to the community as individuals residing in the private residences. The state provided examples of planned community outings, with resident input, and planned onsite activities. Individuals go on outings with their family, friends, and on their own as they wish. Resident interviews confirmed that the setting has several outings each month and the activity director includes the individuals' input about scheduled outings.
- Employees of the assisted living and case managers assist individuals with access to transportation to facilitate full access to the greater community, including through a local taxi company, the setting's van, the Local Council on Aging, and a local transportation vendor. Some individuals drive their own cars and park at the setting's parking lot and go out with family and friends. Staff interviews affirmed that individuals are assisted with accessing transportation.
- Ohio has protections in place for waiver enrollees to ensure they understand that they have the ability to choose their providers. Individuals work with a case manager, their families, their provider(s), and the setting administrator or other setting official(s) to ensure the setting is the best option to meet their needs. The assisted living has options for private units.
- Living units are equipped with locking doors, curtains, and other privacy supports. Most individuals have their own cell phones or telephone in their unit. There are phones at the setting's café and the nursing office for private phone calls. During the review, reviewers noted no seclusion rooms or restraints used in this setting. Individual interviews offered that staff are polite. Staff interviews confirmed respect for privacy.
- There are no seating assignments during meals and individuals have the option to eat in their living unit when they desire. The setting allows individuals to keep pets in their living units. Onsite observations determined that individuals go into the community on their own, participate in group outings and participate in activities (alone and in groups) on-site.
- Resident interviews verify that individuals select their non-residential providers;

individuals have their choice of services and who provides them.

- State reviewers confirmed that each individual has a legally enforceable residency agreement pursuant to the following: ORC 3721.13, ORC 3721.16, OAC 3701-16-07, OAC 5516-44-01, and OAC 173-39-02(E).
- Staff and resident interviews demonstrate that units have entrance doors that are lockable by the individual, with only appropriate staff having keys to doors.
- Individuals sharing units have a choice of roommates in the setting in accordance with OAC 173-39-2.16(B)(2)(a)(ii).
- Several individuals decorated their living units and doors with holiday décor including wreaths, flowers, and other personal decorations. Several living units were decorated with the individual's own furniture, bedspreads, family photos, and keepsakes.
- Resident and staff interviews confirmed there are no restrictions on when residents must return to the setting and individuals control their own schedules and activities.
- Resident and staff interviews, as well as onsite observations, confirm individuals have access to food, including snacks, at any time in the setting's dining room and kitchen. Individuals have access to a daily menu, an alternate menu and can store food in their units.
- Visitors are welcome at any time and are encouraged to join individuals during meals. All exterior doors are locked from 10:00 p.m. to 6:00 am during which time individuals and visitors may use a keypad, use the nursing facility entrance or ring a doorbell to gain access.
- To the extent any facility staff are assigned to support or back up the HCBS staff, the facility staff are cross-trained annually to meet the same qualifications as the HCBS staff. The nurses and nursing assistants work in the assisted living only. The department of nursing is shared between the settings.
- The state considered the following evidence to demonstrate that the setting is integrated in and supports full access to the greater community by the individuals: The state conducted a site visit during which the state made observations and queried relevant personnel, reviewed the resident agreement, interviewed three residents and three staff persons not in the presence of administrative staff, and reviewed the following documents: Abuse Policy, Activity Calendar, Alternate Food Menu, Floor Plan, Grievance Policy, Food Menus, Master Key Policy, Photos, Residential Agreement, Residential Council Minutes, Residential Handbook, Residential Rights, Staff Training and Visitation policy.
 - After initial CMS feedback was given, additional evidence included a review of additional documents which included: 24-hour visitation, 2017 settings tool, 2018 settings tool, Admission, Transfer & Discharge Rights, After Hours Access Policy, Employment Policy, Food Accessibility, Key policy, Letters of Support, Notice of Acknowledgements, ODH Survey, Staff Roster and Schedule, Staff Training Policy, Table of Organization, and Telephone Policy. The state conducted an additional site visit in 2024 during which the state made observations, interviewed a resident, and interviewed a staff member.

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 Ohio provide the following:

- Clarification of the public notice process associated with this setting. The state reports the public comment period occurred September 15, 2020, to October 15, 2020, and indicates on page 5 of the information submitted to CMS that it received input from three commenters during this time. On page 6, the state reports that the Department of Aging did not receive any responses during the public comment period. Please clarify.
 - **Ohio Response:** During proofreading erroneous information was not caught and remedied. The state has remedied the language on the original report and reiterates the state did not receive any public comments during the comment period.
 - **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)].
 - **Ohio Response:** The state has collected evidence from the provider to ensure they offer opportunities for individuals to seek employment. The packet has been updated with this evidence, and prior to the state certifying the provider and enrolling in Medicaid, the state will conduct a final review and technical assistance session regarding all components of the HCBS settings rule, including opportunities to seek employment and work in competitive integrated settings. Additionally, if an individual at the setting chooses to work, the setting will support the individual by ensuring the resident has reminders for work, has a meal and/or snack to take, and coordination of any personal care services and transportation to and from their individual place of employment.
 - **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)].
 - **Ohio Response:** The state has collected evidence from the provider to ensure the setting supports full access of individuals to control their personal resources. The packet has been updated with this evidence and prior to the state certifying the provider and enrolling in Medicaid, the state will conduct a final review and technical assistance session to ensure the setting understands all components of the HCBS settings rule and continues to support full access of individuals to control their personal resources. Additionally, state staff reviewed the Resident Handbook which contains language stating individuals may control their own resources or use the setting business office as an alternative. Additionally, the Ohio Department of Health (ODH) residential care facility licensure requirements include protections for personal resources in OAC 3701-16-11.

- **CMS Response: CMS agrees that the state’s response is sufficient.**
- Attestation that the setting ensures an individual's rights of freedom from coercion [42 CFR 441.301(c)(4)(iii)].
 - **Ohio Response:** The state ensures an individual’s rights of freedom from coercions and restraint are preserved through different mechanisms:
 - The state has collected evidence and reviewed the setting’s policies and procedures, including Resident Rights. The state found language in the Residents Rights and the Abuse policy which strictly prohibits any act of intimidation of an individual residing at the setting. The policy outlines training of staff, procedures to prevent occurrences of coercion, and how to identify if they happen. Interviews conducted at the setting indicated individuals were happy with the staff and the way the individuals were treated by staff at the setting. Additionally, the ODH residential care facility licensure requirements include an individual’s rights of freedom from coercion and restraints throughout OAC Chapter 3701-16.
 - Prior to the state certifying the provider and enrolling in Medicaid, the state will conduct a final review and technical assistance session to ensure the setting understands all components of the HCBS settings rule.
 - Once the provider is certified as an Assisted Living Waiver provider, individuals enrolled on the Assisted Living Waiver who are considering the setting work with the case manager, their family (if desired) and other interested parties identified by the individual to ensure their choice of setting, providers, services, and desired goals are met through person-centered planning.
 - The state’s designated and/or state staff meet with the provider at least annually to conduct a review of the setting for compliance with Ohio Administrative Code, Ohio Revised Code, and the Code of Federal Regulations. These reviews include interviews with individuals residing at the setting and staff.
 - **CMS Response: CMS agrees that the state’s response is sufficient.**
- Attestation that the setting is physically accessible to the individual [42 CFR 441.301(c)(4)(vi)(E)].
 - **Ohio Response:** During the onsite observation, interviews, and administrative review, the state ensures the setting is physically accessible to the individual. This review includes ensuring the individual can access their living unit when out after normal business hours. Additionally, state staff observations and photos of the facility demonstrate the setting has the following physical characteristics: wide hallways, rails and wide entryways into other areas including the individual living units. Each living unit bathroom has a walk-in or roll-in shower with grab bars.
 - **CMS Response: CMS agrees that the state’s response is sufficient.**
- Confirmation that any modifications to the additional conditions under

441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plans. [42 CFR 441.301(c)(4)(vi)(F)].

- **Ohio Response:** The state has collected evidence that any modifications to the additional conditions under 441.301(c)(4)(vi)(A) through (D) are supported by a specific assessed need and justified in the person-centered service plan.
 - The state has collected evidence and reviewed the setting's policies and procedures, including Resident Rights.
 - Prior to the state certifying the provider and enrolling in Medicaid, the state will conduct a final review and technical assistance session to ensure the setting understands all components of the HCBS settings rule.
 - Once the provider is certified as an Assisted Living Waiver provider, individuals enrolled on the Assisted Living Waiver who are considering the setting work with the case manager, their family (if desired) and other interested parties identified by the individual to ensure their choice of setting, providers, services, and desired goals are met through person-centered planning.
 - The state's designee and/or state staff meet with the provider at least annually to conduct a review of the setting for compliance with Ohio Administrative Code, Ohio Revised Code, and the Code of Federal Regulations. These reviews include interviews with individuals residing at the setting and staff.
 - Following certification as an Assisted Living Waiver provider, and Medicaid enrolled individuals begin residing in this setting, adherence to any person-centered services planning modifications to settings regulation requirements will be monitored through routine program operations and oversight.
 - The individual, or if applicable, the individual and the individual's authorized representative will lead the person-centered planning process, with support of the case manager and any other team members chosen by the individual. Any modification in a person-centered service plan is supported by a specific assessed need and justified in the person-centered service plan. Case managers are trained on HCBS setting requirements, the person-centered planning process, developing a person-centered services plan, and modifications. Providers must sign person-centered service plans, including those with modifications, to demonstrate they can implement the plan. Medicaid recipients receiving services at a new setting will have their person-centered service plans reviewed to ensure compliance.
- **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>).

- **Ohio Response:** During the onsite interviews, the state reviews training content and transcripts when available to ensure staff are trained in the provision of home and community-based services. During introductory interviews of the administrators for the settings, the state discusses the importance of ensuring staff receive initial and ongoing training. During staff interviews, the state requests the staff person to list the trainings they have taken. Prior to the state certifying the provider and enrolling in Medicaid, the state will conduct a final review and technical assistance session to ensure the setting understands all components of the HCBS settings rule including ensuring staff have been properly trained in the provision of home and community-based services, in addition to training required in Ohio Administrative Code. Additionally, the facility has provided policies demonstrating that training for staff providing care includes several topics related to assisted living and elements of the HCBS settings rule: Understanding the World of Dementia: The Person and the Disease; Dementia Care Training/Aging Process; Principles of Assisted Living; Your role in an Assisted Living Facility; Waiver Consumer Plan of Care; Use of Keys; The Aging Process Consumer Service Plan. The ODH residential care facility licensure details staff training requirements throughout OAC Chapter 3701-16. This includes training on resident rights and training specific to the needs of the population(s) served by each facility, such as serving individuals living with cognitive impairment. Operationalization of incorporating HCBS settings requirements into overall staff training for this facility was demonstrated through staff and individual interviews conducted.
- The state confirmed the provider’s employees received HCBS Settings Rule training on all the criteria and will annually thereafter. All new hires will receive HCBS Settings Rule training as well. The state provided a document titled AL-HCBS orientation that lists the following training topics: Principles/philosophy of assisted living; aging process; Cuing, prompting and other means of effective communication; Confidentiality; the Person-centered planning process; Consumer’s rights and responsibilities; Home and Community based settings video training series.
- The state confirmed the provider’s employees watched the entirety of the CQL videos on HCBS. New hires will also be required to watch all the videos.
- **CMS Response: CMS agrees that the state’s response is sufficient.**
- **Additional CMS Feedback:**
 - Although the state indicates staff will only use the master key in the event of emergency, to clean the living unit while the individual is not present, to make repairs on the living unit, to pass medication, or to ensure the safety and well-being of the individual, CMS requests the state clarify how residents are made aware of when staff plan to be in their living unit for non-emergency tasks when

the individual is not present, and whether they have the option to request these tasks be done at a different time.

- **Ohio Response:** Residents are interviewed upon admission to determine whether they want to be present or not when non-emergency tasks are completed in the living unit. Their preference is documented in the chart and will be reviewed during each service plan meeting or upon resident request. Additionally, individuals are also given a form indicating when non-emergency tasks need to be completed not less than 24-hours prior to the scheduled task. Individuals will have the opportunity to communicate with staff if they have a concern with non-emergency tasks being completed without the individual present. Please see the attached document titled Use of Keys.
- **CMS Response: CMS agrees that the state's response is sufficient.**
- CMS notes through the review of the heightened scrutiny package, Van Wert Manor currently provides community integrated activities in groups, is heavily focused on activities occurring in the setting (including activities that would be considered examples of reverse integration) or at the attached nursing facility. The package does not reflect how the setting facilitates the individual's engagement in community life beyond planned group outings, which appear to be only once per week. CMS requests the CAP milestone reporting include an assurance that individuals have person-centered service plans that support engagement in community life, including, for example, frequency of planned outings, support for planned and spontaneous individual outings, and how the individual's interests as described in their person-centered service plan is reflected into the facility's group activity calendars. Additionally, CMS requests the state verify through CAP milestone reporting that person-centered service plans include information about how individuals were provided an option for a non-disability specific setting, have a choice in who provides their services within the setting, and a choice of services and supports.
 - **Ohio Response:** Individuals have person-centered service plans that identify their preferences related to engaging in community life. This is outlined in OAC 5160-44-01 and 5160-44-02. During monthly resident council meetings, the setting will request feedback on future activities and will incorporate them as appropriate. Additionally, person-centered service plans will be reviewed quarterly by the provider to ensure activity staff incorporate preferences of everyone into activity programming. The setting created a document titled Community Access Resources that identifies local shopping, dining, entertainment, and transportation options in the community. The setting will assist any individual who needs help scheduling and coordinating transportation outside the setting. Finally,

person-centered service plans include details around all options available regarding non-disability specific settings, and that everyone has a choice in who provides services within the setting and a choice of services and supports. Case managers discuss this information and document it within the person-centered services plan.

- **CMS Response: CMS agrees that the state's response is sufficient.**