

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

June 16, 2023

Dana Hittle, Medicaid Director
Oregon Health Authority
500 Summer Street, NE e49
Salem, OR 97301

Dear Director Hittle:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from April 17-19, 2023. CMS visited several settings in Oregon that were identified by the state and/or stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5) and required a CMS-conducted heightened scrutiny review to determine if they comply with the home and community-based services (HCBS) settings criteria at 42 CFR § 441.301(c)(4).

CMS appreciates the efforts of the state to prepare for our visit to Oregon. We are asking the state to apply remediation strategies addressing the feedback contained in our report to the specific setting(s) as identified. We note that the HCBS settings criteria identified in the report that are followed by an asterisk require the state to go beyond ensuring that the individual setting has completed the necessary actions identified; specifically, complying with person-centered planning requirements requires further direction to and collaboration with the entities responsible for developing and monitoring the person-centered plans and with the HCBS provider community that is responsible for implementing services and achieving the objectives outlined in the plan. In addition, CMS notes that the state's remediation strategies must be applied to all remaining similarly situated settings you have identified as being presumptively institutional that were not included in CMS' site visit to ensure compliance with the settings criteria at 42 CFR § 441.301(c)(4) by the timelines detailed in the ultimately approved Corrective Action Plan (CAP). Finally, the state should ensure issues identified in this report are addressed in the state's overall assessment process of all providers of HCBS in Oregon, to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance.

As described more fully in the attached report, CMS notes below several areas where issues were found to exist across several locations, which raise systemic concerns that must be addressed by the state. Specifically, the following regulatory criteria located at 42 CFR 441.301(c)(4) were not found to be in practice:

- 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.

- The setting 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.*
- The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.*
- 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.
- 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 a 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 in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals are able to have visitors of their choosing at any time.
- Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.*
- Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.

Oregon's Statewide Transition Plan (STP) described strategies to ensure that all providers of Medicaid HCBS have been assessed to meet the regulatory criteria and any needed remediation has been identified. The state's practice for addressing the observations described in the attached report must align with the processes described in the STP and in the state's CAP.

CMS requests that the state provide a written response providing updated information describing how the state will remediate both the process for developing and implementing the person-centered service plan and the individual settings to ensure compliance with all of the settings criteria. CMS also requests a written response on how the state will apply this feedback to the ongoing monitoring of person-centered planning functions and settings in the HCBS delivery system as noted above. CMS requests this information be submitted no later than July 16, 2023.

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 Oregon's successful delivery of Medicaid-funded HCBS.

Sincerely,

Melissa L. Harris, Deputy Director
Medicaid Benefits and Health Programs Group

Enclosure

Heightened Scrutiny Site Visit - Oregon
Summary Review by Setting
Visit Dates: April 17-19, 2023

Oregon Site Visit Team:

CMS Representative: Anthony Borges Nazari

ACL Representative: Erica McFadden and Jill Jacobs (virtually on Wednesday)

New Editions: Devon Mayer, Vicky Wheeler

Oregon: John Palio and Patrick Woods (OHA), Mat Rapoza and Margaret May (APD), Rose Herrera and Lisa Catherwood (ODDS)

Introduction:

The Site Visit Team visited six settings in Oregon, including two Memory Care Communities (MCC) attached to Residential Care Facilities (RCF), a Residential Treatment Facility (RTF), a Residential Treatment Home (RTH), a Group Home for Adults, and a Group Home for Children. The facilities are located in Cottage Grove, Florence, Salem, Portland, and Gresham. Two of the settings were identified by the state as presumptively institutional and submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review. Four of the settings were originally submitted by Oregon for a heightened scrutiny review as settings that have the effect of isolating individuals receiving HCBS from the broader community, but were later rescinded due to guidance issued by CMS in March 2019. The settings were selected as a sample from all settings submitted by the state to CMS for heightened scrutiny review and/or based on stakeholder request for CMS to conduct site visits.

Promising Practices:

One setting had a state-conducted compliance visit in July 2022 that generated many findings. One of the remediation strategies this setting did was hire a consultant to revamp their care plans. The current care plans are robust and contain extensive information about the individual so the reader can understand what is important to and for a person.

Summary of Findings:

Although a distinct review of each setting is included in this report, the table below summarizes the findings for the entirety of the visit to Oregon and identifies systemic issues noted through the review.

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(i)	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.	Middlefield Oaks, Spruce Point
441.301(c)(4)(ii)	The setting 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.	Middlefield Oaks, Spruce Point
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Middlefield Oaks, Spruce Point, Via Verde, Horizon House, Albertina Kerr, Alternative Services, Inc.
441.301(c)(4)(iv)	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.	Middlefield Oaks, Albertina Kerr

Regulation Citation	Regulation Language	Setting Name
441.301(c)(4)(vi)(A)	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 a 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 in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	Middlefield Oaks, Spruce Point, Horizon House
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	Middlefield Oaks, Via Verde
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	Spruce Point, Albertina Kerr
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	Middlefield Oaks, Spruce Point, Via Verde, Horizon House, Alternative Services, Inc.

Additional Provision	Language	Setting Name
State Medicaid Director Letter #19-001 ¹	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	Middlefield Oaks, Spruce Point, Via Verde, Horizon House, Albertina Kerr, Alternative Services, Inc.

¹ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

Middlefield Oaks, Memory Care Community (MCC) – Visit April 17, 2023

Facility Description:

The setting is a Memory Care Community that is attached to a Residential Care Facility, located in Cottage Grove, OR. The setting is located within a commercial zoning area, proximal to residential zoning and 350 feet from the community hospital where several residents access their primary care. The setting is a one-story building, separated from the RCF by doors that were locked with codes and alarmed. There are two separate neighborhoods, Silver and Sunset, in the MCC. The setting has the capacity for 36 residents, but currently has 29 total residents, 19 of whom receive HCBS. Most HCBS residents have a shared room and a Jack and Jill bathroom (has two doors and is accessible from two bedrooms). The MCC setting was originally submitted by Oregon as a setting that has the effect of isolating individuals receiving HCBS from the broader community, but was later rescinded due to guidance issued by CMS in March 2019.

Site Visit Review Description:

Upon arrival, the site visit team reviewed service plans, the residency agreement, and staff training material, interviewed a direct support professional (DSP), and spoke to state staff. The team was provided a walking tour of the MCC that included conversations with administrative staff as well as participants who received services. A couple of residents invited the team to speak with them in their rooms. Rooms had personalized decorations.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	<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.</p>	<p>The setting does not facilitate access to the community. The MCC had a vacant Activity Director position for months; the position was recently filled. Staff reported that residents there were able to leave once in the last two years that she worked there to go look at Christmas lights with the RCF residents. Residents can leave when their families come visit. The service plans reviewed by the team did not include information on community activities or outings.</p> <p>A resident interviewed expressed interest in volunteering throughout the interview, but the service plan reported that she didn't want to volunteer.</p> <p>Middlefield Oaks must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Middlefield Oaks should develop policies, practices and resources to ensure that individuals have full access to the greater community.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	The setting 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.	<p>The service plans did not include documentation of settings options.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>The bathroom doors do not lock in the Jack and Jill bathrooms shared between residents. While the Administrator said the doors to the bathrooms locked, the two doors the team tried did not lock.</p> <p>Dietary information and eating restrictions for residents in one of the neighborhoods was left out on the kitchen counter.</p> <p>There was an Ombudsman sign posted, but it was posted outside of the locked neighborhoods where residents couldn't see it.</p> <p>Middlefield Oaks must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, and respect. This includes facilitating privacy in the shared bedroom.</p>

<p>441.301(c)(4)(iv)</p>	<p>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.</p>	<p>The doors to the outside patio in both neighborhoods were locked, even though an Administrator said they were to be kept unlocked. There was no access to the outside for the residents and there was little for the residents to do.</p> <p>There was little interaction between residents. One of the residents shared that they used to play bingo in the hallway with others, but they don't get to do that anymore.</p> <p>Most of the bedroom doors were open during the visit. One of the residents said she had to keep her door open, because otherwise it was too hot in her room. It was unclear whether people had the option to close their doors and it appeared that they were discouraged from doing so.</p> <p>Alcohol use is not allowed unless there are doctor's orders to allow them access.</p> <p>Staff report that individuals can wake up and go to bed based on their preferences, but staff may wake up individuals to administer medications at specific times.</p> <p>Middlefield Oaks must ensure their model of service delivery aligns with the regulatory criteria to facilitate independence and community integration and amend practices to ensure that schedules are not regimented and that individuals have the opportunity to set their own schedules and participate in activities of their choosing.</p> <p>Middlefield Oaks must ensure their model of service delivery aligns with the regulatory criteria to support</p>
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Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
-		participants' autonomy in making choices about daily activities.
441.301(c)(4)(vi)(A)	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 a 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 in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<p>The residency agreement lacked language around how to file an appeal against eviction.</p> <p>Middlefield Oaks must ensure that a lease, residency or other written agreement is in place for each individual and that the agreement provides protections from evictions and appeals processes that are comparable to those in the jurisdiction's landlord tenant laws.</p>
441.301(c)(4)(vi)(B)	Each individual has privacy in their sleeping or living unit.	<p>All residents' doors in the MCC were propped open with a wedge and several residents could be seen lying in their beds.</p> <p>The bathroom doors do not lock in the Jack and Jill bathrooms shared between residents. While the Administrator said the doors to the bathrooms locked, the two doors the team tried did not lock.</p> <p>Middlefield Oaks should ensure individuals have privacy in their sleeping or living unit.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<p>Individuals do not have keys to their bedrooms. Staff noted that several residents have elopement risk, while this was not noted in the service plans.</p> <p>Middlefield Oaks must ensure that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p> <p>Any modifications on the ability of an individual resident to lock their door must be based on an assessed need and documented in the person-centered service plan (PCSP).</p>
441.301(c)(4)(vi)(B)(2)	Individuals sharing units have a choice of roommates in that setting.	<p>The provider picks the roommates based on availability and switches individuals if there are issues.</p> <p>Middlefield Oaks must revise its model of service delivery to ensure that individuals sharing units have a choice of roommates.</p>
441.301(c)(4)(vi)(C)	Individuals have the freedom to control their own schedules and activities, and have access to food at any time.	<p>Staff report that individuals can wake up and go to bed based on their preferences, but staff will administer medications at specific times not based on individuals' schedules.</p> <p>Middlefield Oaks must revise its model of service delivery to ensure individuals can control their own schedules, unless there is a documented reason, described in an individual's person-centered service plan, for any restrictions.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(E)	The setting is physically accessible to the individual.	Both doors to the fenced-in patio were locked despite being told by the Administrator during the tour that the doors were always unlocked for residents to go outside. Middlefield Oaks should ensure the setting is physically accessible to the individual.
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	The residency agreement states that no residents are allowed to drink or smoke. The residency agreement notes that visitors can smoke in a designated smoking area. While staff reported residents all had dementia to justify restrictions, there were no modifications to the settings criteria noted in the individuals' PCSP. Middlefield Oaks should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ²	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	The review team was shown the staff training that is done. There was no record of staff being trained in HCBS settings criteria. Middlefield Oaks should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.

Spruce Point, Memory Care Community attached to a Residential Care Facility – Visit April 17, 2023

² [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

Facility Description:

The setting is a MCC attached to an RCF, located in Florence, OR, in proximity to shopping, dining, and recreation. The setting is a one-story building, separated from the RCF by doors that are locked with codes and alarmed. The MCC has the capacity for 25 residents and currently has 25 total residents, 9-11 (as reported by staff) of whom are receiving HCBS. All rooms are private. The setting was originally submitted by Oregon as a setting that has the effect of isolating individuals receiving HCBS from the broader community but was later rescinded due to guidance issued by CMS in March 2019. In addition to the PCSPs developed by the case manager, the setting had comprehensive care plans. They hired a consultant to assist with creating the care plans. Care plans included information about individual preferences and goals for romantic relationships and documented a relationship between residents that included planning for privacy. The setting has a facility van that is used for trips every other week. Tuesdays are reserved for one-on-one trips into the community.

Site Visit Review Description:

Upon arrival, the site visit team reviewed PCSPs, the residency agreement, and staff training material, interviewed a DSP, and spoke to state staff. The team was provided a walking tour of the MCC that included conversations with administrative staff as well as participants who received services. A couple of residents invited the team to speak with them in their rooms. Rooms had personalized decorations and individuals had keys to their bedroom doors.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	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.	Staff shared that the individuals went on rides as an activity, but individuals don't get off the facility van because staff worry that they will wander away. Spruce Point must ensure their model of service delivery aligns with the regulatory criteria to support participants' full access to the greater community. Establishing partnerships with community resources and leveraging existing community transportation options should be explored. Spruce Point should develop policies, practices and resources to ensure that individuals have full access to the greater community.

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(ii)	The setting 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.	<p>The PCSPs did not include documentation of settings options.</p> <p>The state Medicaid Agency and the entity that is responsible for ensuring the development of the person-centered service plan must ensure that individuals receiving Medicaid-funded HCBS are afforded a choice of setting, in compliance with regulatory requirements, including a choice of non-disability specific settings.</p>
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>Two separate staff made comments about psychotropic medications in relation to individuals being compliant.</p> <p>Spruce Point must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint. This includes ensuring individuals are not given psychotropic medication as a means of chemical restraints for staff convenience.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(A)	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 a 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 in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<p>The residency agreement is missing information about eviction appeal rights and there are policies in the lease that are only for residents in the RCF and not the MCC. The Administrator mentioned that they are in the process of updating the lease.</p> <p>Spruce Point must ensure that a lease, residency or other written agreement is in place for each individual and that the agreement provides protections from evictions and appeals processes that are comparable to those in the jurisdiction's landlord tenant laws.</p>
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>There were recommended visiting hours from 10:00 AM-8:00 PM. The lease said overnight guests were allowed, however the Administrator indicated that is not the case in the MCC.</p> <p>Spruce Point must ensure their model of service delivery aligns with the regulatory criteria that participants are able to have visitors of their choosing at any time.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>The residency agreement states that smoking is not permitted. The Administrator said they do not admit individuals who smoke.</p> <p>The setting holds weekly happy hours, but individuals can only participate in drinking alcohol if they have a doctor’s note.</p> <p>Spruce Point should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ³	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>The list of training topics the settings provided did not include information on HCBS, the settings rule, or the role of person-centered planning.</p> <p>Spruce Point should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</p>

Via Verde, Residential Treatment Home – Visit April 18, 2023

Facility Description:

Via Verde is a Residential Treatment Facility (RTF) located in Salem, OR. The setting is located on the grounds of the Oregon State Hospital, adjacent to homes housing the State Hospital population, and adjacent to the Oregon State Penitentiary. The setting is a two-story cottage style home owned by a private provider. The other cottages are owned and run by different entities. There are five bedrooms; four bedrooms upstairs and one accessible bedroom downstairs. There are three bathrooms. There are five male residents who all receive HCBS.

All of the residents are on Aid and Assist orders and have Psychiatric Security Review Board (PSRB) limitations which may limit things such as freedom to control schedules, freedom to select the setting, etc. “When people are accused of a crime, sometimes they are not able to participate in

³ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

their trial because of the severity of their mental illness. In these cases, the court may issue an order under ORS 161.370 for them to be sent for mental health treatment — most often at Oregon State Hospital — so they can become well enough to “aid and assist” in their own defense. The primary treatment goals for patients under a .370 order are stabilization and achieving a level of capacity so they can cooperate with attorneys and participate in their own defense. Psychiatric and psychological assessments and treatment, including diagnoses, medications and therapy; Benefit eligibility and coordination, transition planning for discharge; Legal skills, teaching basic legal terminology and ideas that will help most people become able to aid and assist; Rehabilitation services to engage people in therapeutic activities aligned with their interests and strengths; Occupational therapy to assist with people’s daily living skills such as cooking, personal finance and public transit; Medical and dental services, physical therapy; and GED classes for people ages 18-21. The hospital may keep patients who are under an Aid and Assist order for: Up to three years; or the period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted, whichever is shorter.”⁴

“The Psychiatric Security Review Board (PSRB) was originally established in 1977 to supervise those individuals who successfully asserted the insanity defense to a criminal charge. Recognizing that individuals diagnosed with a persistent mental illness have different rehabilitative needs than convicted defendants, this State has invested in a robust mental health system specifically designed for this population.”⁵ The setting does not enforce the PSRB orders, but they do advise the residents on best behaviors and they report back to the PSRB if there is any violation of their conditions of release. For example, all of the residents at this setting have restrictions on visitors, but it is not documented in the PCSP, because it is a restriction imposed by the PSRB.

All rooms are single occupancy. The facility is not locked and residents can come and go as they please, dependent upon their PSRB restrictions. The setting does not decide on restrictions and they are not outlined in the PCSPs. The provider stated that the limitations are documented in the PSRB orders, but the team did not have access to those during the site visit.

There is public transportation just across the street from the campus. The setting staff assist individuals in getting passes for the bus and train them on how to use it. The facility also has a van. The residents go out on Fridays to play pool. There is a house meeting on Sundays where they discuss any issues and do menu planning. Each resident has one meal a week that they prepare for the whole house. The kitchen is open to the residents and food is available anytime. The setting has established a relationship with the Salvation Army Kroc Center in Salem which is a community center that has a swimming pool, gym, arcade, rock climbing wall, etc. Some of the individuals get supported employment services and one goes to college.

Site Visit Review Description:

Upon arrival, the site visit team was met by the administrative staff and the house manager. The team sat at the kitchen table and discussed the setting and asked questions as they arose. The team reviewed PCSPs and the residency agreement. The team was provided with a walking tour of the home and spoke to one resident in the house who invited the team to speak with him in his room. Rooms had personalized decorations and

⁴ <https://www.oregon.gov/oha/Documents/Aid-and-Assist-Fact-Sheet.pdf>

⁵ https://www.oregon.gov/prb/Pages/About_the_Board.aspx

individuals can lock their bedroom doors from the inside. There were also three residents who were coming and going and leaving to smoke together.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>The staff showed the site visit team that there are incentives for good behaviors such as doing chores around the house. Some of the incentives are for one-on-one skill building outings. Such skill-building should be not viewed as an “incentive”, and should be provided as needed based on each individual’s assessed needs.</p> <p>The staff said individuals can make a choice if they want to hold their Supplemental Nutrition Assistance Program (SNAP)/ Electronic Benefits Transfer (EBT) cards or give them to the setting to pool their money.</p> <p>Via Verde must amend practices that allow for coercive measures and ensure individuals’ rights to privacy, dignity and respect are recognized. To avoid coercive practices and ensure that SNAP benefits are appropriately adjusted when individuals reside in a congregate setting, individuals should maintain control over their SNAP cards.</p>
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<p>The staff mentioned that the doors to the residents’ bedrooms lock, however residents do not currently have the keys. The residents have to ask staff to open their doors for them. The setting is working on getting keys from the landlord.</p> <p>Via Verde must ensure that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>All residents must lock up their cigarettes and lighters and have to ask staff to retrieve them. This is because one resident has a history of arson. There is a blanket restriction for all residents.</p> <p>The site visit team noted in the policies that there is zero tolerance for drugs and alcohol in the home. Many of them have a history of substance abuse.</p> <p>The residency agreement included restrictions outlined in individual's Conditional Release Forms from the PSRB. When the site visit team inquired about this, the staff said the residency agreement was a template used by the owner of the setting.</p> <p>Via Verde should ensure that any relevant modifications for a specific individual, including those from the PSRB, are incorporated into their PCSP, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁶	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>The staff needs additional training on how to implement and document modifications of HCBS settings regulatory criteria and when they need to be lifted. It was not clear if staff are trained on the settings rule.</p> <p>Via Verde should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria, including requirements around modifications.</p>

Horizon House, Residential Treatment Facility – Visit April 18, 2023

Facility Description:

Horizon House is a Residential Treatment Facility (RTF) located in Salem, OR. The setting is located on the grounds of the Oregon State Hospital, adjacent to homes housing the State Hospital population, and adjacent to the Oregon State Penitentiary. The setting is a two-story cottage style home owned by Marion County, Oregon. Horizon House rents the cottage from Marion County. The other cottages are owned and run by different entities. There are five bedrooms; four bedrooms upstairs and one accessible bedroom downstairs. There are two and a half bathrooms. The setting is coed and all nine residents receive HCBS. The residents are referred from the Oregon State Hospital. Residents tend to live at the house between 18-24 months before stepping down to a less restrictive setting. Residents may stay longer if needed.

There was one resident under an Aid and Assist order with PSRB restrictions related to leaving the setting. The setting does not enforce the PSRB orders, but they do advise the residents on making good choices and they report back to the PSRB.

All rooms are double occupancy except the downstairs bedroom. The choice of roommates is decided during weekly house meetings. If there are issues, the staff try to mediate and use the circumstance as training in conflict resolution. The facility is not locked and residents can come and go as they please. There is not a curfew. There is public transportation just across the street from the campus. The setting staff assist individuals in getting passes for the bus and train them on how to use it. The facility also has two vehicles. The setting also has a partnership with the YMCA so residents can go to the gym.

Site Visit Review Description:

Upon arrival, the site visit team was met by the Marion County Administrator, the house administrator, and DSPs and therapists. The team sat at the dining room table and discussed the setting, the PCSP process, the PSRB, and asked other questions as they arose. The team reviewed PCSPs, the residency agreement, spoke to the staff and spoke to state staff. The team was provided with a walking tour of the home and spoke to three

⁶ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

residents in the house. The residents invited the team to speak with them in their rooms. Rooms had personalized decorations and individuals had keys to their bedroom doors.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>The staff use a punch card system to motivate residents to attend therapeutic groups and complete household chores that buys them rewards, which are mostly food items, and valued items requested by residents.</p> <p>Horizon House must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint. This includes refraining from coercive practices to ensure individuals participate in services.</p>
441.301(c)(4)(vi)(A)	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 a 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 in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<p>The current lease has minimal information and does not include the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity or provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. However, the Administrator did show an updated form that includes this information that they plan to implement once it gets reviewed by the legal department.</p> <p>Horizon House must ensure that a lease, residency or other written agreement is in place for each individual and that the agreement provides protections from evictions and appeals processes that are comparable to those in the jurisdiction's landlord tenant laws.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>The site visit team noted in the policies that there is zero tolerance for drugs and alcohol in the home. When the team asked the staff if they could drink alcohol out of the home, they said yes, but they would talk to them about making better choices since many of them have a history of substance abuse.</p> <p>Horizon House should ensure that any relevant modifications for a specific individual, including those from the PSRB, are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁷	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>Horizon House was in the process of coordinating training to all of the staff.</p> <p>Horizon House should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</p>

Albertina Kerr, Group Home (Children) – Visit April 19, 2023

Facility Description:

The setting is a Group Home for Children, located in Gresham, OR. The setting is located in a residential single family homes neighborhood. There are several unaffiliated Adult Foster Homes in the same neighborhood. The home is single-story and has a large fenced-in backyard. There are four single occupancy bedrooms. There is a therapy room that includes bean bag chairs, a swing, Legos, and other items. The garage has a gym, bikes for the children, and the laundry is located here. The bathroom doors are left open when not in use and they are always locked from the inside with only staff having keys to unlock. There are four male residents who are teenagers, and all are receiving HCBS through the 1915(k). The setting was originally submitted by Oregon as a setting that has the effect of isolating individuals receiving HCBS from the broader community, but was later rescinded due to guidance issued by CMS in March 2019.

⁷ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

Site Visit Review Description:

The site visit team arrived at the setting and were met by administrative and direct support staff. Only one resident was home; all others were still at school and expected to arrive during the visit. Administrative staff gave the site visit team a tour of the setting and provided the person-centered service plans for review. The team spoke to the resident who was home and he showed the team his bedroom. The team reviewed the plans as they waited for the other residents to arrive home. One child arrived home and introduced himself to the site visit team. He entered the kitchen and prepared a snack. Another child who resided there was overwhelmed with the strangers in the home when he arrived from school. One of the administrators told the team that the individual was uncomfortable, so the team wrapped up the visit and left the home.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Individuals could use a landline telephone but it is monitored by the provider and the individuals they speak to have to be on an approved list. It is unclear why individuals' phone usage is monitored. Albertina Kerr must ensure that individuals have the ability to make and receive calls in private.

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iv)	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.	<p>Staff ask the children to go to their rooms at 8:00 PM. The children can stay up in their room but are encouraged to go to their rooms at 8:00 PM. Staff indicated that there are no consequences if the children refused or if they came back out of their rooms after 8:00 PM. Staff also shared that all the (teenage) residents are early risers and get up at 7:00 AM.</p> <p>During the tour, the team noted that the garage door is locked and if residents wanted to use the laundry or the gym equipment, they would have to ask staff to unlock the door and staff indicated they would have to supervise them due to chemicals stored in the garage.</p> <p>Albertina Kerr must ensure their model of service delivery aligns with the regulatory criteria to facilitate independence and community integration and amend practices to ensure that schedules are not regimented and that individuals have the opportunity to set their own schedules and participate in activities of their choosing. Recognizing that school-age individuals reside there, they should be given similar opportunities to make choices and decisions comparable to teenagers not receiving Medicaid HCBS.</p>
441.301(c)(4)(vi)(D)	Individuals are able to have visitors of their choosing at any time.	<p>The staff mentioned that visitors must be on an approved list and background checks are required. No overnight guests are allowed. The staff said no friends are allowed to come visit because of confidentiality of the other residents in the group home.</p> <p>Albertina Kerr should provide training to staff and residents to understand the policy around individuals' ability to have visitors at any time.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁸	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	It was not evident that the staff received training on the HCBS settings rule. Albertina Kerr should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.

Alternative Services, Inc., Group Home (Adults) – Visit April 19, 2023

Facility Description:

The setting is a Group Home for Adults, located in Portland, OR. The setting is located in a residential single family homes neighborhood. The home has a very large fenced-in backyard. There are two bedrooms upstairs and one bedroom in the basement. All rooms are single occupancy. There is a sensory room upstairs that includes a ball pit, bean bag chairs, and other items. This are two full bathrooms upstairs and a half bath in the basement. There are three residents, one female and two males, all are receiving HCBS through the 1915(k). All the residents have the same service coordinator. The setting was originally submitted for heightened scrutiny by Oregon as a setting that has the effect of isolating individuals receiving HCBS from the broader community, but was later rescinded due to guidance issued by CMS in March 2019.

Each resident has a binder in the house that has all their PCSP information and residency agreement, and there is a daily log of activities that each individual participates in. Some go to a day program and the residents go on day trips to the community as a group and individually. Two of the residents enjoy going out together to walk to the store, go out to eat, go to the movies, etc. There are two facility vehicles for community outings.

Site Visit Review Description:

The site visit team arrived at the setting and were met by administrative and state staff. Two residents were home when the team arrived, and one was off-site getting medical treatment. Administrative staff gave the site visit team a tour of the setting and provided the binders for each individual served, which included their person-centered service plans and residency agreements. The team spoke to the two residents who were home and they showed the team their bedrooms. When the third resident arrived home from the emergency room, the team finished the visit to not overwhelm them.

Findings of Site Visit:

⁸ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(iii)	The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>The ombudsman sign was posted in the backroom which is rarely used by residents.</p> <p>Alternative Services, Inc. must ensure their model of service delivery aligns with the regulatory criteria to support participants' right to privacy, dignity, respect and freedom from coercion and restraint.</p>
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	<p>The site visit team noted in the policies that there is no alcohol in the home. There is nothing noted in the PCSPs regarding this restriction.</p> <p>Alternative Services, Inc. should ensure that any relevant modifications for a specific individual are incorporated into the plan, and that modifications to the settings criteria are limited only to a specific assessed need as opposed to a blanket modification.</p>

Additional Provision	Language	Violation Finding Based on Site Visit
State Medicaid Director Letter #19-001 ⁹	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>It was not evident that the staff received training on the HCBS settings rule.</p> <p>Alternative Services, Inc. should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</p>

⁹ [Heightened Scrutiny SMD-SMDL Final \(medicaid.gov\); see question 10](#)