

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



**Disabled & Elderly Health Programs Group**

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April 10, 2019

Deborah Fournier  
State Medicaid Director  
Office of Medicaid Business and Policy  
State of New Hampshire, Department of Health and Human Services  
129 Pleasant Street  
Concord, NH 03301-6521

**RE: Heightened Scrutiny Review of:**  
Easter Seals Group Home; 87 Pleasant Street, Concord NH

Dear Ms. Fournier:

This letter is in reference to a 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) and Section 441.710 (a)(1)(2). New Hampshire submitted an evidence package for a group home operated by Easter Seals located on the grounds of a public hospital. The evidentiary package was submitted by the state of New Hampshire to CMS for heightened scrutiny review in January, 2017.

CMS provided the state its initial “Summary of Findings” on June 8, 2018. The state provided its response to CMS on July 26, 2018. CMS appreciates the efforts of the state to provide a comprehensive evidentiary package regarding the setting's characteristics. Based on the information contained in the evidentiary packages specific to these settings, CMS has determined the information submitted by the state for the heightened scrutiny review is sufficient to demonstrate that this setting will overcome any institutional presumption and meet all of the HCBS settings criterion or before the end of the statewide transition period (March 17, 2022). This conclusion is based on the mitigation strategies outlined by the state in their submissions regarding this setting. The state is expected to include within its milestones and quarterly reports to CMS the status of any outstanding remediation that is required of this setting including a verification that the remediation has been completed.

CMS has attached an updated Summary of Findings, which outlines the initial questions CMS raised and the state’s responses including proposed remediation to bring the setting into compliance. 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.

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

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

Sincerely,

/S/

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

# Heightened Scrutiny Summary of Findings

## Setting Information

Name of Setting: Easter Seals Group Home

Address: 87 Pleasant Street, Concord, NH

Type of Setting: Residential Group Home

HS Category: Setting is on the grounds of a public institution

Date Submitted: May 2016

Brief Description of Setting: Single-family home where two HCBS participants reside; located on the grounds of New Hampshire Hospital.

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

- The state confirmed that the home is within walking distance of downtown Concord, with access to local businesses, restaurants, theaters.
- Transportation to community activities is provided by the direct services provider.
- Individuals have their own bedroom and living space on separate floors; share a kitchen and dining area.
- Individuals have engaged in the decoration of their own personal living quarters.
- Individuals have keys to their home.
- Individuals have the freedom and support to control their own schedules and activities.
- Individuals have access to food at any time.
- Individuals can have visitors of their choosing at any time.
- Individuals have representative payees as opposed to personal bank accounts, but do have access to spending money and freedom to make small purchase decisions.

## 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 New Hampshire provide the following:

- 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)]; and that individuals who are interested have opportunities to work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  - State response:
  - NH confirms that the each of the individuals with the support of their guardians chose the setting(s) where they receive services. This was verified through interviews, and documentation during the heightened scrutiny process.
  - As noted at the top of page 2 of the Summary Request Form for Heightened Scrutiny, one of the participants is currently working part-time and the other had begun working with vocational rehabilitation services to obtain employment.
  - As requested during the phone call, NH attests that the participant who is employed by Easter Seals is not required to work for them as a condition of residency.
  - **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 had choice in selecting their non-residential service providers [42 CFR 441.301(c)(4)(v)].
  - State response:
  - One of the individuals receives 15 hours per week of non-residential services (Community Participation Services), and the selection of provider was made by the participant's guardian and is identified in the service agreement.
  - The other individual does not receive non-residential services at this time.
  - CMS agrees that the state's response is sufficient. CMS notes that the state should, through ongoing monitoring, ensure that individuals maintain the right to choose their providers and ensure that the selection of a nonresidential service provider is not contingent upon selection of an individual's residential service provider.
  
- In accordance with the state's systemic remediation plan, assurance or date certain that remediation has been completed to ensure that all participants in this home have a lease or tenancy agreement [42 CFR 441.301(c)(4)(vi)(A)].
  - NH state law 540, Actions Against Tenants states:
  - IV. The term "tenant" or "tenancy" shall not include occupants or occupancy in the following places and the provisions of this chapter shall not apply to:
  - (c) Rooms in student dormitories, nursing homes, hospitals and any other facilities licensed under RSA 151 or certified under RSA 126-A, convents, monasteries, asylums, or group homes.
  - Due to this New Hampshire is still working to resolve how to systemically address the CMS requirement.
  - CMS agrees that remediation is required as outlined in the New Hampshire HCBS statewide transition plan related to the state's proposed remediation activities.
  
- Confirmation that the use of restrictive interventions and modifications to conditions in provider-owned and controlled settings follow the criteria outlined at 441.301(c)(4)(vi)(F)(1)-(8) as verified through observation at an on-site visit, interviews with service recipients and/or a review of person-centered service plans.
  - State response:
  - The restrictive interventions and modifications have been implemented using the criteria outlined in 441.301(c)(4)(vi)(F)(1)-(8) as verified by the person-centered plans, Human Rights Committee approval, and guardian approval.
  - CMS agrees that the state's response is sufficient.
  
- With respect to accessing the broader community: Verification 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) & 42 CFR 441.301(c)(4)(vi)(C)]
  - State response:
  - As noted in the Summary Request Form for Heightened Scrutiny, documentation was reviewed for each of the participants and they have individualized schedules and weekly

documentation that describes the activities they choose and participated in during the week. Additionally, a years' worth of monthly progress notes were reviewed which summarized goals/activities that each participant did during the month. Each individual has their own staff to support them in choosing and participating in preferred activities. This was verified by participant and staff interviews during the on-site process.

- During the on-site visit a conversation was observed between a resident and a staff person. The resident said they changed their mind since their conversation at breakfast and didn't want to go shopping, they wanted to go out for coffee instead. The staff suggested doing both activities. The resident said they just wanted to go for coffee. Staff supported their decision.
  - CMS agrees that the state's response is sufficient.
- Regarding Interview of Beneficiaries and Staff: Confirmation that both residents were interviewed, verification of the number of staff interviewed and attestation that the residents were interviewed outside of the presence of staff with a clear understanding that staff would not be informed of the specific information the individual shared [42 CFR 441.301(c)(4)(iii)].
    - State response:
    - One of the residents was not interviewed during the heightened scrutiny process. There were four staff and the program manager interviewed. All interviews occurred in a private place with only the interviewer and interviewee present. The state's heightened scrutiny process has been updated to include an interview with the guardian if the resident is not able to participate in the interview.
    - CMS agrees that the state's response is sufficient.