

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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January 9, 2020

Jim Jones  
Medicaid Director  
Division Administrator, Health Care Access and Accountability  
Wisconsin Department of Health Services  
1 West Wilson Street, Room 350, PO Box 309  
Madison, WI 53701-0309

### **RE: Heightened Scrutiny Review of:**

Kitty Rhoades Memorial Memory Care Center, 1446 N 4<sup>th</sup> St., New Richmond, WI 54017  
Orchard View Terrace - St. Croix County, 1423 N 4<sup>th</sup> St., New Richmond, WI 54017

Dear Mr. Jones,

This letter is in reference to two settings submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review, in accordance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Wisconsin submitted two community-based residential facilities co-located in the same building as a skilled nursing facility. Evidentiary packages were submitted by the state of Wisconsin to CMS for heightened scrutiny review on September, 28, 2018.

CMS provided the state its initial "Summary of Findings" on May 16, 2019. The state provided its response to CMS on July 3, 2019. CMS had several conversations with the state in regard to additional information needed to make a determination that the two settings overcame their institutional presumption, with the latest request on November 12, 2019, to which the state provided its response on November 14, 2019. CMS appreciates the efforts of the state to provide comprehensive evidentiary packages regarding each setting's characteristics. Based on the information contained in the evidentiary packages specific to these settings and the additional information the state provided, CMS has determined the information submitted by the state for the heightened scrutiny review is sufficient to demonstrate that these settings will overcome any institutional presumption and meet all of the HCBS settings criteria or before the end of the statewide transition period (March 17, 2022). 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 these settings, CMS requests that the state provide, within its milestones and quarterly reports to CMS, the date when

the settings begin 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 441.301(c)(1)-(3) in place at that date. CMS also appreciates the state's strategy to ensure continued compliance through beneficiary experience to be assessed through interviews within 6-9 months after the setting begins to provide Medicaid HCBS.

Upon review of this feedback, please contact Michele MacKenzie at (410) 786-5229 or [michele.mackenzie@cms.hhs.gov](mailto: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 Wisconsin's successful delivery of Medicaid-funded home and community-based services.

Sincerely,

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

## Heightened Scrutiny Summary of Findings

### Setting Information:

Name of Setting: Kitty Rhoades Memorial Memory Care Center

Address: 1446 N 4<sup>th</sup> Street, New Richmond, WI 54017

Type of Setting: Residential

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

Date Submitted: September 28, 2018

Brief Description of Setting: The setting is attached to a nursing facility (provider of inpatient institutional treatment) on a Health and Rehab Center Campus operated by St. Croix County. The setting seeks to become a waiver provider. The setting is described as 10 beds, one large restricted room, open so that all corners can be viewed, with bedrooms surrounding this living space with staff able to view all bedrooms from this central common area. There is a separate outside entrance.

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

- The state conducted a desk review of evidence submitted for the setting and two on-site visits for review and observation. One resident was spoken to during the second onsite visit. At the time of the assessment, there were no beneficiaries receiving Medicaid HCBS in the setting.
- The state found that individuals choose to decorate their doors and bedrooms with family photos and other personal items.
- The state found that individual residents participate in typical community life activities outside of the setting, but only when supported by family and friends.
- The state found that visitors are permitted at any time.
- Individuals can choose alternative medical and therapy providers in the community as desired.
- The state found that individuals have access to family and two taxi options (one for medical visits; one for anywhere in the community) for transportation needs. Provider also owns bus holding 15 people that is shared by the settings on the property.
- There are separate organization charts and staffing schedules for the setting with minimal interconnectedness at the management and administrative levels.
- The state considered the following evidence to demonstrate the setting is integrated and supports full access into the community by the individuals: two on-site review visits and completion of the state's HCBS Adult Residential Provider Assessment; desk review of the state's In-Home assessment; standard Wisconsin Department of Health Services (DHS) survey and probationary license review; Resident Handbook; Resident Admission Agreement/Lease; policies; sign out log; organization charts; staffing schedules; maps; site plans; photos; signage; building plans; aerial maps; and public comment on the setting.

## Initial Determination

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

## Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption, with Summary of State Response:

CMS requested the state of Wisconsin provide the following:

- Attestation from the state through the review of person-center service plans (PCSPs) and/or interviews with individuals residing in the setting 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);
  - individuals have a choice in selecting their non-residential services, in addition to medical and dental services, and service providers. [42 CFR 441.301(c)(4)(v)].
  - **Wisconsin Response: Compliance within State Standards**
    - Wisconsin has protections in place for waiver participants which ensure they understand their choices. State Medicaid waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are responsible for discussing choice of service settings with the waiver participant and family/guardian to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. In practice, the waiver agencies are complying with this requirement, and documenting and monitoring the choice of settings in the member centered plan or IRIS support and service plan, as applicable.
    - In Wisconsin, the choice of setting requirement is not the initial responsibility of the provider setting. Rather the choice of setting takes place through the person-centered planning process at the waiver agency level. Waiver agencies are certified by the State Medicaid Agency (SMA) and work within the requirements of contracts with the SMA.
    - Wisconsin included contract language between the State Medicaid Agency and the Managed Care Organization to demonstrate the setting is selected by the individual and the individual shall have a choice in their non-residential service providers.
    - Wisconsin has protections in place through Pre-Admission Consultation (PAC): the state summarized <https://www.dhs.wisconsin.gov/adrc/pros/pac.htm> and Wis. Stat. § 50.09.
    - Provider-Specific Compliance:
      - The state indicated the majority of the potential residents touring this setting are considering numerous options. Kitty Rhoades Memorial Memory Care Center provides a copy of the Aging and Disability Resource Center (ADRC) resource manual to prospective

residents so that they are aware of other options and services in the area. The state provided a summary of <https://www.dhs.wisconsin.gov/publications/p0/p00040-stcroix.pdf>, Wis. Admin. Code § DHS 83.29, Kitty Rhoades Resident Handbook and Resident Rights.

- **The State Medicaid Agency will:**
  - Provide CMS with the date when the Kitty Rhoades Memorial Memory Care Center begins to provide Medicaid HCBS to individuals;
  - Ensure that when waiver participants are admitted to the Kitty Rhoades Memorial Memory Care Center, the MCO will have documented that the participant selected that setting from among a variety of setting options, including non-disability specific settings;
  - After completing the previous steps, attest to CMS that Medicaid beneficiaries receiving HCBS have person-centered service plans that meet the requirements outlined at CFR 441.301(c)(1)-(3) in place at the time when services begin.
- Wisconsin’s timeline for review of person-centered service plans of individuals receiving HCBS waiver services who reside at the Kitty Rhoades Memorial Memory Care Center is dependent on how soon individuals receiving HCBS are admitted to the setting. DHS has indicated that it will arrange interviews 6-9 months after the setting begins to provide Medicaid HCBS to beneficiaries to allow the waiver members an opportunity to have gained a lived experience in the setting.
- **CMS Response:** CMS agrees that the state’s response is sufficient.
- Verification that the state conducted a sufficient number of consumer interviews to obtain data that is representative of the overall experiences of individuals in the setting, as well as an attestation that the residents interviewed were not pre-selected by the provider and 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)].
  - **Wisconsin Response:** The Wisconsin Department of Health Services State Medicaid Agency (SMA) notes that the Kitty Rhoades Memorial Memory Care Center is not currently an HCBS waiver-certified provider. At this time, Kitty Rhoades Memorial Memory Care Center remains an applicant for HCBS waiver provider certification until CMS reviews the additional information being provided by the SMA and confirms a final decision. As such, there are currently no Medicaid Waiver participants residing at this setting.
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Kitty Rhoades Memorial Memory Care Center begins to provide Medicaid HCBS to individuals.
    - After allowing adequate time for Medicaid waiver participants to gain a lived experience in this setting, attest to CMS through the review of person-centered plans and/or interviews with individuals residing there that the individuals residing at the Kitty Rhoades Memorial Memory Care Center have the opportunity control their schedules and activities, and have access to food at any time.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.

- Verification by the state that the setting supports, through the use of its own transportation or assistance accessing other forms of transportation, community activities of individuals' choosing (including group and individual outing options in the broader community) that are consistent with the preferences and desires outlined in each individual's person-centered service plan, as identified through a review of the person-centered service plans, setting activity records/notes and/or direct onsite observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(5)].
  - **Wisconsin Response: Compliance within State Standards**
    - Person-Centered Planning: The state summarized Wis. Admin. Code § DHS 83.35.
    - Program Services: Community activities: The state summarized Wis. Admin. Code § DHS 83.38(1)(d).
    - Family and social contacts: The state summarized Wis. Admin. Code § DHS 83.38(1)(e).
    - Compliance in Provider-Submitted Documentation and Onsite Review: The state summarized the setting's Transportation Services Policy, Kitty Rhoades Resident Handbook, Resident Admission Agreement/Lease III, service amenities document, and Activities Program Policy and public comments received on this setting.
    - Observations by State Reviewers included:
      - A review of the In/Out log demonstrated that numerous residents had signed out to attend church, picnics, or other activities in the community with family or friends.
      - Bulletin boards were observed throughout the setting with posted information on community activities and transportation options. Residents are able to post information on these bulletin boards.
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Kitty Rhoades Memorial Memory Care Center begins to provide Medicaid HCBS to individuals.
    - Attest to CMS through the review of person-centered service plans and/or interviews with individuals residing there that the setting supports community activities of Medicaid beneficiaries' choosing, consistent with the preferences outlined in each individual's person-centered service plan, consistent with the findings during the initial assessment of the setting. Further, Wisconsin can then attest that the setting continues to support access to the broader community consistent with the preferences and desires outlined in each individual's person-centered plan.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation from the state through the review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting that:
  - Individuals have the opportunity to control their personal resources [42 CFR 441.301(c)(4)(i)];
  - The setting optimizes and 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)];
- Individuals have privacy in their sleeping units with entrance doors lockable by the individual, with only appropriate staff having keys to doors [42 CFR 441.301(c)(4)(vi)(B)(1)]; and individuals sharing units have a choice of roommates in that setting [42 CFR 441.301(c)(4)(vi)(B)(2)]; and
- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time [42 CFR 441.301(c)(4)(vi)(C)].
- **Wisconsin Response: Compliance within State Standards**
  - Person-Centered Planning: the state summarized Wis. Admin. Code § DHS 83.35.
  - Rights: The state summarized Wis. Admin. Code § DHS 83.32, Wis. Stat. § 50.09 and Wis. Admin. Code § DHS 83.32.
  - Compliance within State Standards:
  - Requirements of initial and ongoing licensure in Wisconsin includes verification by DHS Division of Quality Assurance surveyors that the setting (DQA, F-02138, HCBS Compliance Review):
    - Provides lockable key entry doors on all resident rooms, and individual keys to all residents.
    - Has a policy ensuring that staff uses facility keys to enter a resident’s room only under circumstances agreed upon with the resident.
    - Residents have choice of roommates.
    - Resident bedrooms shall accommodate no more than 2 residents per room.” (Wis. Admin. Code § DHS 83.54)
  - Person-Centered Planning: Family Care Provider Network: The state summarized DHS-MCO Contract, Article VIII.
  - Rights: The state summarized Wis. Admin. Code § DHS 83.32 and Wis. Admin. Code § DHS 83.41.
  - Compliance in Provider-Submitted Documentation: The state summarized Kitty Rhoades Transportation Policy, service amenities document, Resident Admission Agreement/Lease, cover letter, pages 3, 4, 5 and 8 of the Resident Funds Policy, and public comments received on this setting.
- **The State Medicaid Agency will:**
  - Provide CMS with the date when the Kitty Rhoades Memorial Memory Care Center begins to provide Medicaid HCBS to individuals.
  - Attest to CMS through the review of person-centered service plans and/or interviews with individuals residing there that the setting continues to support community activities of their choosing consistent with the preferences outlined in their person-centered service plan, individuals continue to have the opportunity to control their personal resources, the opportunity to control their schedules and activities, and have access to food at any time, consistent with the findings during the initial assessment of the setting.
  - Attest to CMS through the review of in-place policies, practices, and staff

training documents that only appropriate staff continue to have keys to living unit doors, consistent with the findings during the initial assessment of the setting. Policies will also ensure that staff knock and receive permission prior to entering a resident's living unit, and that staff use keys to enter a resident's room only under circumstances agreed upon with the resident.

- **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation from the state through the review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting 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)];
  - **Wisconsin Response: Compliance within State Standards**
    - The state summarized Wis. Stat. § 50.09, Wis. Stat. § 50.09, Wis. Admin. Code § DHS 83.32, Wis. Admin. Code § DHS 83.32, [www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf](http://www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf), [www.dhs.wisconsin.gov/dqa/memos/15-003.pdf](http://www.dhs.wisconsin.gov/dqa/memos/15-003.pdf) and onsite observations.
    - Compliance in Provider-Submitted Documentation: Concerns, Complaints, Grievances Policy, Procedure #12. Wisconsin can attest to CMS that the Kitty Rhoades Memorial Memory Care Center has in place the policies and practices to ensure an individual's right of privacy, dignity and respect, and freedom from coercion and restraint.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation from the state through the review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting that any modifications of the additional conditions, under §441.301(c)(4)(vi)(A) thru (D), must be supported by a specific assessed need and justified in the person-centered plan [42 CFR 441.301(c)(4)(vi)(F)].
  - **Wisconsin Response: Compliance within State Standards**
    - Person-Centered Planning: Demonstrated through Wisconsin HCBS waivers, waiver-specific contracts, and policy documents.
    - Assessment, individual service plan and evaluations: The state summarized Wis. Admin. Code § DHS 83.35(1)(a) and Wis. Admin. Code § DHS 83.35 (1)(d).
    - Compliance in Provider Submitted Documentation: Kitty Rhoades Cover letter, pages 4 and 5.
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Kitty Rhoades Memorial Memory Care Center begins to provide Medicaid HCBS to individuals.
    - Attest to CMS that Medicaid beneficiaries receiving HCBS at the Kitty Rhoades Memorial Memory Care Center have person-centered service plans in place. Any modifications to the plans will be supported by a specific assessed need and justified in the person-centered service plan in accordance with 42 CFR section 441.301(c)(4)(vi)(A) thru (D).

- **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation from the state that individuals occupy the setting under a legally enforceable agreement, 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 [42 CFR 441.301(c)(4)(vi)(A)].
  - **Wisconsin Response: Compliance within State Standards**
    - Wisconsin summarized Wis. Admin. Code § DHS 83.29 and Wis. Admin. Code § DHS 83.31.
    - Compliance in Provider Submitted Documentation: Wisconsin summarized the Kitty Rhoades Resident Admission Agreement/Lease, II (E) and can attest to CMS that individuals residing at the Kitty Rhoades Memorial Memory Care Center have a legally enforceable agreement and, at a minimum, the same responsibilities and protections from eviction that tenants have under landlord / tenant laws.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Clarification from the state that the staff working in the community-based residential facility (CBRF) are educated on the HCBS settings criteria [42 CFR 441.301(c)(5)(v)].
  - **Wisconsin Response: Compliance within State Standards**
    - The state summarized requirements at DHS 83.32 (3), 50.09 and 51.61 DHS 94, and Wis. Admin. Code § DHS 83.21 for training all employees receive.
    - Compliance in Provider Submitted Documentation: Staff receive training in person-centered planning. Training plans include provisions for cross-training if institutional staff are occasionally assigned to the HCBS setting.
    - Wisconsin requested and has received additional information from provider to confirm that initial and ongoing staff training materials include the principles of HCBS. Document provided includes staff training content on HCBS, person-centered care, and the employee’s role in promoting resident choice.
    - Wisconsin obtained and has reviewed staff training materials. The updated training describes HCBS and person-centered planning principles and practices, including the employee’s role in promoting resident choice and the components of person-centered care.
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Kitty Rhoades Memorial Memory Care Center begins to provide Medicaid HCBS to individuals.
    - After allowing adequate time for Medicaid waiver participants to gain a lived experience in this setting, attest to CMS that staff working in the CBRF continue to be educated on HCBS, consistent with the findings during the initial assessment of the setting.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation to CMS that Medicaid beneficiaries receiving HCBS at this setting have PCSPs

and that these individuals are experiencing access to the broader community to the same degree as beneficiaries not receiving Medicaid HCBS and consistent with the level desired as articulated in their person-centered service plan [42 CFR 441.301(c)(4)].

- **The State Medicaid Agency will:**
  - Provide CMS with the date when the Kitty Rhoades Memorial Memory Care Center begins to provide Medicaid HCBS to individuals.
  - After allowing adequate time for Medicaid waiver participants to gain a lived experience in this setting, attest to CMS that Medicaid beneficiaries receiving HCBS in this setting have person-centered service plans and that these individuals are experiencing access to the broader community to the same degree as beneficiaries not receiving Medicaid HCBS consistent with the level desired as articulated in their person-centered plan, consistent with the findings during the initial assessment of the setting.
- **CMS Response:** CMS agrees that the state's response is sufficient.
- Clarification of whether the setting only disseminates information about community activities or provides/facilitates activities in the community or off campus.
  - **Wisconsin Response:** Wisconsin summarized the Kitty Rhoades Resident Handbook, the Resident Admission Agreement/Lease, III, the service amenities document, Activities Program Policy, and the Transportation Services Policy and public comment received.

Observations By State Reviewers During Onsite Assessment Include:

    - A review of the In/Out log documents that residents had signed out to attend church, picnics, gardening, and trip to Dairy Queen with family or friends.
    - Bulletin boards were observed throughout the setting with posted information on community activities and transportation options. Residents, families, and community members contribute to the variety of activities posted on the bulletin boards. Recent example is a member of the local VFW coming in to post information on a popular pancake breakfast
  - **CMS Response:** CMS agrees that the state's response is sufficient.

## Heightened Scrutiny Summary of Findings

### Setting Information

Name of Setting: Orchard View Terrace; St. Croix County

Address: 1423 N 4<sup>th</sup> Street, New Richmond, WI 54017

Type of Setting: Residential

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

Date Submitted: September 28, 2018

Brief Description of Settings: The setting is a three-story building attached to a nursing facility (provider of inpatient institutional treatment) on a Health and Rehab Center Campus operated by St. Croix County. There is a separate entrance to the setting in the rear of the building, with internal signs to the residential area via elevators. The entry lobby is unattended. The entrance door is locked with a doorbell for visitors.

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

- The state conducted a desk review of evidence submitted for the setting and two on-site visits for review and observation. Discussions with residents occurred on the second visit. Service plans were reported to be reviewed on site.
- The state found that individuals can choose to decorate their rooms with furniture, family photos, and other personal items.
- The state found based on record review and discussions with residents, that individual residents participate in typical community life activities outside of the setting, but only when supported by family and friends. The state observed a staff member planning with residents to organize a movie night at a local theater.
- The state found that visitors are permitted at any time.
- DHS surveys found no evidence of restriction of resident rights.
- Individuals can choose alternative medical and therapy providers in the community as desired.
- Individuals have access to family and town taxis for transportation needs. The provider also owns a bus holding 15 people that is shared across settings on the property.
- There are separate organization charts and staffing schedules for the setting with minimal interconnectedness reported at the management and administrative levels.
- The setting provided evidence of a resident admission agreement/lease for review.
- The state considered the following evidence to demonstrate the setting is integrated and supports full access into the community by the individuals: two on-site review visits and completion of HCBS Adult Residential Provider Assessment; desk review of In-House assessment; two standard DHS survey reviews; Program Statement; Resident/Family Handbook; Resident Admission Agreements/Lease; sign in/out log; organization charts; staffing schedules; maps; site plans; photos; signage; building plans; aerial maps; and public comment on the setting.

## Initial Determination

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

## Additional Information Requested to Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption, and Summary of State Response:

CMS requested the state of Wisconsin provide the following:

- Attestation from the state through the review of person-center service plans (PCSP) and/or interviews with individuals residing in the setting 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
  - individuals have a choice in selecting their non-residential services, in addition to medical and dental services, and service providers. [42 CFR 441.301(c)(4)(v)].
  - **Wisconsin Response: Compliance within State Standards.**
    - Wisconsin has protections in place for waiver participants which ensure they understand their choices. State Medicaid waiver agencies – managed care organizations (MCOs) and participant self-directed IRIS (Include, Respect, I Self Direct) consultant agencies – are responsible for discussing choice of service settings with the waiver participant and family/guardian to locate the most suitable provider setting, including a discussion of living in a non-disability specific setting. In practice, the waiver agencies are complying with this requirement, and documenting and monitoring the choice of settings in the member centered plan or IRIS support and service plan, as applicable.
    - In Wisconsin, the choice of setting requirement is not the initial responsibility of the provider setting. Rather the choice of setting takes place through the person-centered planning process at the waiver agency level. Waiver agencies are certified by the SMA and work within the requirements of contracts with the SMA.
    - Wisconsin included contract language between the State Medicaid Agency and the Managed Care Organization to demonstrate the setting is selected by the individual and the individual shall have a choice in their non-residential service providers.
    - Wisconsin has protections in place through Pre-Admission Consultation (PAC): <https://www.dhs.wisconsin.gov/adrc/pros/pac.htm>. The state summarized administrative codes: Wis. Stat. § 50.09, Wis. Admin. Code § DHS 83.29.
    - Provider-Specific Compliance: <https://www.dhs.wisconsin.gov/publications/p0/p00040-stcroix.pdf>, Resident Handbook and Resident Rights.
  - **The State Medicaid Agency will:**

- Provide CMS with the date when the Orchard View Terrace begins to provide Medicaid HCBS to individuals;
    - Ensure that when waiver participants are admitted to Orchard View Terrace, the MCO will have documented that the participant selected that setting from among a variety of setting options, including non-disability specific settings;
    - Attest to CMS that Medicaid beneficiaries receiving HCBS at the Orchard View Terrace have person-centered service plans that meet the requirements outlined at CFR 441.301(c)(1)-(3) in place at the time when services begin.
    - DHS has indicated that it will arrange interviews 6-9 months after the setting begins to provide Medicaid HCBS to beneficiaries to allow the waiver members an opportunity to have gained a lived experience in the setting.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation from the state through the review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting 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)].
  - **Wisconsin Response:** The state summarized Wis. Stat. § 50.09, Wis. Admin. Code § DHS 83.32 and provided guidelines on restraints and isolation found at: [www.dhs.wisconsin.gov/waiver\\_manual/appndx-r1.pdf](http://www.dhs.wisconsin.gov/waiver_manual/appndx-r1.pdf) and [www.dhs.wisconsin.gov/dqa/memos/15-003.pdf](http://www.dhs.wisconsin.gov/dqa/memos/15-003.pdf).
    - Wisconsin summarized Orchard View Terrace Resident Rights to attest to CMS that the Orchard View Terrace has in place the policies and practices to ensure an individual’s right of privacy, dignity and respect, and freedom from coercion and restraint.
    - State heightened scrutiny reviewers conducted two site visits to this setting. The reviewers did not observe anything that raised concerns regarding encroachment on individual rights. State licensed settings are subject to unannounced licensing visits, both in response to complaints and during oversight visits. The state’s long-term care ombudsman program has regular access to the setting. In addition, when HCBS participants are residents in the setting, waiver program care managers are required to have on-going contacts, including face-to-face visits, at which time any member rights issues would be identified and addressed.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation from the state through the review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting that:
  - individuals have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
  - individuals have privacy in their sleeping units [42 CFR 441.301(c)(4)(vi)(B)] with entrance doors lockable by the individual, with only appropriate staff having keys to doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  - individuals have the freedom and support to control their own schedules and activities, and have access to food at any time [42 CFR 441.301(c)(4)(vi)(C)]; and

- 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 service plan [42 CFR 441.301(c)(4)(i)]
- **Wisconsin Response: Compliance within State Standards.**
  - The state summarized Wis. Admin. Code § DHS 83.35 and Wis. Admin. Code § DHS 83.54.
  - Requirements of initial and ongoing licensure in Wisconsin includes verification by DHS Division of Quality Assurance surveyors that the setting (DQA, F-02138, HCBS Compliance Review):
    - Provides lockable key entry doors on all resident rooms, and individual keys to all residents.
    - Has a policy ensuring that staff uses facility keys to enter a resident's room only under circumstances agreed upon with the resident.
    - Residents have choice of roommates.
  - Family Care Provider Network: The state provided a summary of DHS-MCO Contract, Article VIII, Wis. Admin. Code § DHS 83.32, Wis. Admin. Code § DHS 83.41, and Wis. Admin. Code § DHS 83.35.
  - Compliance in Provider-Submitted Documentation: the state summarized Orchard View Terrace Resident Handbook, flyers/documents, facility brochure and cover letter to ensure adherence to these settings criteria.
  - Wisconsin requested and has received additional confirmation from provider on policies and procedures to ensure:
    - Staff always knock, and receive permission, prior to entering a resident's room.
    - Safe location of facility master keys and description of who has access to the keys.
    - Staff use facility keys to enter a resident's room only under circumstances agreed upon with the resident.
  - During an onsite assessment of the setting, heightened scrutiny reviewers observed individuals managing their own schedules, with one woman having driven to/from WalMart in her own car. Wisconsin obtained and reviewed activity calendars showing a variety of options including pontoon boat rides, trips to the zoo, going to a movie, and weekly outings for concerts in the park, at the input and request of Orchard View residents. Review of daily resident in/out logs confirms that residents are out and about in their community, including going to the bank, home, VFW, casino, Legion Hall, and an overnight trip to Hudson, WI. State heightened scrutiny reviewers have obtained and reviewed person-centered service plans for Orchard View Terrace residents. Documented supports included resident choice of activity, and preferences specific to their favorite activities. Heightened scrutiny reviewer observations and previously provided evidentiary information confirm that individuals have privacy in their units, including lockable entrance doors. While onsite, reviewers observed staff knocking and receiving permission prior to entering resident living units.

- **The State Medicaid Agency will:**
  - Provide CMS with the date when the Orchard View Terrace begins to provide Medicaid HCBS to individuals;
  - After allowing adequate time for Medicaid waiver participants to gain a lived experience in this setting, attest to CMS through the review of person-centered plans and/or interviews with individuals residing there that, consistent with the findings during the initial assessment of the setting:
    - individuals residing at the Orchard View Terrace continue to have the opportunity to control their schedules and activities, and have access to food at any time;
    - only appropriate staff continue to have keys to living unit doors.
    - the setting continues to supports community activities of their choosing consistent with the preferences outlined in their person-centered service plans.
- **CMS Response:** CMS agrees that the state’s response is sufficient.
- Clarification of whether the setting only disseminates information about community activities or provides/facilitates activities in the community or off campus. Description of how the state determined that individuals were able to access food at any time.
  - **Wisconsin Response:** Determined compliance in provider-submitted documentation and onsite review including Resident/Family Handbook, Resident Admission Agreement/Lease, III, Activities program policy and transportation services policy.
  - Observations by State Reviewers During Onsite Assessment Include:
    - A review of the In/Out log demonstrated that numerous residents had signed out to attend church, picnics, or other activities in the community with family or friends.
    - Bulletin boards were observed throughout the setting with posted information on community activities and transportation options. Residents are able to post information on these bulletin boards. Residents, families, and community members contribute to the variety of activities posted on the bulletin boards. Recent example is a member of the local VFW coming in to post information on a popular pancake breakfast.
    - It was observed during the state’s onsite visit that individuals had access to food at any time. Orchard Terrace had kitchens and dining rooms as part of their common areas. Residents are able to access simple food items kept in the refrigerator, cupboards, and out on the counter such as fruit, cereal, crackers, and bread.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation from the state through the review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting that the setting supports, through the use of its own transportation or assistance accessing other forms of transportation, individuals’ access to the broader community that are consistent with the preferences and desires outlined in each individual’s person-centered service plan [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(5)]
  - **Wisconsin Response: Compliance within State Standards;** the state provided a

summary of Wis. Admin. Code § DHS 83.35, Wis. Admin. Code § DHS 83.38(1)(d), and Wis. Admin. Code § DHS 83.38(1)(e).

- Compliance in Provider-Submitted Documentation and Onsite Review including Resident Resource Information Resident Admission Agreement/Lease, III and the Resident/Family Handbook.
  - Observations by State Reviewers include:
    - A review of the In/Out log demonstrated that numerous residents had signed out to attend church, picnics, or other activities in the community with family or friends.
    - Bulletin boards were observed throughout the setting with posted information on community activities and transportation options. Residents are able to post information on these bulletin boards.
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Orchard View Terrace begins to provide Medicaid HCBS to individuals and that provision of such services will be consistent with those already observed/verified.
  - **CMS Response:** CMS agrees that the state's response is sufficient.
- Verification that the state conducted a sufficient number of consumer interviews to obtain data that is representative of the overall experiences of individuals in the setting, as well as attestation that the residents interviewed were not pre-selected by the provider and 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)].
    - **Wisconsin Response**
      - The Wisconsin Department of Health Services State Medicaid Agency notes that the Orchard View Terrace is not currently an HCBS waiver-certified provider. At this time, Orchard View Terrace remains an applicant for HCBS waiver provider certification until CMS reviews the additional information being provided by SMA and confirms a final decision. As such, there are currently no Medicaid Waiver participants residing at this setting.
    - **The State Medicaid Agency will:**
      - Provide CMS with the date when the Orchard View Terrace begins to provide Medicaid HCBS to individuals.
      - Confirm that the setting is continuing to provide services consistent with those evidenced to date and after allowing adequate time for Medicaid waiver participants to gain a lived experience in this setting, to further assure ongoing compliance, attest to CMS through monitoring via the review of person-centered plans and/or interviews with individuals residing there that the individuals residing at the Orchard View Terrace continue to have the opportunity control their schedules and activities, and have access to food at any time on an ongoing basis.
    - **CMS Response:** CMS agrees that the state's response is sufficient.
  - Attestation from the state that individuals occupy the setting under a legally enforceable agreement, 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 [42 CFR 441.301(c)(4)(vi)(A)].

- **Wisconsin Response: Compliance within State Standards.** The state summarized Wis. Admin. Code § DHS 83.29.
- **CMS Response:** CMS agrees that the state’s response is sufficient.
- Clarification from the state that the staff working in the CBRF are educated on the HCBS settings criteria [42 CFR 441.301(c)(5)(v)].
  - **Wisconsin Response: Compliance within State Standards.** The state provided summary of Wis. Admin. Code § [DHS 83.32 \(3\)](#), Wis. Admin. Code § [DHS 94](#) and Wis. Admin. Code § DHS 83.21.
    - Compliance in Provider-Submitted Documentation: the state summarized the cover letter, and training plans.
    - Wisconsin requested and has received additional information from the provider to confirm that initial and ongoing staff training materials include the principles of HCBS. Documentation provided includes staff training content on HCBS, person-centered care, and the employee’s role in promoting resident choice.
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Orchard View Terrace begins to provide Medicaid HCBS to individuals.
    - After allowing adequate time for Medicaid waiver participants to gain a lived experience in this setting, attest to CMS that staff working in the CBRF continue to be educated on HCBS, consistent with the findings during the initial assessment of the setting.
  - **CMS Response:** CMS agrees that the state’s response is sufficient.
- Attestation from the state through the review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting that any modifications of the additional conditions, under §441.301(c)(4)(vi)(A) thru (D), must be supported by a specific assessed need and justified in the person-centered plan [42 CFR 441.301(c)(4)(vi)(F)].
  - **Wisconsin Response: Compliance within State Standards.** The state summarized Wis. Admin. Code § DHS 83.35(1)(a) and Wis. Admin. Code § DHS 83.35 (1)(d).
    - Compliance in Provider-Submitted Documentation: the state summarized cover letter, page 4:
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Orchard View Terrace begins to provide Medicaid HCBS to individuals with person centered service plans in place for each individual.
    - Attest to CMS that Medicaid beneficiaries receiving HCBS at the Orchard View Terrace have person-centered service plans in place. Any modifications to the plans will be supported by a specific assessed need and justified in the person-centered service plan in accordance with §441.301(c)(4)(vi)(A) thru (D).
  - **CMS Response:** CMS agrees that the state’s response is sufficient.

- Attest to CMS that Medicaid beneficiaries receiving HCBS at these settings have PCPs and that these individuals are experiencing access to the broader community to the same degree as beneficiaries not receiving Medicaid HCBS and consistent with the level desired as articulated in their person-centered plan [42 CFR 441.301(c)(4)].
  - **The State Medicaid Agency will:**
    - Provide CMS with the date when the Orchard View Terrace begins to provide Medicaid HCBS to individuals with person-centered service plans in place.
    - Attest to CMS that Medicaid beneficiaries receiving HCBS in this setting have person-centered plans and that these individuals continue to experience access to the broader community to the same degree as beneficiaries not receiving Medicaid HCBS consistent with the level desired as articulated in their person-centered plan, consistent with the findings during the initial assessment of the setting.
  - **CMS Response:** CMS agrees that the state's response is sufficient.