



## Disabled & Elderly Health Programs Group

---

July 23, 2021

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

Dear Mr. Jones:

This letter is in reference to the Dove Healthcare-Osseo Assisted Living 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 § 441.301(c)(4) and (5). Dove Healthcare-Osseo Assisted Living is a community-based residential facility co-located in the same building as a skilled nursing facility. Information on how this setting complies with the home and community-based settings criteria was submitted by the state of Wisconsin to CMS for heightened scrutiny review on September 17, 2018.

CMS provided the state its initial “Summary of Findings” on May 16, 2019, to which the state provided its response to CMS on March 11, 2020. Based on the information contained in the initial submission and the additional information the state provided, CMS agrees with the state’s determination that this setting will overcome any institutional presumption and meet all of the HCBS settings criteria on or before the end of the transition period for compliance, which ends March 17, 2023. In the pages that follow, the initial CMS feedback to the state is provided, as well as the state’s responses and proposed future actions, and CMS’ reaction to those responses.

Since there are currently no individuals receiving Medicaid-funded HCBS in this setting, CMS requests that the state provide, as part of its milestone and quarterly reporting to CMS, the date when the setting begins to provide Medicaid-funded HCBS to individuals, along with an assurance that individuals have a person-centered service plan that meets requirements outlined at 42 CFR 441.301(c)(1)-(3) in place at that date. CMS also appreciates the state’s strategy to ensure Dove Healthcare-Osseo Assisted Living’s continued compliance with regulatory criteria through beneficiary experience, to be assessed through interviews within 6-9 months after the setting begins to provide Medicaid-funded 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 HCBS.

Sincerely,

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

## Heightened Scrutiny Summary of Findings

Name of Setting: Dove Healthcare-Osseo Assisted Living

Address: 51017 Ridge View Road, Osseo, WI 54758

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: Setting is described as clearly distinct from the nursing facility with separate entrances and signage.

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

- The state conducted a desk review of submitted evidence and one on-site visit for review and observation. Reviewers visited with several residents over lunch during the onsite visit.
- The setting includes studio and 1-bedroom apartments with full kitchens. Observation found that living units have lockable doors.
- DHS survey found no evidence of restriction of resident rights.
- The setting includes community member participation in various activities.
- The state found sufficient evidence to support that individuals regularly participate in typical community activities outside of the setting to the extent the individual desires. The setting is located approximately one mile outside of the town. Individuals engage in community activities individually or as planned by the recreation director.
- Individuals can choose alternative medical and therapy providers in the community as desired. Individuals can receive services from providers other than the assisted living facility as mutually agreed upon and defined in the risk agreement. Individuals have volunteer opportunities in the community.
- Individuals have access to family and friends for transportation; the setting has a vehicle for group travel and some residents have their own vehicles.
- Individuals reported snacks and beverages are available throughout the day. Individuals can prepare meals in their own living units or obtain meals in the common dining room.
- There are separate organizational charts and staffing schedules for the setting with minimal interconnectedness with the nursing facility at the management and administrative levels.
- Policy review supports that individuals have control of their personal resources.
- The state considered the following evidence to demonstrate the setting is integrated in and supports full access into the community by the individuals: on-site review visit, resident interviews and completion of HCBS Adult Residential Provider Assessment; desk review of In-House Assessment; standard DHS survey review; sample Tenant Service Plan; Tenant Agreement/Handbook; Training Plan and materials; Orientation Checklist; Staffing Plan Policy; map; photos, blueprints; building plans; organization charts; public comment.

### **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 requested the state of Wisconsin provide the following:

- Attestation from the state that the setting is selected by the individual from among a variety of setting options including non-disability specific settings [42 CFR § 441.301(c)(4)(ii)].
  - **Wisconsin Response: Compliance Within State Standards**
    - Wisconsin has protections in place for waiver participants which ensure they understand their choices. The Wisconsin Department of Health Services (State Medicaid Agency, hereafter SMA) 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 and work within the requirements of contracts (contract language included) with the SMA. Through ongoing monitoring, Wisconsin will ensure that individuals maintain the right to choose where they reside.
    - Wisconsin has protections in place through Pre-Admission Consultation (PAC): <https://www.dhs.wisconsin.gov/adrc/pros/pac.htm>
    - The state included Compliance Within Provider-Submitted Documentation and Onsite Observations to include participant interviews.
  - **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:**
    - State heightened scrutiny reviewers conducted an onsite assessment of this setting. The reviewers did not observe anything that raised concerns regarding encroachment on individual rights. The SMA review process found no evidence of restriction of resident rights around access to visitors, personal control over resources, autonomy or access to food. The state included onsite observations to include participant interviews.
    - State-regulated settings are subject to unannounced licensing visits, both in

response to complaints and during regular oversight visits. In addition, when HCBS participants are residents in the setting, waiver program care managers are required to have ongoing contact, including face-to-face visits, at which time any member rights issues would be identified and addressed.

- Compliance within State Standards: The state summarized Wisconsin Administrative Code §§ [DHS 89.34 and 89.36](#) and provided guidelines on restraints and isolation found at: <http://www.dhs.wisconsin.gov/waivermanual/appndx-r1.pdf> and <http://www.dhs.wisconsin.gov/dqa/memos/15-003.pdf>
  - Compliance Within Provider-Submitted Documentation: the state reviewed the service agreement, staff training policy training materials, and policies on tenant rights and freedom from abuse, neglect, and exploitation.
- **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 had a choice in selecting their non-residential service providers, in addition to medical and dental providers [42 CFR 441.301(c)(4)(v)].
    - **Wisconsin Response: Compliance Within State Standards**
      - The state provided contract language regarding member choice and policy manual language regarding self-direction.
      - Person-Centered Planning: The state summarized HCBS waivers, waiver-specific contracts, policy documents, and Wis. [Stat. § 50.09](#)
      - The state summarized [Wis. Admin. Code § DHS 89.24\(2\)\(b\)](#) and Wis. Admin. Code § [DHS 89.34](#).
      - Compliance Within Provider-Submitted Materials and Onsite Review/Observations: The state summarized the setting's service agreement and policies and procedures related to the service agreement and contracted services.
    - **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)];
    - **Wisconsin Response:** The state found sufficient evidence to support that individuals regularly participate in typical community activities outside of the setting to the extent the individual desires. The setting is located approximately one mile outside of the town. Individuals engage in community activities individually or as planned by the recreation director. Individuals also have volunteer opportunities in the community.

- Compliance Within State Standards:
      - The state provided a summary of DHS-MCO Contract, Articles V and VII and a summary of employment information from the IRIS policy manual.
    - Compliance Within Provider-Submitted Materials:
      - Tenants have volunteer opportunities in the community such as the Lutheran Mentor Program and participate in various fundraisers in the Osseo community.
      - Tenants are asked about their hobbies, interests, community involvement and the activities that they currently enjoy, would like to see in the assisted living setting, or would like to continue with in the community such as volunteer or employment opportunities.
      - Other than social activities, Dove Healthcare doesn't provide any nonresidential services. SMA reviewer assessment of tenant support plans reflects that individuals elect to direct their community activities independently.
  - **CMS Response: CMS agrees that the state's response is sufficient.**
- Attestation from the state through a review of person-centered service plans, direct observations and/or interviews with individuals residing in the setting that individuals are able to have visitors of their choosing at any time [42 CFR § 441.301(c)(4)(vi)(D)].
  - **Wisconsin Response:**
    - Compliance within State Standards: The state summarized Wis. Admin. Code § [DHS 89.22](#) and Wis. Admin. Code § [DHS 89.34](#).
    - Compliance Within Provider-Submitted Documentation and Onsite Review/Observations
      - The state summarized the setting's staff training materials and Service Agreement.
      - The state summarized onsite review/observations to include participant interviews.
  - **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 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, please clarify that a lease, residency agreement or other form of written agreement is in place for each HCBS participant and the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. [42 CFR § 441.301(c)(4)(vi)(A)]

- **Wisconsin Response:**
  - Compliance within State Standards: The state summarized Wis. Admin. Code § [DHS 89.27](#).
  - Compliance Within Provider-Submitted Documentation: the state summarized the setting's Service Agreement.
  
- **CMS Response: CMS agrees that the state's response is sufficient.**
  
- Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>).
  - **Wisconsin Response:**
    - State reviewers confirmed that there are separate organizational charts and staffing schedules for the setting with minimal interconnectedness with the nursing facility at the management and administrative levels.
    - Compliance Within Provider-Submitted Documentation: The state summarized the setting's Staff Orientation Checklist and Annual Review.
  
  - **CMS Response: CMS agrees that the state's response is sufficient.**
  
- Attest to CMS that Medicaid beneficiaries receiving HCBS at these settings 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 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 Dove Healthcare-Osseo Assisted Living 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 service 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 service plan, consistent with the findings during the initial assessment of the setting.
  
  - **CMS Response: CMS agrees that the state's response is sufficient.**