

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

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 Pine Valley 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). Pine Valley Assisted Living is an assisted living 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 for heightened scrutiny review on September 28, 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 10, 2020. CMS had several conversations with the state with regard to additional information needed to make a determination that the setting overcame the institutional presumption, with the latest request on July 21, 2020, to which the state provided its response on July 23, 2020. CMS appreciates the efforts of the state to provide comprehensive information regarding this setting's characteristics. Based on the information contained in the initial submission, and the additional information the state provided, CMS agrees with the state's determination that this setting will overcome any institutional presumption and meets all of the HCBS settings criteria on or before the end of the transition period, 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, within 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 Pine Valley Assisted Living's continued compliance with the 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) 786-5929 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 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: Pine Valley Assisted Living Center

Address: 25951 Circle View Lane, Richland Center, WI 53581

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: Assisted Living setting adjoining a skilled nursing facility with a shared exterior entrance. Common lobby area with separate hallways leading to the two different settings. Exterior sign labeled Pine Valley Community.

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, desk review of other available evidence and one on-site visit for review and observation.
- The state found that individuals can choose to decorate their rooms with their own furniture, family photos and other personal items.
- Each room has lockable doors.
- The state found that individual residents may participate in typical community activities outside of the setting supported by family and friends to the extent the individual desires. Information regarding community activity options are posted. The setting will provide transportation if there is sufficient interest for a community activity. Taxi service is also available.
- Individuals are able to participate in activities of their own choosing or activities offered by the setting, and have independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- There is access to an "always available menu" and meals are offered on a flexible schedule.
- Individuals can choose alternative medical, ancillary and therapy providers in the community as desired.
- Individuals can maintain outside employment.
- Individuals can control their own personal resources and can maintain personal community bank accounts or receive assistance with money management through the on-campus business office.
- DHS survey/licensure reviews confirms there are no statements of deficiency (SOD) or other evidence of restriction of resident rights delineated in the Wisconsin bill of rights.
- There are separate organization charts, staffing schedules, and job descriptions for the setting with minimal interconnectedness to the nursing facility at the management and administrative levels.
- The state considered the following evidence to demonstrate the setting is integrated in and supports full access into the community by the individuals: one on-site review visit and completion of HCBS Adult Residential Provider Assessment; desk review of In-House Assessment; two DHS survey/license reviews; standard Wisconsin Department of Health Services (DHS) survey and probationary license reviews; Resident Handbook; Resident

Admission Agreement; testimonials; resident interviews, organization charts; staffing schedules; staffing plans; maps; site plans; photos; signage; floor plans; aerial maps; and, two public comments.

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:

- Clarification that the setting is currently serving individuals receiving Medicaid-funded residential HCBS.
 - **Wisconsin Response:** The Wisconsin Department of Health Services State Medicaid Agency (SMA) notes that the Pine Valley Assisted Living Center (hereafter, Pine Valley) is not currently an HCBS waiver-certified provider. At this time, Pine Valley Assisted Living 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. Pine Valley does not currently serve individuals receiving Medicaid-funded residential HCBS.
 - **CMS Response:** CMS agrees that the state's response is sufficient.
- Attestation from the state through the review of person-centered service plans and/or interviews w/ 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).
 - **Wisconsin Response:**
 - Wisconsin has protections in place for waiver participants which ensure they understand their choices. 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. 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 (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 reviewed and included a compilation of documents referred to as Compliance within Provider-Submitted Materials and Onsite Observations to include participant and family interviews, and public comment.

The State Medicaid Agency will:

- Provide CMS with the date when Pine Valley begins to provide Medicaid HCBS to individuals.
- Ensure that when waiver participants are admitted to Pine Valley, 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 Pine Valley have person-centered service plans in place.
- Wisconsin will arrange interviews 6-9 months after the setting begins to provide Medicaid HCBS 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-center service plans and/or interviews w/ individuals residing in the setting that individuals had 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:**

- Wisconsin has verified through reviews of the setting's policies and practices, as well as direct onsite observation, that Pine Valley ensures resident choice of non-residential service providers. The state found that individuals can choose alternative medical, ancillary and therapy providers in the community as desired. State-licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits. Through ongoing HCBS monitoring, Wisconsin will ensure that individuals maintain the right to make such choices while residing in this state-licensed community-based residential facility. Additionally, the state's long-term care ombudsman program has regular access to the setting.
- Compliance within State Standards
 - The state provided a summary of Wis. Admin. Code § DHS 83.29.
 - Person-Centered Planning: The state summarized HCBS waivers, waiver-specific contracts, and policy documents and Wis. Stat. § 50.09
- Compliance within Provider-Submitted Materials and Onsite Observations: The state summarized the setting's Rights of Residents Policy, cover letter, Resident Handbook, Residency and Services Agreement, and Outside

Provider Agreement.

- **CMS Response: CMS agrees that the state's response is sufficient.**
- Confirmation 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. Further, there are no statements of deficiency or other evidence of restriction of resident rights from the state's Division of Quality Assurance (DQA) survey/licensure reviews.
 - Compliance within State Standards: 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/waivermanual/appndx-r1.pdf and
www.dhs.wisconsin.gov/dqa/memos/15-003.pdf
 - State-licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular 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 ongoing contacts, including face-to-face visits, at which time any member rights issues would be identified and addressed.
 - Compliance within Provider-Submitted Documentation: Residents Rights document, cover letter, and Rights of Residents Policy.
 - **CMS Response: CMS agrees that the state's response is sufficient.**
- Confirmation 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 that individuals can maintain outside employment if they so desire. There are not currently, however, any residents of Pine Valley who are employed. Residents are predominantly older adults who have retired from their working years.
 - Compliance Within State Standards:
 - The state summarized Wisconsin Administrative Code § DHS 83.35.
 - 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 Documentation: The state summarized Pine Valley Policy and Procedure and the Resident Handbook.
 - **CMS Response: CMS agrees that the state’s response is sufficient.**
- Confirmation through the 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. Stat. § 50.09.
 - Compliance within Provider-Submitted Documentation: The state summarized the Pine Valley Assisted Living Center Residency and Services Agreement and the Rules and Guidelines of the Facility.
 - The state provided resident comments shared with the SMA reviewers.
 - **CMS Response: CMS agrees that the state’s response is sufficient.**
- Verification of the number of consumer interviews conducted, as well as attestation that the residents interviewed 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 SMA notes that Pine Valley Assisted Living Center is not currently an HCBS waiver-certified provider within the HCBS settings rule requirements. As such, there are currently no Medicaid Waiver participants residing at this setting.
 - State heightened scrutiny reviewers did join one couple for lunch during the onsite visit. The couple was reassured that their comments would be kept confidential. The couple indicated that they are very happy living at Pine Valley. Two of their children living nearby have indicated that they’d like to live at Pine Valley someday, too.
 - The SMA will:
 - Provide CMS with the date when Pine Valley begins to provide Medicaid HCBS to individuals.
 - After allowing adequate time for waiver members to gain a lived experience in the setting, Wisconsin will then have an opportunity to meet with and interview these individuals.
 - **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 [42 CFR § 441.301(c)(4)(vi)(A)].

○ **Wisconsin Response:**

- Compliance within State Standards: The state summarized Wis. Admin. Code § DHS 83.29 and § DHS 83.31.
- State licensed settings are subject to unannounced licensing visits, both in response to complaints and during regular oversight visits. Through ongoing HCBS monitoring. Additionally, the state's long-term care ombudsman program has regular access to the setting.
- Compliance within Provider-Submitted Documentation: The state summarized the setting's Assisted Living Residency and Services Agreement and can attest to CMS that individuals residing at Pine Valley 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.**

- As part of the determination of whether the setting has overcome an institutional presumption, the state should attest to CMS that Medicaid beneficiaries receiving HCBS at these settings have person-centered service plans (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 plan [42 CFR § 441.301(c)(4)].

○ **Wisconsin Response:**

- As a state-licensed setting, Pine Valley is subject to routine and unannounced 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. During these visits, person-centered plans and individual choices or rights such as access to the broader community would be reviewed.
- Compliance Within State Standards:
 - Person-Centered Planning: Each participant in a Medicaid home and community-based waiver program must have a person-centered plan that, when indicated, includes any conditions that are to be applied to the conditions defined in the settings rule. Person-centered plans that include one or more exceptions must incorporate the information identified in this section of the settings rule. (WI Statewide Transition Plan, pg. 83; Wisconsin HCBS waivers, waiver-specific contracts, and policy documents)
 - Comprehensive Individual Service Plan: *Individual service plan review*. Annually or when there is a change in a resident's needs, abilities or physical or mental condition, the individual service plan shall be reviewed and revised based on the assessment under sub.

(1). WI Statewide Transition Plan, pg. 83; (Wis. Admin. Code § DHS 83.35 (1)(d))

- Compliance within Provider-Submitted Documentation and Onsite Observations:
 - During the onsite visit, one staff member commented on how one couple spends most of their day doing activities at their discretion in the community; this couple was not present the day of the onsite visit.
 - The state summarized support letters and program statements demonstrating community access and activities.
- Assessment, ISP, and Evaluations Policy:
 - A. “The administrator or designee shall hold a face to face interview with the person and the person’s legal representative, if any, and family members, as appropriate, to determine what the person views as his or her needs, abilities, interests, and expectations.”
 - B.9. “The assessment, at a minimum, shall include all of the following areas applicable to the resident: Social participation, including interpersonal relationships, communication skills, leisure time activities, family and community contacts and vocational needs.
Attachment: An extensive *Initial Activity Assessment and Interest Survey* is attached to the assessment and support plan-related documents. The form reflects countless areas of activity and hobby that the person may be interested in, inside the facility or out in the community, such as zoos, museums, plays, music programs, sports, travel, dancing, movies, exercise, pets, games, outings, “just for fun,” reading, writing, art, instruments, etc.
- Review of support plans reflect goals related to activities, preferences, frequency, reminders or assistance necessary to do so, participation in activities with family and peers outside of and inside of facility, transportation, etc.
- CBRF Resident Handbook :
- Residency and Services Agreement, Leisure Time and Community Activities: “Facility will provide a program of social and recreational activities, both at and away from Facility. Some community activities may have additional charges.”
- **CMS Response: CMS agrees that the state’s response is sufficient.**