

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

April 16, 2019

Maggie Anderson
Director of Medical Services Division
North Dakota Department of Human Services
600 E. Boulevard Avenue, Dept. 325
Bismarck, ND 58505-0250

RE: Heightened Scrutiny Review of: Villa De Remer Apartments; 700, 716 & 752 Cottage Road, 808 W 5th Street # 108 and #208, Grafton, ND 58237

Dear Ms. Anderson:

This letter is in reference to 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). North Dakota submitted 3 single family homes and 2 apartments on the grounds of the Life Skills Transition Center, a publicly operated intermediate care facility for individuals with intellectual or developmental disabilities (ICF/IID). CMS provided feedback to the state on these settings based on an onsite review conducted in August 2015. An evidentiary package was resubmitted by the state of North Dakota to CMS for heightened scrutiny review in March 2016.

CMS provided the state its "Summary of Findings" on June 8, 2018. The state provided its response to CMS on August 20, 2018. 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, CMS concluded that the information submitted by the state for the heightened scrutiny review is sufficient to demonstrate that the settings do not have the qualities of an institution and have met all of the HCBS settings criteria. We have attached a Summary of Findings for the settings as well as the state's response that addresses the concerns outlined. CMS appreciates the effort of the state to provide a comprehensive evidentiary package regarding the setting's characteristics.

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

Thank you for your continued commitment to the state of North Dakota'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: Villa De Remer Apartments

Address: 700, 716 & 752 Cottage Road; 808 W 5th Street #108 and #208 Grafton, ND

Type of Setting: Residential

HS Category: Settings are on the grounds of a publicly-operated ICF/IID

Date Submitted: March 31, 2016

Brief Description of Setting: 3 single family homes and 2 apartments on the grounds of the Life Skills Transition Center.

Support Submitted by the State to Demonstrate Settings' Progress in Overcoming the Institutional Presumption

- The state confirmed that there is no interconnectedness (i.e. administrative functions, personnel) between the publicly-operated ICF/IID and the settings in question.
- The state indicated that two buildings on the grounds of the ICF/IID have been converted into apartment buildings that are owned by private landlords and are utilized by the general public, ensuring that the grounds are no longer used only by individuals with intellectual and developmental disabilities.
- Each participant has their own room and their homes and rooms reflect each individual's choice of living arrangement, individual interests and hobbies.
- Each individual engages in a wide variety of education and employment activities and interacts with the broader community on a daily basis, including activities with people who are not paid to provide services or support to the individual.
- Person-centered plan reviews demonstrate that individuals are receiving services outlined in their plan.
- Individuals have access to food and visitors of their choosing at any time.
- Public and private transportation options assist individuals to participate in community activities away from the campus setting.
- The state included the apartment 808 W. 5th Street #208 as requested by CMS.

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 North Dakota provide the following:

- Confirmation that individuals residing at 716 Cottage Road have leases or written tenancy agreements with the provider. At the time of the CMS site visit, lease agreements were between the Life Skills Transition Center and the HCBS provider. [42 CFR 441.301(c)(4)(vi)(A)]
 - North Dakota Response: The individuals residing at 716 Cottage Road do have leases with the provider signed by either the client or legal decision maker.
 - **CMS agrees that the state's response is sufficient.**
- Clarification that the process for allowing modifications to the additional settings criteria in provider owned and controlled residential settings is supported by a specific assessed need and justified in the person-centered service plan [42 CFR 441.301(c)(4)(vi)(F)(1)-(8)].
 - North Dakota Response: The process and documentation for modifications is described in the policy, "Overall Service Plan Instructions". These instructions provide direction that in the Right Limitation and Due Process section of the person centered service plan needs to include any rights restrictions (which include the modifications per 42 CFR 441.301(c)(4)(vi)(F)(1)-(8)); the individualized assessed need; positive interventions/supports tried previously; collection and review of data to determine ongoing effectiveness; established time limits; informed consent and due process through the Human Rights Committee; and assurance the interventions/supports will not cause harm. The Developmental Disabilities Program Manager is responsible to ensure that the plan is developed in accordance with applicable policies and procedures.
 - **CMS agrees that the state's response is sufficient.**

- Verification that the individuals' person-centered plans reflect that residents were given their choice of settings, including non-disability specific settings [42 CFR 441.301(c)(4)(ii)].
 - North Dakota Response: Setting options and choice of settings is described in the policy, "Overall Service Plan Instructions". The instructions provide information on the Developmental Disabilities Program Manager's role and responsibilities in informing individuals of setting options and documenting in the person-centered service plan the person's choice in setting.
 - CMS agrees that the state's response is sufficient.