

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 19, 2019

Lori Coyner  
Medicaid Director  
State of Oregon, Oregon Health Authority  
500 Summer Street, NE E49  
Salem, OR 97301

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

Horizon House Residential Treatment Facility, 2435 Greenway Drive, NE Salem OR 97301  
New Roads Residential Treatment Home, 2575 Westgate, Building 3, Pendleton OR 97801  
Salmon Run Residential Treatment Home, 2575 Westgate, Building 1, Pendleton OR 97801  
Via Verde Residential Treatment Home, 524 24<sup>th</sup> Place NE, Salem, OR 97301

Dear Ms. Coyner:

This letter is in reference to four 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). Oregon submitted evidence packages for three residential treatment homes (RTHs) and one residential treatment facility (RTF), all of which are located on the grounds of public hospitals operated by the state. The evidentiary packages were submitted by the state of Oregon to CMS for heightened scrutiny review in August of 2017.

CMS provided the state its initial "Summary of Findings" for all four settings on June 8, 2018. The state provided its response to CMS on September 26, 2018. CMS appreciates the efforts of the state to provide a comprehensive evidentiary package regarding the settings' characteristics. Based on the information contained in the evidentiary packages specific to these settings, CMS has determined that additional information is needed before a final determination is made, specifically:

- Confirmation from the state that individuals have the ability to choose the setting in which they receive Medicaid HCBS from various available options, including non-disability specific options;
- Attestation that responsibilities and protections from evictions similar or equivalent to what is provided in state-based landlord tenant law is specifically outlined in the text of residency agreements between the provider and HCBS beneficiaries in each of the settings reviewed; and
- Assurance by the state that individuals transitioning to these four settings from a correctional facility are no longer inmates of a public institution.

Once these issues are addressed, and all remediation strategies proposed by the state to resolve specific areas of non-compliance with the federal requirements are complete, CMS believes these settings will

overcome any institutional presumptions and meet all of the HCBS settings criteria on 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 these settings. The state is expected to include within its milestones and quarterly reports to CMS the status of any outstanding remediation that is required of each setting, including a verification that the remediation has been completed. CMS has attached an updated *Summary of Findings* for each of the four settings, which outline 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 express appreciation to the state of Oregon for participating in the heightened scrutiny review pilot. Your participation in this review process has provided helpful and invaluable feedback, and has assisted CMS in identifying a clear and concise way to communicate with states during the heightened scrutiny review process.

Thank you for your continued commitment to the state of Oregon'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: Horizon House

Address: 2435 Greenway Drive, NE Salem, OR 97301

Type of Setting: Residential Treatment Facility (RTF)

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

Date Submitted: August 2017

Brief Description of Setting: Residential treatment facility located on the grounds of the Oregon State Hospital, and adjacent to homes housing the State Hospital population. Also adjacent to the Oregon State Penitentiary (a correctional institution).

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

- Each resident has access to personal resources, including unrestricted use of their individual mobile phones.
- Individuals may leave the home at will and at any time.
- Residents may have visitors of their individual choosing at any time.
- The facility offers transportation services and the residents may use taxi cabs, Dial-a-Ride services (for \$1), insurance transport services, or have friends/family transport them. The home is also within 800 yards, or a ten-minute walk, to a city bus stop.
- Provider encourages all residents to leave the setting to engage in various community offerings and offers bus training to allow for greater confidence in community integration.
- Provider facilitates outings to various city, county and state events, including events via Salem's All Activities listings. Provider offers a minimum of four outings a day, which often include recreational/senior centers, banking, shopping and religious activities.
- Residents may choose to work and/or volunteer, which currently include grocery outlets, social service organizations, and religious affiliations. One resident is attending community college.

## 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 Oregon provide the following:

- Confirmation that that there is separation (i.e. administrative functions, personnel) between the state hospital or other public institution in the surrounding area and the setting in question [42 CFR 441.301(c)(5)(v)].
  - State Response:
  - Yes, there is separation (i.e. administrative functions, personnel) between the Oregon State Hospital or other public institution and Horizon House.
    - i. The Oregon Health Authority operates the Oregon State Hospital and Marion County operates Horizon House. However, the state hospital is the landlord for Horizon House. Interaction may occur between the state hospital and Horizon House for "sticks and bricks" work orders for facility repair needs. Other than these requests, the state hospital does not oversee any aspect of the residential setting. Additionally, communication may occur between the state hospital and

Horizon House at the time the individual transitions to a lower level of care residential placement option. At this time, state hospital staff would communicate with Marion County for the residential referral to Horizon House. Should the individual choose Horizon House, communication may occur between state hospital staff and Horizon House staff for transitional purposes.

- ii. There is little communication between the Oregon State Penitentiary and Horizon House. Communication may occur between the Oregon State Penitentiary and Horizon House at the time the individual transitions to a lower level of care residential placement option. At this time, the penitentiary would communicate with Marion County for the residential referral to Horizon House. Should the individual choose Horizon House, communication may occur between Oregon State Penitentiary staff and Horizon House staff for transitional purposes.
  - CMS agrees that the state's response is sufficient.
- 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 a variety of setting options including non-disability specific settings [42 CFR 441.301(c)(4)(ii)].
  - State Response:
    - Upon HSD's request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP requirements documenting choice of service setting in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents the selection of setting options including non-disability specific settings.
    - 5 of the 6 residents interviewed stated that Horizon House was the only available option. However, when asked if there were any objections then or now of residing at Horizon House, all five residents stated there were no objections and that they have had a positive experience.
    - 1 of the 6 residents interviewed stated that they chose from two options and decided on Horizon House. They were unsure if the other option was non-disability specific.
    - CMS agrees that the state's proposed remediation is sufficient; however, CMS requests confirmation that all individuals have the opportunity to select the setting of their choosing.
- Assurance through a review of the provider policies that the specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement [42 CFR 441.301(c)(4)(vi)(A)].
  - State Response:
    - The Adult Intensive Services and Supports Intake Team and Provider Liaison with Marion County confirmed that Marion County does not have written HCBS-specific policies for Horizon House. HSD will work with Marion County during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states that the specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement.
    - In practice, Horizon House is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident that states "The RESIDENT has the right to live under a legally enforceable agreement with protections substantially equivalent to landlord/tenant laws of Oregon."

- 5 of the 6 residents interviewed stated that they did sign a residency agreement with Horizon House.
  - 1 of the 6 residents interviewed stated that they did not remember if they signed a residency agreement with Horizon House, as it has been a long time; however, they were sure they probably did sign a residency agreement with Horizon House.
  - CMS agrees with the state's proposed remediation; however, CMS requests attestation of review of the provider's residency agreement to ensure that the specific protections are outlined there.
- Confirmation through a review of person-centered service plans and/or interviews with the individuals that the individuals have freedom and support to control their schedules as identified in the individuals' person-centered service plans [42 CFR 441.301(c)(4)(vi)(C) & 42 CFR 441.301(c)(4)(iv)].
    - State Response:
    - Upon HSD's request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP documenting individual freedom and support to control his or her own schedule in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents individuals' freedom and support to control their schedules as identified in the PCSP.
    - In practice, Horizon House is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident that states "The RESIDENT has the right to control your schedule and activities."
    - 6 out of 6 residents interviewed stated that they do have the have freedom and support to control their schedules.
    - CMS agrees that the state's proposed remediation is sufficient.
- Regarding Interviews of Beneficiaries & Staff: Confirmation of total number of residents and bedroom units in the residential setting, and number of staff interviews conducted.
    - State Response:
      - Total number of residents: 7
      - Total number of bedroom units: 8
      - Total number of staff interviews conducted: 3
    - CMS agrees that the state's response is sufficient.
- The number of consumer interviews conducted, 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:
    - Number of consumer interviews conducted: 6
    - The residents were interviewed individually in the program manager's office. Only the OHA representative and the resident were present.
    - Each resident interviewed understood that staff would not be informed of the specific information shared.
    - CMS agrees that the state's response is sufficient.

- Confirmation through both review of the provider policies and/or via observational data collected by the state during the onsite visit that: Each individual has privacy in their sleeping or living unit [42 CFR 441.301(c)(4)(vi)(B)].
  - State Response:
  - The Adult Intensive Services and Supports Intake Team and Provider Liaison with Marion County confirmed that Marion County does not have written HCBS-specific policies for Horizon House. HSD will work with Marion County during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states each individual will have privacy in their sleeping or living unit.
  - In practice, Horizon House is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident that states “The RESIDENT has the right to privacy in your unit.”
  - 6 out of 6 residents interviewed stated that they do have privacy in their sleeping or living unit.
  - Upon a tour of the setting, HSD confirmed that each resident has privacy in their sleeping or living units.
  - **CMS agrees that the state’s proposed remediation is sufficient.**
  
- Individuals sharing units have a choice of roommates [42 CFR 441.301(c)(4)(vi)(B)(2)].
  - State Response:
  - The Adult Intensive Services and Supports Intake Team and Provider Liaison with Marion County confirmed that that Marion County does not have written HCBS-specific policies for Horizon House. HSD will work with Marion County during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states individuals sharing units will have a choice of roommates.
  - In practice, Horizon House is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident that states “If the RESIDENT will share a room, the RESIDENT has the right to choose your roommate prior to final selection of a roommate. The PROVIDER will, to the best of their resources and abilities, ensure that this right is maintained.”
  - 2 of the 6 residents interviewed do not share a room.
  - 1 of the 6 residents interviewed stated that they did get to choose a roommate.
  - 3 of the 6 residents interviewed confirmed that there was only one shared room available upon entry to the setting and that there were no objections to the roommate and currently are no objections to roommates.
  - 6 out of 6 residents interviewed were confident that if they requested to change a roommate, it would be allowed and handled through Horizon House staff.
  - **CMS agrees that the state’s proposed remediation is sufficient.**
  
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement [42 CFR 441.301(c)(4)(vi)(B)(3)].
  - State Response:
  - Marion County does have a written policy that allows individuals’ freedom to furnish and decorate sleeping or living units. The provider policy number H.010(G)(1) for resident funds, belonging, storage and furnishings states, “Residents will be allowed to use their own furniture within space limitations of the resident sleeping room.”

- In practice, Horizon House is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident that states “The RESIDENT has the right to furnish and decorate your unit.”
  - 5 out of 6 residents interviewed stated that they do have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
  - 1 out of 6 residents interviewed stated that they never asked about decorating their room; however, they feel that if they wanted to, they could.
  - Upon a tour of the setting, HSD confirmed that resident rooms were furnished and decorated with their privately-owned items that were very individualized.
  - **CMS agrees that the state’s response is sufficient.**
- Individuals’ units have lockable entrance doors, with appropriate staff having keys to doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
    - State Response:
    - The Adult Intensive Services and Supports Intake Team and Provider Liaison with Marion County confirmed that Marion County does not have written HCBS-specific policies for Horizon House. HSD will work with Marion County during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states individuals’ units will have lockable entrance doors, with appropriate staff having keys to doors.
    - In practice, Horizon House is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident that states “The door to your unit has a lock that you may choose to use for your privacy. Only appropriate PROVIDER staff have a key to your unit door...”
    - 6 out of 6 residents interviewed stated that their unit does have a lockable entrance door and they have been given keys to the lock.
    - The House Manager confirmed that appropriate staff do have keys to the doors.
    - Upon a tour of the setting, HSD confirmed that each resident unit contains a lockable entrance door and that appropriate staff have keys to the locks.
    - **CMS agrees that the state’s proposed remediation is sufficient.**
  - Individuals have access to food at any time [42 CFR 441.301(c)(4)(vi)(C)].
    - State Response:
    - The Adult Intensive Services and Supports Intake Team and Provider Liaison with Marion County confirmed that Marion County does not have written HCBS-specific policies for Horizon House. HSD will work with Marion County during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states individuals will have access to food at any time.
    - In practice, Horizon House is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident that states “The RESIDENT has the freedom and support to access your personal food at any time.”
    - 6 out of 6 residents interviewed stated that they have access to food at any time.
    - Upon a tour of the setting, HSD confirmed that resident have access to food at any time. There is a snack cabinet that is available to the residents at any time and there is space for residents to store their own bought food items, both in an extra fridge and extra cabinet space.

- CMS agrees that the state's proposed remediation is sufficient.



# Heightened Scrutiny Summary of Findings

## Setting Information

Name of Setting: New Roads

Address: 2575 Westgate, Building 3, Pendleton, OR 97801

Type of Setting: Residential Treatment Home

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

Date Submitted: August 2017

Brief Description of Setting: Residential group home that is adjacent to an Oregon State Hospital cottage (class 1 state run treatment facility), the Eastern Oregon Correctional Institution, and to a co-located and operationally- related facility.

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

- Each resident has access to personal resources, including unrestricted use of their individual mobile phones.
- Individuals may leave the home at will and at any time.
- Residents may have visitors of their individual choosing at any time.
- The facility offers transportation services and the residents may use taxi cabs, Dial-a-Ride services (for \$1), insurance transport services, or have friends/family transport them. The home is also within 800 yards, or a ten-minute walk, to a city bus stop.
- Provider encourages all residents to leave the setting to engage in various community offerings and offers bus training to allow for greater confidence in community integration.
- Provider facilitates outings to various city, county and state events, including events via Salem's All Activities listings. Provider offers a variety of outings, which often include recreational, banking, shopping, personal care and religious activities.
- Four residents are attending community college.

## 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 Oregon provide the following:

- Confirmation that that there is separation (i.e. administrative functions, personnel) between the public institutions in the surrounding area and the setting in question [42 CFR 441.301(c)(5)(v)].
  - State Response:
    - Yes, there is separation (i.e. administrative functions, personnel) between the public institutions in the surrounding area and New Roads.
      - i. There is little communication between the Oregon State Hospital cottage (class 1 state run treatment facility) and New Roads. Communication may occur between the cottage and New Roads at the time the individual transitions to a lower level of care residential placement option. At this time, cottage staff would communicate with New Roads for the residential referral. Should the individual choose New Roads, communication may occur between cottage staff and New Roads staff for transitional purposes.
      - ii. There is little to no communication between the Eastern Oregon Correctional Institution and New Roads. Communication may occur between the correctional

institution and New Roads at the time the individual transitions to a lower level of care residential placement option. At this time, the correction institution staff would communicate with New Roads for the residential referral. Should the individual choose New Roads, communication may occur between the correction institution staff and New Roads staff for transitional purposes.

- iii. The co-located and operationally related facility is Salmon Run, which is also an HSD Heightened Scrutiny setting. One time per month, staff at each of the two settings covers for the other setting during all staff meetings. However, each facility has two independent co-administrators and conducts their own hiring, supervision, staffing situations and hours.
  - CMS agrees that the state's response is sufficient.
- 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 a variety of 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:
  - Upon HSD's request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP requirements documenting choice of service setting in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents the selection of setting options including non-disability specific settings.
  - 3 of the 4 residents interviewed stated that they did have other options and chose New Roads.
  - 1 of the 4 residents interviewed stated that they did not have a choice but have had no objections with being at New Roads.
  - In practice, New Roads is complying with this requirement. HSD reviewed New Road's Policy #11 on Admission to Program which states, "New Roads YAT RTH will support a prospective individual's right to select and choose from available service settings when they meet medical necessity criteria" and "New Roads YAT RTH will support the individual's right to select a program by assisting the person-centered service plan coordinator or County ENCC in identifying and documenting available program options in the person-centered service plan, including information regarding program services and rates."
  - CMS agrees that the state's proposed remediation is sufficient; however, CMS requests confirmation that all individuals have the opportunity to select the setting of their choosing.
- Assurances through a review of the provider policies that the specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement [42 CFR 441.301(c)(4)(vi)(A)].
  - State Response:
  - In practice, New Roads is complying with this requirement. HSD reviewed New Road's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "Live under a legally enforceable agreement with protections substantially equivalent to landlord/tenant laws."

- HSD also reviewed New Road’s Policy #14 on Individual Rights, which states that the resident has the right to “Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord/tenant law...”
  - 4 of the 4 residents interviewed stated that they did sign a residency agreement with New Roads.
  - **CMS requests attestation by review of the provider’s residency agreement that the specific protections are outlined there.**
- Confirmation that restrictions placed on individuals are supported by a specific-assessed need and are clearly justified and documented in the individual person-centered plans [42 CFR 441.301(c)(4)].
    - State Response:
    - No resident at New Roads has required a restriction placed on them through Oregon’s Individually-Based Limitation process, including current residents. Should a need for a limitation arise, New Roads will follow HSD’s Individually-Based Limitation process pursuant to OAR 411-004-0040 and 309-035-0195.
    - **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 have freedom and support to control their schedules as identified in the individuals’ person-centered service plans [42 CFR 441.301(c)(4)(vi)(C) & 42 CFR 441.301(c)(4)(iv)].
    - State Response:
    - Upon HSD’s request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP documenting individual freedom and support to control his or her own schedule in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents individuals’ freedom and support to control their schedules as identified in the PCSP.
    - 4 of the 4 residents interviewed stated that they do have the freedom and support to control their schedules and activities.
    - In practice, New Roads is complying with this requirement. HSD reviewed New Road’s Policy #12 on Residency Agreements which states that it will contain a statement informing the individual that they have the right to “The freedom and support to control the individual’s schedule and activities.”
    - **CMS agrees that the state’s proposed remediation is sufficient.**
- Number of consumer interviews conducted, 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:
    - Total number of consumers interviewed: 4 (the fifth resident works the night shift at her place of employment and was sleeping. She did not want to be disturbed)
    - The residents were interviewed individually in the counselor’s office. Only the OHA representative and the resident were present.

- Each resident interviewed understood that staff would not be informed of the specific information shared.
  - CMS agrees that the state's response is sufficient.
- Confirmation through both review of the provider policies and/or via observational data collected by the state during an onsite visit that: Each individual has privacy in their sleeping or living unit [42 CFR 441.301(c)(4)(vi)(B)].
  - State Response:
  - In practice, New Roads is complying with this requirement. HSD reviewed New Road's Policy #12 on Residency Agreements which states that it will contain a statement informing the individual that they have the right to "Privacy in the individual's unit."
  - HSD also reviewed New Road's Policy #14 on Individual Rights which states that the resident has the right to "Privacy in the individual's unit."
  - 4 out of 4 residents interviewed stated that they do have privacy in their sleeping or living unit.
  - Upon a tour of the setting, HSD confirmed that each resident has privacy in their sleeping or living units.
  - CMS agrees that the state's response is sufficient.
- Individuals sharing units have a choice of roommates [42 CFR 441.301(c)(4)(vi)(B)(2)].
  - State Response:
  - New Roads is a single room occupancy setting. There are no shared bedrooms.
  - CMS agrees that the state's response is sufficient.
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement [42 CFR 441.301(c)(4)(vi)(B)(3)].
  - State Response:
  - In practice, New Roads is complying with this requirement. HSD reviewed New Road's Policy #12 on Residency Agreements which states that it will contain a statement informing the individual that they have the right to "Furnish and decorate the individual's unit according to the Residency Agreement."
  - HSD also reviewed New Road's Policy #14 on Individual Rights which states that the resident has the right to "Furnish and decorate the individual's unit according to the Residency Agreement."
  - 4 out of 4 residents interviewed stated that they do have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
  - Upon a tour of the setting, HSD confirmed that resident rooms were furnished and decorated with their privately-owned items that were very individualized.
  - CMS agrees that the state's response is sufficient.
- Individuals' units have lockable entrance doors, with appropriate staff having keys to doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  - State Response:
  - In practice, New Roads is complying with this requirement. HSD reviewed New Road's Policy #12 on Residency Agreements which states that it will contain a statement informing the individual that they have the right to "Have a lockable door in the individual's unit, which may be locked by the individual."

- HSD also reviewed New Road's Policy #14 on Individual Rights which states that the resident has the right to "Have a lockable door in the individual's unit, which may be locked by the individual and only appropriate program staff have a key to access the unit."
  - 4 out of 4 residents interviewed stated that their bedroom unit does have a lockable entrance door.
  - The house administrator confirmed that appropriate staff do have keys to the doors.
  - Upon a tour of the setting, HSD confirmed that each unit door contained a lock and that appropriate staff have keys to the locks.
  - **CMS agrees that the state's response is sufficient.**
- Individuals have access to food at any time [42 CFR 441.301(c)(4)(vi)(C)].
    - State Response:
    - In practice, New Roads is complying with this requirement. HSD reviewed New Road's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "The freedom and support to access food at any time."
    - HSD also reviewed New Road's Policy #14 on Individual Rights, which states that the resident has the right to "The freedom and support to have access to food at any time."
    - 4 out of 4 residents interviewed stated that they have access to food at any time.
    - Upon a tour of the setting, HSD confirmed that resident have access to food at any time. There is also space for residents to store their own bought food items, both in an extra fridge and extra cabinet space.
    - **CMS agrees that the state's response is sufficient.**

# Heightened Scrutiny Summary of Findings

## Setting Information

Name of Setting: Salmon Run

Address: 2575 Westgate, Building 1, Pendleton, OR 97801

Type of Setting: Residential Treatment Home

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

Date Submitted: August 2017

Brief Description of Setting: Residential treatment home (RTH) that is adjacent to an Oregon State Hospital cottage (class 1 state run treatment facility), the Eastern Oregon Correctional Institution, and to a co-located and operationally- related facility. RTH shares a common wall with another separate and distinct RTH run by a different social service agency. It is also a Psychiatric Security Review Board (PSRB) program, in which residents may have a conditional release stating certain restrictions, such as curfew, locations, and persons to interact.

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

- Each resident has access to personal resources, including unrestricted use of their individual mobile phones.
- Individuals may leave the home at will and at any time.
- Residents may have visitors of their individual choosing at any time.
- The facility offers transportation services and the residents may use taxi cabs, Dial-a-Ride services (for \$1), insurance transport services, or have friends/family transport them. The home is also within 800 yards, or a ten-minute walk, to a city bus stop.
- Provider encourages all residents to leave the setting to engage in various community offerings and offers bus training to allow for greater confidence in community integration.
- Provider facilitates outings to various city, county and state events, including events via Salem's All Activities listings. Provider offers a variety of outings, which often include recreational, banking, shopping, personal care and religious activities.
- Residents may choose to work and/or volunteer. One resident is attending community college.

## 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 Oregon provide the following:

- Confirmation that that there is separation (i.e. administrative functions, personnel) between the public institutions in the surrounding area and the setting in question [42 CFR 441.301(c)(5)(v)].
  - State Response:
  - Yes, there is separation (i.e. administrative functions, personnel) between the public institutions in the surrounding area and Salmon Run.
    - i. There is little communication between the Oregon State Hospital cottage (class 1 state run treatment facility) and Salmon Run. Communication may occur between the cottage and Salmon Run at the time the individual transitions to a lower level of care residential placement option. At this time, cottage staff would initially communicate a referral to the Psychiatric Security Review Board

(PSRB) in Umatilla County. The PSRB would then communicate with Columbia Care's regional manager for the residential referral to Salmon Run. Should the individual choose Salmon Run, communication may occur between cottage staff and Salmon Run staff for transitional purposes.

- ii. There is little to no communication between the Eastern Oregon Correctional Institution and Salmon Run. Communication may occur between the correctional institution and Salmon Run at the time the individual transitions to a lower level of care residential placement option. At this time, cottage staff would initially communicate a referral with the Psychiatric Security Review Board (PSRB) in Umatilla County. The PSRB would then communicate with Columbia Care's regional manager for the residential referral to Salmon Run. Should the individual choose Salmon Run, communication may occur between the correction institution staff and Salmon Run staff for transitional purposes.
  - iii. The co-located and operationally related facility is New Roads, which is also an HSD Heightened Scrutiny setting. One time per month, staff at each of the two settings covers for the other setting during all staff meetings. However, each facility has two independent co-administrators and conducts their own hiring, supervision, staffing situations and hours.
  - CMS agrees that the state's response is sufficient.
- 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 a variety of setting options including non-disability specific settings [42 CFR 441.301(c)(4)(ii)].
    - State Response:
    - Upon HSD's request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP requirements documenting choice of service setting in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents the selection of setting options including non-disability specific settings.
    - 3 of the 5 residents interviewed stated that they did have other options and chose Salmon Run.
    - 2 of the 5 residents interviewed stated that they did not have a choice but have had no objections with being at Salmon Run.
    - In practice, Salmon Run is complying with this requirement. HSD reviewed Salmon Run's Policy #11 on Admission to Program which states, "Salmon Run RTH will support a prospective individual's right to select and choose from available service settings when they meet medical necessity criteria" and "Salmon Run will support the individual's right to select a program by assisting the person-centered service plan coordinator or County ENCC in identifying and documenting available program options in the person-centered service plan, including information regarding program services and rates."
    - CMS requests confirmation from the state that all individuals have the opportunity to select the setting of their choosing, and have the opportunity to select providers of their choosing for their service needs.
  - Assurances through a review of the provider policies that the specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement [42 CFR 441.301(c)(4)(vi)(A)].

- State Response:
  - In practice, Salmon Run is complying with this requirement. HSD reviewed Salmon Run's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "Live under a legally enforceable agreement with protections substantially equivalent to landlord/tenant laws."
  - HSD also reviewed Salmon Run's Policy #14 on Individual Rights which states that the resident has the right to "Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord/tenant law..."
  - 5 of the 5 residents interviewed stated that they did sign a residency agreement with Salmon Run.
  - **CMS requests attestation by review of the provider's residency agreement that the specific protections are outlined in the there.**
- Confirmation that restrictions placed on individuals are supported by a description of a specific assessed need and are clearly justified and documented in the individual person-centered plans [42 CFR 441.301(c)(4)].
    - State response:
    - No resident at Salmon Run has required a restriction placed on them through Oregon's Individually-Based Limitation process, including current residents. Should a need for a limitation arise, Salmon Run will follow HSD's Individually-Based Limitation process pursuant to OAR 411-004-0040 and 309-035-0195.
    - **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 have freedom and support to control their schedules as identified in the individuals' person-centered service plans [42 CFR 441.301(c)(4)(vi)(C) & 42 CFR 441.301(c)(4)(iv)].
    - State Response:
    - Upon HSD's request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP documenting individual freedom and support to control his or her own schedule in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents individuals' freedom and support to control their schedules as identified in the PCSP.
    - In practice, Salmon Run is complying with this requirement. HSD reviewed Salmon Run's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "The freedom and support to control the individual's schedule and activities."
    - 5 out of 5 residents interviewed stated that they do have the have freedom and support to control their schedules.
    - **CMS agrees that the state's proposed remediation is sufficient.**
- Number of consumer interviews conducted, 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:



- Total number of consumers interviewed: 5
  - The residents were interviewed individually in the program administrator's office. Only the OHA representative and the resident were present.
  - Each resident interviewed understood that staff would not be informed of the specific information shared.
  - **CMS agrees that the state's response is sufficient.**
- Confirmation through review of the provider policies and/or via observational data collected by the state during an onsite visit that: Each individual has privacy in their sleeping or living unit [42 CFR 441.301(c)(4)(vi)(B)].
    - State Response:
    - In practice, Salmon Run is complying with this requirement. HSD reviewed Salmon Run's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "Privacy in the individual's unit."
    - HSD also reviewed Salmon Run's Policy #14 on Individual Rights, which states that the resident has the right to "Privacy in the individual's unit."
    - 5 out of 5 residents interviewed stated that they do have privacy in their sleeping or living unit.
    - Upon a tour of the setting, HSD confirmed that each resident has privacy in their sleeping or living units.
    - **CMS agrees that the state's response is sufficient.**
- Individuals sharing units have a choice of roommates [42 CFR 441.301(c)(4)(vi)(B)(2)].
    - State Response:
    - Salmon Run is a single room occupancy setting. There are no shared bedrooms.
    - **CMS agrees that the state's response is sufficient.**
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement [42 CFR 441.301(c)(4)(vi)(B)(3)].
    - State Response:
    - In practice, Salmon Run is complying with this requirement. HSD reviewed Salmon Run's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "Furnish and decorate the individual's unit according to the Residency Agreement."
    - HSD also reviewed Salmon Run's Policy #14 on Individual Rights which states that the resident has the right to "Furnish and decorate the individual's unit according to the Residency Agreement."
    - 5 out of 5 residents interviewed stated that they do have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
    - Upon a tour of the setting, HSD confirmed that resident rooms were furnished and decorated with their privately-owned items that were very individualized.
    - **CMS agrees that the state's response is sufficient.**
- Individuals' units have lockable entrance doors, with appropriate staff having keys to doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
    - State Response:

- In practice, Salmon Run is complying with this requirement. HSD reviewed Salmon Run's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "Have a lockable door in the individual's unit, which may be locked by the individual."
  - HSD also reviewed Salmon Run's Policy #14 on Individual Rights which states that the resident has the right to "Have a lockable door in the individual's unit, which may be locked by the individual and only appropriate program staff have a key to access the unit."
  - 4 of the 5 residents interviewed stated that their bedroom unit does have a lockable entrance door.
  - 1 of the 5 residents interviewed stated that their room does not lock; however, upon tour of the setting, HSD confirmed that all five bedrooms doors contained a lock.
  - The house administrator confirmed that appropriate staff do have keys to the doors.
  - Upon a tour of the setting, HSD confirmed that each unit door contained a lock and that appropriate staff have keys to the locks.
  - **CMS agrees that the state's response is sufficient.**
- Individuals have access to food at any time [42 CFR 441.301(c)(4)(vi)(C)].
    - State Response:
    - In practice, Salmon Run is complying with this requirement. HSD reviewed Salmon Run's Policy #12 on Residency Agreements, which states that it will contain a statement informing the individual that they have the right to "The freedom and support to access food at any time."
    - HSD also reviewed Salmon Run's Policy #14 on Individual Rights, which states that the resident has the right to "The freedom and support to have access to food at any time."
    - 5 out of 5 residents interviewed stated that they have access to food at any time.
    - Upon a tour of the setting, HSD confirmed that resident have access to food at any time. There is also space for residents to store their own bought food items, both in an extra fridge and extra cabinet space.
    - **CMS agrees that the state's response is sufficient.**

# Heightened Scrutiny Summary of Findings

## Setting Information

Name of Setting: Via Verde

Address: 524 24<sup>th</sup> Place NE, Salem, OR 97301

Type of Setting: Residential Treatment Home

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

Date Submitted: August 2017

Brief Description of Setting: Residential treatment home (RTH) that is located on the grounds of the Oregon State Hospital, adjacent to homes housing the state hospital population, and adjacent to the Oregon State Penitentiary.

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

- Each resident has access to personal resources, including unrestricted use of their individual mobile phones.
- Individuals may leave the home at will and at any time.
- Residents may have visitors of their individual choosing at any time.
- The facility offers transportation services and the residents may use taxi cabs, Dial-a-Ride services (for \$1), insurance transport services, or have friends/family transport them. The home is also within 800 yards, or a ten-minute walk, to a city bus stop.
- Provider encourages all residents to leave the setting to engage in various community offerings and offers bus training to allow for greater confidence in community integration.
- Provider facilitates outings to various city, county and state events, including events via Salem's All Activities listings. Provider offers a variety of outings, which often include recreational/senior centers, banking, shopping and religious activities.
- Residents may choose to work and/or volunteer, which currently include the local humane society, lawn care services, and the local food share program. One resident is attending community college.

## 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 Oregon provide the following:

- Confirmation that that there is separation (i.e. administrative functions, personnel) between the public institutions in the surrounding area and the setting in question [42 CFR 441.301(c)(5)(v)].
  - State Response:
  - Yes, there is separation (i.e. administrative functions, personnel) between the Oregon State Hospital or other public institution and Via Verde.
    - i. The Oregon Health Authority operates the Oregon State Hospital and Shangri-la operates Via Verde. However, the state hospital is the landlord for Via Verde. Interaction may occur between the state hospital and Via Verde for "sticks and bricks" work orders for facility repair needs. Other than these requests, the state hospital does not oversee any aspect of the residential setting. Additionally, communication may occur between the state hospital and Via Verde at the time

the individual transitions to a lower level of care residential placement option. At this time, state hospital staff would communicate with Shangri-la for the residential referral to Via Verde. Should the individual choose Via Verde, communication may occur between state hospital staff and Via Verde staff for transitional purposes.

- ii. There is little communication between the Oregon State Penitentiary and Via Verde. Communication may occur between the Oregon State Penitentiary and Via Verde at the time the individual transitions to a lower level of care residential placement option. At this time, the penitentiary would communicate with Shangri-la for the residential referral to Via Verde. Should the individual choose Via Verde, communication may occur between Oregon State Penitentiary staff and Via Verde staff for transitional purposes.
  - CMS agrees that the state's response is sufficient.
- 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 a variety of setting options including non-disability specific settings [42 CFR 441.301(c)(4)(ii)].
  - State Response:
  - Upon HSD's request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP requirements documenting choice of service setting in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents the selection of setting options including non-disability specific settings.
  - 1 of the 5 residents interviewed stated that they did have options; however, Via Verde was the only option in Marion County with available beds.
  - 1 of the 5 residents interviewed stated that they did not have a choice but would have chosen Via Verde due to the location to their family.
  - 3 of the 5 residents interviewed stated that they did not have a choice but that they have enjoyed living at Via Verde.
  - CMS agrees that the state's proposed remediation is sufficient; however, CMS requests confirmation that all individuals have the opportunity to select the setting of their choosing.
- Assurances through a review of the provider policies that the specific unit/dwelling is owned, rented, or occupied under a legally enforceable agreement [42 CFR 441.301(c)(4)(vi)(A)].
  - State Response:
  - The Quality Assurance and Quality Improvement Manager for Shangri-La who operates Via Verde RTH, stated that "At this time, we do not have a policy on the books that specifically outlines how we are meeting HCBS guidelines/rule, however compliance is evident in the residency agreement... This is something that I would like to remedy..." HSD will work with Shangri-la during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states that the specific unit/dwelling is owned, rented, or occupied under a legally enforceable agreement.
  - In practice, Via Verde is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident; it does state that

the residents have the right to “Live under a legally enforceable agreement with protections substantially equivalent to landlord/tenant laws.”

- 5 of the 5 residents interviewed stated that they did sign a residency agreement with Via Verde.
  - CMS agrees that the state’s proposed remediation is sufficient; however, CMS requests an attestation by review of the provider’s residency agreement that the specific protections are outlined there.
- Confirmation that restrictions placed on individuals are supported by a description of a specific-assessed need and are clearly justified and documented in the individual person-centered plans [42 CFR 441.301(c)(4)].
    - State Response:
    - No resident at Via Verde has required a restriction placed on them through Oregon’s Individually-Based Limitation process, including current residents. Should a need for a limitation arise, Via Verde will follow HSD’s Individually-Based Limitation process pursuant to OAR 411-004-0040 and 309-035-0195.
    - 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 have freedom and support to control their schedules as identified in the individuals’ person-centered service plans [42 CFR 441.301(c)(4)(vi)(C) & 42 CFR 441.301(c)(4)(iv)].
    - State Response:
    - Upon HSD’s request to review Person Centered-Service Plans (PCSP), further remediation activities have been identified to ensure compliance with PCSP documenting individual freedom and support to control his or her own schedule in accordance with federal regulations and Oregon Administrative Rules 411-004-0030 and 309-035-0190. Remediation activities will include a review of the plan template to ensure it adequately documents individuals’ freedom and support to control their schedules as identified in the PCSP.
    - In practice, Via Verde is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident; it does state that the residents have the right to “Freedom and support to control your schedule and activities.”
    - 5 of 5 residents interviewed stated that they do have the have freedom and support to control their own schedules and activities.
    - CMS agrees that the state’s proposed remediation is sufficient.
  - The number of resident interviews conducted (if any), 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:
    - Total number of residents interviewed: 5
    - The residents were interviewed individually in the program manager’s office. Only the OHA representative and the resident were present.
    - Each resident interviewed understood that staff would not be informed of the specific information shared.

- CMS agrees that the state's response is sufficient.
- Confirmation through both review of the provider policies and/or via observational data collected by the state during an onsite visit that: Each individual has privacy in their sleeping or living unit [42 CFR 441.301(c)(4)(vi)(B)].
  - State Response:
  - The Quality Assurance and Quality Improvement Manager for Shangri-La who operates Via Verde RTH, stated that “At this time, we do not have a policy on the books that specifically outlines how we are meeting HCBS guidelines/rule, however compliance is evident in the residency agreement... This is something that I would like to remedy...” HSD will work with Shangri-la during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states that each individuals has privacy in their sleeping or living unit.
  - In practice, Via Verde is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident; it does state that the residents have the right to “Privacy in your room.”
  - 5 out of 5 residents interviewed stated that they do have privacy in their sleeping or living unit.
  - Upon a tour of the setting, HSD confirmed that each resident has privacy in their sleeping or living units.
  - CMS agrees that the state's proposed remediation is sufficient.
- Individuals sharing units have a choice of roommates [42 CFR 441.301(c)(4)(vi)(B)(2)].
  - State Response:
  - Via Verde is a single room occupancy setting. There are no shared bedrooms.
  - CMS agrees that the state's response is sufficient.
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement [42 CFR 441.301(c)(4)(vi)(B)(3)].
  - State Response:
  - The Quality Assurance and Quality Improvement Manager for Shangri-La who operates Via Verde RTH, stated that “At this time, we do not have a policy on the books that specifically outlines how we are meeting HCBS guidelines/rule, however compliance is evident in the residency agreement... This is something that I would like to remedy...” HSD will work with Shangri-la during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states that individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
  - In practice, Via Verde is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident does state that the residents have the right to “Furnish and decorate your room in accordance with this agreement.”
  - 5 out of 5 residents interviewed stated that they do have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
  - Upon a tour of the setting, HSD confirmed that resident rooms were furnished and decorated with their privately-owned items that were very individualized.
  - CMS agrees that the state's proposed remediation is sufficient.

- Individuals’ units have lockable entrance doors, with appropriate staff having keys to doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
  - State Response:
  - The Quality Assurance and Quality Improvement Manager for Shangri-La who operates Via Verde RTH, stated that “At this time, we do not have a policy on the books that specifically outlines how we are meeting HCBS guidelines/rule, however compliance is evident in the residency agreement... This is something that I would like to remedy...” HSD will work with Shangri-la during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states individuals’ units have lockable entrance doors, with appropriate staff having keys to doors.
  - In practice, Via Verde is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident does state that the residents have the right to “Have a lockable door for your room.”
  - 5 out of 5 residents interviewed stated that their unit does have a lockable entrance door.
  - The House Manager confirmed that appropriate staff do have keys to the doors.
  - Upon a tour of the setting, HSD confirmed that each room has a lock on each resident door and that appropriate staff have keys to the doors.
  - CMS agrees that the state’s proposed remediation is sufficient.
  
- Individuals have access to food at any time [42 CFR 441.301(c)(4)(vi)(C)].
  - State Response:
  - The Quality Assurance and Quality Improvement Manager for Shangri-La who operates Via Verde RTH, stated that “At this time, we do not have a policy on the books that specifically outlines how we are meeting HCBS guidelines/rule, however compliance is evident in the residency agreement... This is something that I would like to remedy...” HSD will work with Shangri-la during the transition period to remediate any missing formal policies outlining HCBS requirements, including a policy that states individuals have access to food at any time.
  - In practice, Via Verde is complying with this requirement. HSD reviewed the Residency Agreement template that is signed between the setting and the resident; it does state that the residents have, “The freedom and support to access food at any time.”
  - 5 out of 5 residents interviewed stated that they have access to food at any time.
  - Upon a tour of the setting, HSD confirmed that residents have access to food at any time. There is also space for residents to store their own bought food items, both in an extra fridge and extra cabinet space.
  - CMS agrees that the state’s proposed remediation is sufficient.