

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

Marie Matthews
State Medicaid Director
Montana Department of Public Health and Human Services
111 North Sanders, PO Box 4210
Helena, MT 59604

Dear Ms. Matthews:

This letter is in reference to the Boulder Meadows 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 Section 441.301(c)(4)(5). Boulder Meadows is an assisted living facility in the same building as a Community Access Hospital. An evidentiary package was submitted by the state of Montana to CMS for heightened scrutiny review on September 11, 2018.

CMS provided the state its initial “Summary of Findings” on April 10, 2019. The state provided its responses to CMS on April 25, 2019. CMS had several conversations with the state in regard to additional information needed to make a determination of the setting’s adherence to the settings criteria, with the latest request on May 12, 2020, to which the state provided its response on May 15, 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, within its milestones and quarterly reports 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.

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 Montana’s successful delivery of Medicaid-funded home

and community-based services.

Sincerely,

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

Heightened Scrutiny Summary of Findings

Setting Information:

Name of Setting: Boulder Meadows

Address: 302 W. 8th Avenue, Big Timber, Montana 59011

Type of Setting: Residential

Heightened Scrutiny Category: Setting is located in a building on the grounds of, or immediately adjacent to, a public institution.

Date Submitted: September 11, 2018

Brief Description of Setting: The Boulder Meadows Assisted Living Facility (ALF), Pioneer Medical Center, Critical Access Hospital with Emergency Room (CAH/ER) and Pioneer Medical Clinic, Rural Health Clinic (RHC) are all housed within the same block and owned by the same public entity.

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

- Residents have independence in selecting a roommate and participating in activities of their choice.
- The facility promotes community integration through activities offered onsite, encouragement of family and friends to participate in these activities, ability for family and friends to visit at any time and even stay with residents, and availability of a bus to take members to an off-site adult day center 3-4 days/week and to out-of-town shopping trips to one of the three major cities in Montana 1 day/week.
- The facility is physically accessible to individuals with disabilities.
- Residents have privacy when using telephone, internet or other personal communication devices.
- Residents can lock their room and bathroom doors for privacy. Staff knock on the door and/or ring a doorbell for access to the resident's private room.
- State considered the following evidence to demonstrate the setting is integrated and supports full access into the community by the individuals: onsite visit and interviews with one non-Medicaid-eligible resident and one staff member.

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 Montana provide the following:

- Description of the state's assessment of the setting independent of the provider self-assessment, including the interconnectedness (i.e. administrative functions, staff training specific to home and community-based settings, personnel providing clinical and HCBS

services) between the institutional facility and the assisted living facility to ensure adherence to the settings criteria by the assisted living facility, including through the use of any shared staff [42 CFR 441.301(c)(5)].

Montana's Response:

- The State attests the facility has no institutional staff assigned or used as back up in the ALF setting. In September 2019, the state provided comprehensive HCBS setting criteria training to the staff of Boulder Meadows, including an in-depth review of Montana's State Transition Plan Information Guide and CMS' Key Message and Tips for Providers: Person-Centered Plans¹, as well as CMS' Person-Centered Planning PowerPoint. The training was followed up with a question and answer period in which all outstanding questions and concerns were resolved to the state and facility staff's satisfaction. The training documents were provided to the ALF for use in training new staff, if any cross-over staffing should occur in the future and/or refresher training for existing staff. If needed, the state is available to provide additional HCBS settings criteria training to meet any future needs or concerns prior to the state's annual refresher training for the ALF facility.
- The state attests Boulder Meadows implements standard operating procedures to serve its residents distinct from Pioneer Medical's operational and in-patient care processes as it relates to fully complying with the federal HCBS settings criteria. The billing and financial system module for Boulder Meadows to enter, manage and track data is distinctly separate from Pioneer Medical Center.

CMS Response: CMS agrees that the state's response is sufficient.

- 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)].

Montana's Response:

- Not applicable to the Boulder Meadows facility. On TA call with CMS on 01-18-2019, the State confirmed the facility has no current HCBS members residing at the facility.

CMS Response: Since there are currently no individuals receiving Medicaid-funded HCBS in this setting, CMS requests that the state provide, within its milestones and quarterly reports 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.

- Confirmation through a review of person-centered service plans and/or interviews with the residents that the individuals had a choice in selecting their nonresidential service providers [42 CFR 441.301(c)(4)(v)] and that the setting promotes opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].

¹ <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Program/Education/Resource-Library/person-centered-service-plans-key-messages-and-tips-providers>

Montana's Response: Not applicable to the Boulder Meadows facility. On TA call with CMS on 01-18-2019, the state confirmed the facility has no current HCBS members residing at the facility.

CMS Response: Since there are currently no individuals receiving Medicaid-funded HCBS in this setting, CMS requests that the state provide, within its milestones and quarterly reports 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.

- Verification that the community transportation option available as described in the evidentiary package facilitates access to the greater community (42 CFR 441.301(c)(4)(i)).

Montana Response:

- Hospitality House/Senior Center provides transportation to residents for visits to downtown Big Timber on Monday, Tuesday, Wednesday and Friday. The bus is available on Thursdays for trips out of town for appointments/shopping trips to Livingston, Billings or Bozeman. Big Timber has a population of approximately 1,650. It is located midway between Billings (82 miles away) and Bozeman (62 miles away). In addition to providing access to the greater community, this transportation service provides for access to two of Montana's largest cities.

CMS Response: CMS agrees that the state's response is sufficient.

- Assurance that the specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement that includes the same or comparable protections to those provided under the jurisdiction's landlord tenant law [42 CFR 441.301(c)(vi)(A)].

Montana Response:

- A legally enforceable agreement (written residency agreement) for the facility was reviewed by the state. The state attests that the Boulder Meadows Assisted Living Facility admission agreement is compliant with HCBS settings criteria at 42 CFR 441.301(c)(4)(vi)(A). The state also attests that the entirety of the Montana Residential Landlord and Tenant Act of 1977, including MCA §70-24-422 and MCA §70-24, applies to all Montana residents regardless of whether they are receiving Medicaid HCBS.
- The grievance section provides the resident with contact information for the Ombudsman program.
- Termination of Agreement information is also outlined in Section IX; the residency rights and responsibilities for terminating the agreement and the facility's rights and responsibilities for termination the agreement.

CMS Response: CMS agrees that the state's response is sufficient.

- Regarding interviews with beneficiaries and staff, please provide an assurance that the sample of consumer interviews was sufficient for the state to make an informed determination of beneficiary experience and an 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)].

Montana Response:

- The State attests that the interview information submitted with the Heightened Scrutiny evidence packet includes one (1) staff interview and one (1) consumer interview. The state also conducted four (4) additional consumer interviews that collectively represent 70% of the consumer population within the facility, with the remaining consumers choosing to decline an interview. The state attests that the results of the direct observation during the onsite visit, the provider's self-assessment responses, staff interview, and consumer interview responses provide sufficient support to assert the facility has met the criteria outlined in 42 CFR 441.301(c)(4).

CMS Response: CMS agrees that the state's response is sufficient.

- Please note that as part of the determination of whether the setting has overcome an institutional presumption, the state will be required to 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)] .