

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

December 6, 2022

Cynthia MacDonald
Assistant Commissioner
Medicaid Director
Minnesota Department of Health
540 Cedar Street PO Box 64983
St Paul, MN 55167

Dear Assistant Commissioner MacDonald:

This letter and attached report are in reference to a site visit conducted by the Centers for Medicare & Medicaid Services (CMS) from July 25-27, 2022. CMS visited several settings in Minnesota that were identified by the state and/or stakeholders as having the qualities of an institution as outlined at 42 CFR § 441.301(c)(5) and required a CMS-conducted heightened scrutiny review to determine if they comply with the home and community-based services (HCBS) settings criteria at 42 CFR § 441.301(c)(4).

CMS appreciates the efforts of the state to prepare for our visit to Minnesota. We are asking the state to apply remediation strategies addressing the feedback contained in our report to the specific setting(s) as identified. We note that the HCBS settings criteria identified in the report that are followed by an asterisk require the state to go beyond ensuring that the individual setting has completed the necessary actions identified; specifically, complying with person-centered planning requirements requires further direction to and collaboration with the entities responsible for developing and monitoring the person-centered plans and with the HCBS provider community that is responsible for implementing services and achieving the objectives outlined in the plan. In addition, CMS notes that the state's remediation strategies must be applied to all remaining similarly situated settings you have identified as being presumptively institutional that were not included in CMS' site visit to ensure compliance with the settings criteria at 42 CFR § 441.301(c)(4) by March 17, 2023. Finally, the state should ensure issues identified in this report are addressed in the state's overall assessment process of all providers of HCBS in Minnesota, to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance.

As described more fully in the attached report, CMS notes below several areas where issues were found to exist across several locations, which raise systemic concerns that must be addressed by the state. Specifically, the following regulatory criteria located at 42 CFR 441.301(c)(4) were not found to be in practice:

- The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
- The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- The unit or dwelling is a specific physical place that be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity. For settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement or other form or written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
- Units have entrance doors lockable by the individual with only appropriate staff having keys to doors.
- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
- Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.*

Minnesota's Statewide Transition Plan (STP), approved on February 12, 2019, describes strategies to ensure that all providers of Medicaid HCBS have been assessed to meet the regulatory criteria and any needed remediation has been identified. The state's practice for addressing the observations described in the attached report must align with the processes described in the STP.

CMS suggests the provision of technical assistance to ensure that expectations for community integration across HCBS providers and service coordinators is understood. As indicated in the attached report, the state indicated that community integration is the responsibility of service coordinators, and not the HCBS providers. While the service coordinator has responsibility to ensure the development of a person-centered service plan that identifies the individual's preferences for community integration and identifies supports that they need, the regulatory criteria place extensive responsibility on HCBS providers to ensure that settings in which HCBS are received are facilitating individuals' goals and support needs for community integration, as outlined in person-centered service plans.

CMS requests that the state provide a written response providing updated information describing how the state will remediate both the process for developing and implementing the person-centered service plan and the individual settings to ensure compliance with all of the settings criteria. CMS also requests a written response on how the state will apply this feedback

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to the ongoing monitoring of person-centered planning functions and settings in the HCBS delivery system as noted above. CMS requests this information be submitted no later than January 5, 2023.

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 Minnesota's successful delivery of Medicaid-funded HCBS.

Sincerely,

Melissa L. Harris, Deputy Director
Disabled & Elderly Health Programs Group

Enclosure

Heightened Scrutiny Site Visit- Minnesota
Summary Review by Setting
July 25-July 27, 2022
Report Date: September 23, 2022

Minnesota Site Visit Team:

CMS Representative: Ralph Lollar

ACL: Beverley Laubert

New Editions: Amy Coey and Vicky Wheeler

Minnesota: Leah Zoladkiewicz, Rachel Shands, and Aimee Rumpza

Introduction:

The site visit team visited six settings on three campuses. The first three settings were located on a campus in Annadale, Minnesota; a small town approximately an hour northwest of Minneapolis/St. Paul. These settings included Centennial Villa Assisted Living Memory Care, Centennial Villa Assisted Living, and Centennial Villa Congregate Apartments. The fourth and fifth settings visited were Vindauga View Assisted Living Facility at Parmly on the Lake and Isabelle's House at Parmly on the Lake, located in the rural town of Chisago, about an hour northeast of the Minneapolis/St. Paul area. Margaret's House at Parmly on the Lake, which is part of the Vindauga/Isabelle campus was initially identified as a setting for review during the site visit; however, the state indicated there would be no home and community-based services participants residing at the setting during the site visit. On the day the site visit team visited the campus, a participant receiving Medicaid-funded home and community-based services (HCBS) was moving into Margaret's House. The site visit team conducted a tour of the setting, but didn't interview the participant or staff. The setting is included in this report, but was not considered part of the six settings visited. Ebenezer Ridges Adult Day Center (ADC), the sixth and final setting visited by the team, is in Burnsville, a small city about fifteen minutes southwest of Minneapolis, and situated on a campus that includes a nursing facility, rehabilitation center, childcare program, and assisted living facility. Ebenezer Ridges ADC was the only setting visited on this campus.

Promising Practices:

CMS would like to recognize promising practices which were noted during the course of the site visit; particularly around the availability of visitors and food. Vindauga View Assisted Living View had a residency agreement which clearly indicated visitors

were welcomed at any time, including overnight visitors. The setting had a designated apartment which they left open for visiting family members to stay. Additionally, the residency agreement distinctly stated the number of days a visitor could stay per year before becoming a resident of the facility. Ebenezer Ridges Adult Day Center offered options for meals, developed meal plans with the input of participants, offered a variety of snacks throughout the day, offered snacks to participants, and encouraged participants to eat when they desired.

Summary of Findings:

Although a distinct review of each setting is included in this report, the table below summarizes the findings for the entirety of the visit to Minnesota and identifies systemic issues noted through the settings review.

Rule Citation	Rule Language	Setting Name
441.301(c)(4)(i)	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Isabelle’s House, Vindauga View ALF, Centennial Villa Assisted Living Memory Care, Centennial Villa Assisted Living, Centennial Villa Congregate Apartments, Ebenezer Ridges ADC
441.301(c)(4)(iii)	Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Isabelle’s House, Vindauga View ALF, Ebenezer Ridges ADC
441.301(c)(4)(vi)(A)	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and	Isabelle’s House, Vindauga View ALF

Rule Citation	Rule Language	Setting Name
	<p>protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	
441.301(c)(4)(vi)(B)(1)	<p>Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	Isabelle's House, Vindauga View ALF
441.301(c)(4)(vi)(C)	<p>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p>	Centennial Villa Assisted Living Memory Care, Centennial Villa Assisted Living, Centennial Villa Congregate Apartments,
441.301(c)(4)(vi)(F)	<p>Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.*</p>	Ebenezer Ridges ADC, Isabelle's House
Additional Provision	Language	Setting Name
Staff Training on HCBS Setting Rule	<p>Description of how staff are trained and monitored on their understanding of the settings</p>	Isabelle's House, Vindauga View ALF, Centennial Villa Assisted Living Memory Care, Centennial Villa

Rule Citation	Rule Language	Setting Name
Criteria: State Medicaid Director Letter # 19-001 ¹	criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	Assisted Living, Centennial Villa Congregate Apartments, Ebenezer Ridges ADC

Isabelle’s House at Parmly on the Lake and Vindauga View Assisted Living Facility Description:

Isabelle’s House and Vindauga View are customized living settings located on a continuous care campus in a small city of approximately 5,000 people, about forty miles north of Minneapolis. Also located on the campus is a nursing facility, in and outpatient therapy services, a fitness center, and another customized living setting, Margaret’s House. Isabelle’s House, as well as Margaret’s House, provide residential services to people with Alzheimer’s disease and other types of dementia. Isabelle’s House has 16 living units and 4 of those are used by HCBS participants. Vindauga View is an assisted living facility that provides services to 25 people, 5 of whom are HCBS participants. All of the settings are separate, distinct buildings, but connected through interior hallways. Due to COVID, all visitors must sign in at the front desk of the nursing facility, answer questions related to COVID exposure, have their temperatures taken, and wear a mask, prior to entering the facility.

Site Visit Review Description:

Upon arrival, the team reviewed PCSPs made available by both the state and the provider. The entire team was provided a tour of the facilities. The site visit team conducted conversational interviews with administrators, direct support staff, and participants who receive services at the settings. State staff were present during interviews, but did not contribute to, or participate in the conversation with the exception of the discussion with the administrator. Participants invited site team members into their living units for a tour and discussion about the settings’ HCBS qualities.

¹ <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>Based on review of PCSPs, staff interviews, and participant interviews, the site visit team noted there is minimal evidence of community integration. People are sitting; they don't leave. If they have family, they might leave on occasion. There was nothing in the PCSPs that indicated community integration. Participants reported being bored and indicated if they leave the facility, to go to church or other activities, it is with family.</p> <p>A staff member at one of the settings noted that it was not their role to assure integration; state staff agreed, noting it is the case manager's role.</p> <p>Staff noted community integration has been impacted by COVID. The team noted a reliance on families in order for participants to leave the facility. One resident goes into the community to get her hair done if her family takes her, but they would not always do that. Staff was unaware that they should assist her in accessing the community.</p> <p>There is also no public transportation available. The setting used to have a van, but then they got a new owner who sold the van.</p> <p>There is a huge lake located very close to the campus; fishing is very popular in Minnesota and a staff member at one of the settings noted that people may get a fishing</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>license and fish, but it's contingent on if they have a family member to take them.</p> <p>The staff noted group outings two times per month using Arrowhead transportation paid for by the facility. Staff noted this was hard to maintain due to cost and people cancelling. Outings included trips to Dairy Queen, and a scenic overlook.</p> <p>These settings should ensure their model of service delivery aligns with the regulatory criteria to facilitate community integration, without relying on an external case manager to accomplish this alignment. Establishing partnerships with community resources and leveraging existing community transportation options should supplement reliance on informal supports.</p>
441.301(c)(4)(vi)(B)(1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<p>Two staff misunderstood the use of a master key. They said all the locks on residents' rooms are the same because they could get into all the rooms with that one key. But the administrator indicated that what staff have is a master key. One individual noted he has a lock on his door and a key "somewhere." Other individuals were unsure if they had locks/keys.</p> <p>These settings are to ensure that individuals understand that they may lock their doors, and be provided keys.</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.*	<p>The lease/residency agreement and administration reported having a locked memory care unit; noting a blanket restriction. Through conversation and demonstration, the site visit team noted the setting actually has delayed egress. If someone pushed on the door it will open but then the alarm will sound. It is not locked. The door opens to a work/staff area with a nurse station, chairs, etc. On the other side of the room is a keypad to disarm the alarm. If people walk through, the alarm will sound. It is a less restrictive area, but staff may be in there or nearby to hear the alarm. It gives the person a second to be side-tracked to get where they wanted to go. Also noted in the residency agreement was an acknowledgement that an electronic system is used to alert staff if a resident for whom the system is used goes through a door. There was no evidence there is such a system in operation; only delayed egress.</p> <p>These settings should ensure alignment between existing practices and the language used in residency agreements. Use of person-centered service plans should be used to document any individualized modifications.</p>
Additional Provision	Language	Violation Finding Based on Site Visit
Staff Training on HCBS Setting Rule Criteria:	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-	The site visit team was impressed with one staff member; her name tag indicated she was a “Peer Mentor.” She was more knowledgeable than other staff who were

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
State Medicaid Director Letter # 19-001 ²	centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>interviewed, noting her job was to know the residents and provide care how they wanted, but acknowledged the service plans did not include information about the person being served. She noted staff are to complete a “get to know me” sheet with each new individual and spend time with the person and the family to fill it out. The site visit team was unable to locate these types of forms in the record provided; it was not part of the PCSP. No other specific training around HCBS was noted by other staff or administrators.</p> <p>These settings should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</p>

Centennial Care: Centennial Villa Assisted Living Memory Care, Centennial Villa Assisted Living, and Centennial Villa Congregate Apartments

Facility Description:

All three settings are located on a continuum of care campus located in a small town with a population of approximately 3,000 people. There is a shared wellness/fitness center that can be used by the residents, as well as the general public. In addition to the settings that were reviewed, the campus includes a nursing facility (Annadale Care Center). All settings on the campus are attached through hallways that connect the various buildings. Centennial Villa Assisted Living Memory Care provides twenty-four-hour staffing to people with memory care and other cognitive support needs. The setting serves 26 people; 12 are served through HCBS waivers. Centennial Villa Assisted Living provides customized living services focused on individuals with dementia and other cognitive impairments. The setting has 26 units; 6 individuals who are supported through the HCBS waiver reside in this setting. Centennial

² <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10

Villa Congregate Apartments is an independent living and customized living setting with 22 units. There are 8 individuals in this setting who utilize HCBS waivers for support.

Site Visit Review Description:

Upon arrival, the team reviewed person-centered service plans (PCSPs) made available by both the state and the provider. The entire team was provided a tour of the facility. The site visit team conducted conversational interviews with administrators, direct support staff, and participants who receive services at the settings. State staff were present during interviews, but did not contribute to, or participate in the conversation. Participants invited site team members into their living units for a tour and discussion about the settings’ HCBS qualities. Additionally, administrative staff provided the site visit team a tour of an unoccupied unit that is being used as a “general store.” The settings’ recreational coordinator purchases items (non-perishable foods, clothing, and personal care items) from which residents can “shop” when needed. Interviews with administration, staff, and participants covered all settings criteria.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(i)	The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<p>Through interviews with participants and staff, it was noted that prior to COVID, community access was better, and more frequent. The setting has a residential coordinator onsite who serves all three settings on campus. This person coordinates group activities onsite.</p> <p>Participants indicated that rather than going out of the setting to shop, the recreational coordinator purchases items for the general store and they can buy things there. Staff noted a “dining out” program which consisted of staff going to McDonald’s to pick up food and bring it back to residents.</p> <p>Participants/staff noted that if people get out of the setting to shop, participate in community activities, or go out to eat, that is facilitated by family, not staff. Staff don’t help people get out into</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		<p>the community. The settings do not have a facility van and no public transportation is available. Some residents have cars and they may take a friend to church or friends come pick them up for church. There is a dependency on residents for supports, rather than the setting, to get out in the community.</p> <p>Through the review of the PCSPs, the site visit team was unable to determine if participants were engaged in their communities, either through social activities or employment. It was noted by the state to the team that participants often choose not to share their PCSPs with their residential providers due to privacy issues; this choice was supported by the state. The team noted nothing in the PCSP that would indicate a heightened need for restricting access to the PCSP for providers the individual selected.</p> <p>Additionally, the state indicated that the setting is not responsible for community integration; this is the function of the service coordinator. Further, the state indicated that additional services, provided by other providers than the residential provider, were responsible for community integration. This was not evidenced in review of the PCSPs, or through interviews with participants or staff.</p> <p>The Centennial Care settings should ensure their model of service delivery aligns with the regulatory criteria to facilitate community integration, without relying on one person or position to accomplish this alignment. Establishing partnerships with community resources and leveraging existing community</p>

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
		transportation options should supplement reliance on informal supports.
441.301(c)(4)(vi)(C)	Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	<p>On the setting's menu and posted on a sign in the congregate dining room, participants are directed that they must review menus and indicate what they intend to eat by a certain day/time; otherwise, they will not receive a meal. When discussing this concern with staff they noted people would get something to eat even if they missed the deadline and noted the signage was misleading as to what really occurs.</p> <p>The Centennial Care settings should remove any signage that indicates a meal will not be provided under any circumstances and ensure that individuals have access to food at any time.</p>
Additional Provision	Language	Violation Finding Based on Site Visit
Staff Training on HCBS Setting Rule Criteria: State Medicaid Director Letter # 19-001 ³	Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.	<p>Staff indicated they receive initial and annual training on various topics, but were unaware of the settings rule or settings criteria.</p> <p>The Centennial Care settings should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</p>

³ <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10

Ebenezer Ridges Adult Day Center

Facility Description:

The adult day center (ADC) is located on a continuous care campus in Burnsville, a suburb of Minneapolis. There is a nursing facility, rehabilitation center, child daycare center, and assisted living facility located on the campus. The surrounding neighborhood is residential with closely located shopping, public transportation, parks, churches, restaurants, and retail businesses. Ebenezer Ridges serves 48 older adults and people with disabilities. Seventeen of those attendees are HCBS participants. The ADC is contained in the same building as the child daycare center and assisted living facility. Within the ADC, there is a living room area, dining area, and a kitchen. There's also a patio that's fenced in and shared with the child daycare center. The patio's use is sometimes for the ADC, sometimes for the daycare center, and sometimes shared between both settings.

Site Visit Review Description:

The site visit team reviewed PCSPs, as well as plans specific to the ADC, which were made available by the provider. The team noted the setting had well developed PCSPs as well as ADC service plans onsite for the team to review. However, consistent information was not always shared across both documents. For example, one ADC service plan noted the need for an Epi-Pen for bee stings, while the PCSP did not mention any support required for such a medical emergency. Another ADC service plan noted choking episodes, while the PCSP noted no such concern. The team was provided a tour of the facility, and conducted conversational interviews with administrators, direct support staff, and participants who receive services at the ADC. State staff were present during plan reviews and interviews, but did not contribute to, or participate in the review or conversation. There is a daily menu available from which participants may select what they would like to have for lunch. If they prefer, they can bring their own lunch. Individuals are able to participate in activities within the setting as they choose. There is a calendar for group outings that's developed by the participants and staff. Participants have the option of attending group outings when they choose. The ADC has a new program administrator. She is really motivated and willing to do what needs to be done to make sure the setting is home and community based. It was noted at this setting that the ADC was given all PCSPs after they were developed, was familiar with them and made them available to staff. No individual in this setting apparently restricted provider access to his/her PCSP.

Findings of Site Visit:

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
441.301(c)(4)(vi)(F)	Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must	The ADC setting is locked with key access only by staff. Participants are unable to come and go as they

Regulation Citation	Regulation Language	Violation Finding Based on Site Visit
	<p>be supported by a specific assessed need and justified in the person-centered service plan.*</p>	<p>choose. The door requires unlocking when entering from the outside, as well as unlocking to exit the setting. The state and agency staff were not aware of a reason why the setting was locked.</p> <p>The setting should evaluate its reliance on locking the door, to facilitate individuals being able to come and go as they choose. CMS is available for needed technical assistance on how to implement individually-focused practices.</p> <p>Use of person-centered service plans should be used to document any individualized modifications.</p>
Additional Provision	Language	Violation Finding Based on Site Visit
<p>Staff Training on HCBS Setting Rule Criteria: State Medicaid Director Letter # 19-001⁴</p>	<p>Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or in community training policies and procedures established by the state.</p>	<p>Staff indicated they receive initial and annual training on various topics, but were unaware of the settings rule or settings criteria.</p> <p>This setting should ensure all employees have consistent and reinforced training on the HCBS settings regulatory criteria.</p>

⁴ <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>; see question 10