

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Medicaid Benefits and Health Programs Group

January 6, 2025

Rebecca de Camera
Medicaid Director
Montana Department of Public Health and Human Services
111 North Sanders, PO Box 4210
Helena, MT 59604

RE: Heightened Scrutiny Review of:

- River Ridge Assisted Living, 1415 Yellowstone River Road, Billings, Montana 59105 (Assisted Living Facility)
- The Villa Assisted Living, 404 Summit Ave, Lewistown, Montana 59457 (Assisted Living Facility)

Dear Director de Camera:

This letter is in reference to settings submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review, in accordance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4) and (5). Montana submitted two assisted living facilities in the same building as a privately operated skilled nursing facility.

CMS provided the state its initial “Summary of Findings” for River Ridge Assisted Living and the Villa Assisted Living to which the state responded. CMS had several conversations with the state in regard to additional information needed to make a determination of the settings’ adherence to the settings criteria. Based on the information contained in the initial submissions and the additional information the state provided, CMS agrees with the state’s determination that these settings have overcome any institutional presumption and meet all of the HCBS settings criteria. In the pages that follow, the initial CMS feedback to the state is provided, as well as the state’s responses, and CMS’ reaction to those responses.

It is important to note that the CMS adjudication of heightened scrutiny solely addresses the state’s compliance with the applicable Medicaid authorities. CMS approval does not address the state’s independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court’s *Olmstead v. LC* decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at: http://www.ada.gov/olmstead/q&a_olmstead.htm.

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 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 HCBS.

Sincerely,

Curtis J. Cunningham, Director
Division of Long Term Services and Support
Medicaid Benefits and Health Programs Group

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: River Ridge Assisted Living

Address: 1415 Yellowstone River Road, Billings, Montana 59105

Type of Setting: Residential – Assisted Living Facility (ALF)

Heightened Scrutiny Category: Setting located in a building that also provides inpatient institutional treatment.

Date Submitted: February 15, 2023

Brief Description of Setting: River Ridge Assisted Living is directly attached to a Skilled Nursing Facility (SNF). An onsite visit by Montana's Quality Assurance staff confirms the two entities are separated by double-door entry. Each entity has its own separate entrance. In addition, River Ridge Assisted Living is located in a separate wing of the building, with a separate dining area, separate activity area and is staffed by non-SNF personnel.

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

- River Ridge Assisted Living has several different community calendars printed and available for residents. They try to have field trips planned such as the zoo, library, and picnics in the park. They also go out for breakfast, go to the fair and summer series concerts etc. Residents can choose to participate in community outings and families are always invited. All residents are able to safely come and go at any time including to attend any activity or event that they want. Facility transportation is available for residents as confirmed through interviews with staff and residents during the state's onsite review. The Department reviewed the residents' person-centered service plans and verified there is variation in the scope, frequency, and breadth of individual beneficiary interactions and engagement in and with the broader community and confirmed that facility support professionals provide residents the support and means necessary to enhance the quality of life through access to the broader community.
- The state indicated that HCBS and non-HCBS members who choose to live at River Ridge Assisted Living are afforded the personal liberty and rights to select a setting of their choice for long term care service delivery. The state also indicates the HCBS system actively verifies member choice, and rights are acknowledged and services planned appropriately.
- The state's report indicates that River Ridge Assisted Living offers privacy to residents while using telephone, internet, or other personal communication devices.
- Residents can attend community activities and services when they choose such as shopping, religious services, scheduled appointments, lunch with family and friends, as confirmed through interviews with staff and residents. They have access to all common areas and can plan their day according to their preferences.
- The state confirmed through interviews with medical providers, staff and residents that residents at River Ridge Assisted Living are not required to receive medical, behavioral or therapy services on-site.

- The state reported residents can lock their room as well as lock their bathroom door for privacy. Staff knock on the door and/or ring a doorbell for access to the resident's private room. Each apartment has single action locks on the front doors and restrooms. Each resident has a key to their apartment.
- No residents have a roommate, each apartment is single occupancy.
- Residents are encouraged to have pictures, home furnishings, and even paint the room if they like. They may even have their pets living with them as well. The state reports bedroom decorations and furniture are arranged at the discretion of the resident.
- The state's review indicated residents are able to control their own schedules, appointments, visitors etc. They are free to go with family, enjoy community activities as well as group activities. The state reports residents have the freedom to set their own daily routines for things such as hygiene, care delivery, recreation, and meals. Residents have full access to the setting, including the laundry, and can choose to do their own laundry.
- Residents have a central kitchen that gives them access to food at any time including fridge and freezer foods. They have a snack bar with fresh fruit, crackers, and baked goods as well as beverages such as juices, coffee, cappuccino, water etc. The provider will accommodate any meals missed. The state affirmed information through photos as well as the on-site evaluation report conducted by the Montana Department of Public Health and Human Services (DPHHS) Quality Assurance Division, staff interviews and resident interviews.
- The state reported that River Ridge Assisted Living is physically accessible to residents and the general public. For those residents needing support to move about this setting, there are accommodations such as grab bars, seats in the bathroom and ramps for wheelchairs. This setting does not include any barriers which limit access such as Velcro strips, locked doors or locked cupboards or refrigerators.
- The state attested that documentation of modifications to the additional conditions has been accomplished by River Ridge through observations made during the onsite visit or through a reasonable sample of consumer interviews or through a review of person-centered service plans. The provider stated that any needs, modifications or requests are documented in the resident's individual care plan, which is updated regularly as needed. Additionally, this is all communicated regularly with service delivery partners, physicians, and family.
- The state considered the following evidence to demonstrate River Ridge Assisted Living is integrated and supports full access to the greater community by the individuals: Facility Activities Calendar, Community Activities and Integration Opportunities, Meal Menu, Transportation Options and Policy, Resident Service/Care Plan, HCBS Service Plan, Visitation Access and Policy, Resident and Member Interviews, Staff Interviews, Resident Handbook, Resident Agreement, Community Chamber of Commerce Detail, Montana Office of Inspector General Survey Results, HCBS Member Records, HCB Settings Provider Self- Assessment(s), and HCB Settings Validation Tool(s).

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 Montana provide the following:

- Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
 - **Montana Response:** The ALF provides transportation, as well as access to public transportation to meet member needs surrounding employment goals to work in competitive integrated settings. This may include transportation to and from appointments to employment opportunities and/or vocational rehabilitation appointments through the State of Montana. When members identify employment goals to work in competitive employment settings, these goals are integrated into the HCBS Service Plan and then translated to service delivery including services delivered through the adult residential service provider. This is routinely verified by the Service Plan Evaluation portion of the Quality Assurance Review Process. This was also verified by the resident and interviews.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Confirmation that the setting supports full access of individuals to control their personal resources [42 CFR 441.301(c)(4)(i)].
 - **Montana Response:** The ALF has no restrictions on individuals controlling his/her funds. Individuals have access to community financial resources (bank, credit unions), etc. The state made the determination that the setting supports full access to individuals to control their personal resources and that individuals have access to their funds through review of members' Plans of Care, and review of Resident Agreements, as well as interviews of residents and staff. If financial management is identified as a need, it would be addressed in each member's Plan of Care.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Please provide verification that there are transportation options available and assistance to utilize transportation to access the broader community [42 CFR 441.301(c)(4)(i)].
 - **Montana Response:** Members have access to transportation offered by the ALF and also accessible public transportation offered by Billings Met Transit. The state reviewed the River Ridge Resident Agreement, completed onsite visits, reviewed documentation, and conducted staff and resident interviews. The Department attests that this regulation is met by River Ridge Assisted Living as required. Members have transportation provided by the facility, as well as access to public transportation through Billings Transit. River Ridge has posted the Billings Bus Schedule on a bulletin board where residents can see them. In addition to observing public transportation options posted in convenient locations, the state also reviewed the Resident Agreement, which includes language that states assistance with securing transportation services is included as part of the

- monthly fee.
 - **CMS Response:** CMS agrees that the state 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 setting options including non-disability specific settings and the setting options are identified and documented in the person-centered service plan and are based on the individual's needs, and preferences. [42 CFR 441.301(c)(4)(ii)].
 - **Montana Response:** The Senior and Long-Term Care (SLTC) Freedom of Choice form lists out the alternative providers available and the member signs off on multiple choices. The Department reviewed Person Centered Service Plans of the members receiving services and can attest that they made free choices of services and qualified providers for each service included in their service plan. The Department completed onsite visits and conducted staff and resident interviews. The Department attests that this regulation is met as required.
 - **CMS Response:** While the state did not provide a specific response to this feedback, the freedom of choice form, which includes the various service options, has sufficiently provided the needed information.
- Confirmation that the setting ensures an individual's rights of dignity and respect, and freedom from coercion and restraint [42 CFR 441.301(c)(4)(iii)
 - **Montana Response:** There are several ways members residing in this ALF are ensured to have freedom from coercion and restraint. The Montana Office on Aging Long-Term Care Ombudsman visits facilities once per month. The Office of Inspector General also visits all Montana ALFs any time there is a complaint. The Office of Inspector General conducts onsite visits for licensing purposes every 1, 2, or 3 years depending upon license issuance. The Department completed onsite visits and conducted staff and resident interviews. In addition, Serious Occurrence Report (SOR) policy requires reporting of suspected and/or witnessed coercion or restraint in the Quality Assurance Management System (QAMS) which will allow for tracking. The Department attests that this regulation is met by River Ridge Assisted Living as required.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Confirmation that a lease, residency agreement or other form of written agreement is 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 [42 CFR 441.301(c)(4)(vi)(A)].
 - **Montana Response:** The River Ridge Assisted Living Resident Agreement has been reviewed and found compliant with Montana Landlord Tenant Act found at MCA 70.24.101 through 70.24.442. The Resident Agreement outlines tenant eviction protections. The Department attests that this regulation is met by River Ridge Assisted Living as required.

- **CMS Response:** CMS agrees that the state response is sufficient.
- Attestation that only appropriate staff have keys to individuals' doors [42 CFR 441.301(c)(4)(vi)(B)(1)].
 - **Montana Response:** River Ridge has updated page 4 section 6 of the Resident Agreement to include that the keys will be issued to the residents upon the time of occupancy. The resident agreement includes the specific language: "Appropriate staff that is currently working, does have a key for emergency purposes." River Ridge provided a copy of the updated Resident Agreement. The state will add to the Resident and Staff Interview questions whether they're aware if anyone, other than those who are appropriate, have a key to the setting.
 - **CMS Response:** CMS finds this response to be sufficient.
- Confirmation that individuals are able to have visitors of their choosing at any time [42 CFR 441.301(c)(4)(vi)(D)].
 - **Montana Response:** River Ridge Assisted Living has no restrictions on visitors, has no visiting hours and does not require visitors to meet in a certain area. The River Ridge Assisted Living Resident Agreement states that all guests are welcome including overnight guests. In addition, the Department completed an onsite visit, reviewed documentation, and conducted staff and resident interviews. The Department attests that this regulation is met by River Ridge Assisted Living as required.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>).
 - **Montana Response:** The Department continues their efforts to best train and educate HCBS service delivery system and providers on the content of the final HCB Settings rule. River Ridge indicated new employees are required to read service plans and all employees have ongoing education. The facility uses Relias standardized training and uses monitoring practices to ensure staff have met the training requirements. New employees and volunteers take twelve courses during onboarding that cover areas such as settings criteria, resident rights, person-centered planning, and HIPAA. Existing employees take one course each month through Relias. Employees also participate in quarterly in-service training which covers person-centered planning. Providers are required to submit a Provider Self Assessment which details the requirements under the Settings Rule. In addition, DPHHS has a HCBS website which provides comprehensive resources related to the Settings Rule which are available to providers, staff, and the public at large. <https://dphhs.mt.gov/assets/hcbs/HCBSSettings12-08-2023.pdf>.
 - **CMS Response:** CMS agrees that the state response is sufficient.

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: The Villa Assisted Living

Address: 404 Summit Ave, Lewistown, Montana 59457

Type of Setting: Residential – Assisted Living Facility (ALF)

Heightened Scrutiny Category: Setting located in a building that also provides inpatient institutional treatment.

Date Submitted: February 15, 2023

Brief Description of Setting: The Villa Assisted Living is directly attached to a Skilled Nursing Facility (SNF). An onsite visit by Montana's Quality Assurance staff confirms the two entities are observed to be distinctly separate including, but not limited to, separate entrances, separate staff, dining area, and activities. Staff at the SNF are not involved in either a supervisory or any other capacity at The Villa.

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

- The Villa has multiple activities for a resident to choose from at the facility. The Villa uses a monthly calendar to plan activities. There is also transportation offered to community events, whether with a group or individually. Residents are able to attend physician appointments, beauty shop appointments, community concerts, social gatherings outside of the facility, etc. The Department reviewed the resident person-centered service plans, and conducted desk reviews and resident interviews to verify there is variation in the scope, frequency, and breadth of individual beneficiary interactions and engagement in and with the broader community.
- The state indicated that HCBS and non-HCBS members who choose to live at this setting are afforded the personal liberty and rights to select a setting of their choice for long term care service delivery. MT HCBS system actively verifies member choice, and rights are acknowledged and services planned appropriately.
- The setting offers privacy to residents while using the telephone, internet, or other personal communication devices.
- The state assures the specific unit/dwelling is owned, rented, or occupied under a legally enforceable agreement that includes the same or comparable protections to those provided under the jurisdiction's landlord tenant law and pursuant to Administrative Rules of Montana 37.106.2823.
- The state reported staff knock on the door and/or ring a doorbell prior to access to the resident's private room with their permission.
- The state reported residents can lock their apartment doors for privacy and security. Each resident has a private room that they can lock on the inside and lock with a key on the outside. Additionally, staff exchange the set of keys at each shift change only to direct care staff members to assure only the appropriate staff have keys to the doors.
- The Villa has both single and double occupancy bedrooms available, and when sharing a bedroom, residents have the ability to choose their roommate. The only residents who

share rooms are couples.

- The state reported bedroom decorations and furniture are arranged at the discretion of the resident. The provider encourages residents to decorate the room to their liking and make the room feel like their own home.
- The state reported that residents have the freedom to set their own daily routines for things such as hygiene, care delivery, recreation, and meals.
- The dining room has scheduled meals 3 times per day. The staff will accommodate meal service. There are snacks available in the dining room 24 hours a day. Residents can also request food to be delivered to their rooms at any time. The state attests residents have access to food at any time, as supported through the provider self-assessment, the on-site evaluation report conducted by the Montana Department of Public Health and Human Services (DPHHS) Quality Assurance Division, staff interviews and resident interviews.
- The assessment included The Villa does not have restricted visiting hours.
- The state reported that The Villa is physically accessible to residents and the general public. For those residents needing support to move about this setting, there are accommodations such as grab bars, seats in the bathroom, and ramps for wheelchairs. This setting does not include any barriers which limit access such as Velcro strips, locked doors or locked cupboards or refrigerators.
- The provider stated that the service plan can be updated whenever needed. These are documented in their system and the responsible party will be notified of any changes. Each resident has their own service plan. Ongoing communication is made with service delivery partners and case managers to manage resident's needs. The state has concluded through observation made during an onsite visit, through consumer interviews, and through a review of person-centered service plans that any modification to the settings criteria are documented in person-centered service plans as required by the regulation.
- The state considered the following evidence to demonstrate The Villa Assisted Living is integrated and supports full access to the greater community by the individuals: Facility Activities Calendar, Community Activities and Integration Opportunities, Meal Menu, Transportation Options and Policy, Resident Service/Care Plan, HCBS Service Plan, Visitation Access and Policy, Resident and Member Interviews, Staff Interviews, Resident Handbook, Resident Agreement, Community Chamber of Commerce Detail, Montana Office of Inspector General Survey Results, HCBS Member Records, HCB Settings Provider Self- Assessment(s), and HCB Settings Validation Tool(s).

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 Montana provide the following:

- Verification that the setting supports full access for individuals to have opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].
 - **Montana Response:** The ALF provides transportation, as well as access to public transportation to meet member needs surrounding employment goals to work in

competitive integrated settings. This may include transportation to and from appointments to employment opportunities and/or vocational rehabilitation appointments through the State of Montana. When members identify employment goals to work in competitive employment settings, these goals are integrated into the HCBS Service Plan and then translated to service delivery, including services delivered through the adult residential service provider. This is routinely verified by the Service Plan Evaluation portion of the Quality Assurance Review Process. This was also verified by the resident and interviews.

- **CMS Response:** CMS agrees that the state response is sufficient.
- Confirmation that the setting supports full access of individuals to control their personal resources [42 CFR 441.301(c)(4)(i)].
 - **Montana Response:** The Villa has no restrictions on individuals controlling his/her funds. Individuals have access to community financial resources (bank, credit union). The state made the determination that the setting supports full access to individuals to control their personal resources and that individuals have access to their funds through review of members' Plans of Care, and review of Resident Agreements, as well as interviews of residents and staff. If financial management is identified as a need, it would be addressed in each member's Plan of Care.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Verification that there are transportation options available and assistance to utilize transportation to access the broader community [42 CFR 441.301(c)(4)(i)].
 - **Montana Response:** Members have access to transportation offered by the facility, as well as access to public transportation through Central Montana Shuttle to meet member needs. The Villa has posted these schedules on a bulletin board where residents can see them. The state attests that this regulation was met. In addition to observing public transportation options posted in convenient locations, the state also reviewed the Resident Agreement, which includes language that states assistance with securing transportation services is included as part of the monthly fee.
 - **CMS Response:** CMS agrees that the state 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 setting options including non-disability specific settings [42 CFR 441.301(c)(4)(ii)].
 - **Montana Response:** The Senior and Long-Term Care (SLTC) Freedom of Choice form lists out the alternative providers available and the member signs off on multiple choices. The Department reviewed Person Centered Service Plans of the members receiving services and can attest that they made free choices of services and qualified providers for each service included in their service plan.

The Department completed onsite visits and conducted staff and resident interviews. The Department attests that this regulation is met by The Villa Assisted Living as required.

- **CMS Response:** CMS agrees that the state response is sufficient.
- Attestation that the setting ensures an individual's rights of dignity and respect, and freedom from coercion and restraint [42 CFR 441.301(c)(4)(iii)].
 - **Montana Response:** The state made the determination that members residing in this ALF are ensured individual rights of dignity and respect by verifying the ALF provides training covering this requirement. Members are afforded privacy in the bathroom, privacy during personal care and hygiene care. It is expected and verified that Case Management Teams and staff treat members with respect. This is documented in the member's plan of care process. The state made the determination by verifying several ways members residing in this ALF are ensured to have freedom from coercion and restraint. The Montana Office on Aging Long-Term Care Ombudsman visits facilities once per month. The Office of Inspectors General also visits all Montana ALFs any time there is a complaint. The Office of Inspector General conducts onsite visits for licensing purposes every 1, 2, or 3 years depending upon license issuance. The Department completed onsite visits and conducted staff and resident interviews. In addition, Serious Occurrence Report (SOR) policy requires reporting of suspected and/or witnessed coercion or restraint in the Quality Assurance Management System (QAMS) which will allow for tracking, etc. The Department attests that this regulation is met by The Villa Assisted Living as required.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Confirmation that the setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact [42 CFR 441.301(c)(4)(iv)].
 - **Montana Response:** The state confirmed that the setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices by verification through the person-centered plans as well as staff and member interviews. The state attests that the following is true:
 - Members choose and control their own schedule in accordance with a person-centered plan.
 - Individuals are made aware that they are not required to follow a set schedule which is not part of their agreed upon plan.
 - Members come and go at their discretion.
 - Members may have visitors at any time.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Confirmation that the setting facilitates individual choice regarding services and supports, and who provides them [42 CFR 441.301(c)(4)(v)].

- **Montana Response:** The state confirmed through interviews with providers, staff and residents that residents at this setting are not required to receive medical, behavioral or therapy services on-site. The state provided as evidence a freedom of choice form, which includes various service options.
 - **CMS Response:** CMS agrees that the state response is sufficient.
- Description of how staff have been properly trained in the provision of home and community based services (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>).
 - **Montana Response:** The Villa uses Relias standardized training and uses monitoring practices to ensure staff have met the training requirements. New employees and volunteers take twelve courses during onboarding that cover areas such as settings criteria, resident rights, person-centered planning, and HIPAA. Existing employees take one course each month through Relias. Employees also participate in quarterly in-service training which covers person-centered planning.
 - **CMS Response:** CMS agrees that the state response is sufficient.