

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



Disabled & Elderly Health Programs Group

April 10, 2019

Maureen Corcoran
Director
Ohio Department of Medicaid
50 West Town Street, 4th Floor
Columbus, OH 43215

RE: Heightened Scrutiny Review of:

- Villa Vista Royale, 1800 Sinclair Ave, Steubenville, OH 43953;
- Monarch Meadows Nursing and Rehabilitation, LLC, 229 Commerce Dr, Seaman, OH 45679;
- The Lodge at New Dawn, 2336 Greentree Ave SW, Canton, OH 44706

Dear Ms. Corcoran:

This letter is in reference to settings submitted to the Centers for Medicare & Medicaid Services (CMS) for a heightened scrutiny review, in accordance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710 (a)(1)(2). Ohio submitted three residential assisted living facilities co-located in the same building as nursing facilities; the settings are in a publicly or privately-operated facility that provides inpatient institutional treatment. Evidentiary packages were submitted by the state of Ohio to CMS for heightened scrutiny review on May 26, 2018.

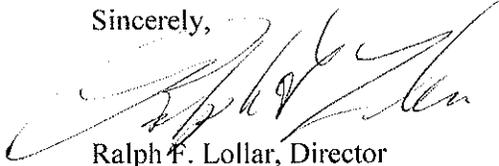
CMS provided the state its initial "Summary of Findings" on June 8, 2018. The state provided its response to CMS on July 6, 2018. CMS appreciates the efforts of the state to provide comprehensive evidentiary packages regarding each setting's characteristics. Based on the information contained in the evidentiary packages specific to these settings, CMS has determined the information submitted by the state for the heightened scrutiny review is sufficient to demonstrate that these will overcome any institutional presumption and meet all of the HCBS settings criteria 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 these settings including a verification that the remediation has been completed.

Since there are currently no individuals receiving Medicaid HCBS in these settings, CMS requests that the state provide, as a part of these updates, the date when the setting begins to provide Medicaid HCBS to individuals with an assurance that individuals have a person-centered plan that meets requirements outlined at 42 CFR 441.301(c)(1)-(3) in place at the time when services begin.

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

Thank you for your continued commitment to the state of Ohio's successful delivery of Medicaid-funded home and community-based services.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ralph F. Lollar', written in a cursive style.

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

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Villa Vista Royale, LLC

Address: 1800 Sinclair Avenue, Steubenville, OH 43953

Type of Setting: Residential Assisted Living Facility licensed for 8 individuals

HS Category: Setting is co-located in the same building as a nursing facility

Date Submitted: April 26, 2018

Brief Description of Setting: The setting is a licensed assisted living (AL) facility co-located in the same building with a private nursing facility. The AL has submitted an application to become a waiver provider.

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

Each individual has their own unit, which can be decorated according to their preferences. Unit doors can close for privacy and are lockable. Individuals have keys to their living units and the nurse on duty has access to a master key for use in the event of an emergency.

Individuals have access to food at any time.

Individuals may have visitors of their choosing at any time.

Transportation to community activities is provided by the direct services provider and public transportation options are available. Family members and friends also help with transportation needs.

Individuals have the freedom and support to control their own schedules and activities.

State considered the following evidence to demonstrate the setting is integrated in and supports full access into the community by the individuals: onsite evaluation tool (including observations of interactions, and interviews with residents and staff), abuse policy, access to setting after-hours policy, activity calendar, floor plan, food options and menus, grievance policy, letters of support from family members, lock and key policy, Ohio Department of Health (ODH) survey, photos, Residential Care Facility (RCF) survey, resident agreement, resident council, resident employment, resident handbook, resident rights, resident survey, staff schedule, staff training, table of organization, and transportation options.

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 Ohio provide the following:

- 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)].

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

Ohio Response:

Ohio respectively notes this provider is not currently a certified assisted living waiver provider, but rather an applicant for certification. With the recommended remediation outlined in the state's original submission of Villa Vista Royale, LLC to CMS, Ohio believes the provider's setting may overcome the presumptions of an institution.

Additionally, Ohio has protections in place for waiver enrollees, which ensure they understand their choices. Individuals work with a case manager, their families, their provider(s), and the setting administrator or other setting official(s) to ensure the setting of choice is their best option. Upon enrollment, the individuals are offered the same protections as an individual who is not enrolled on a waiver and they sign the Freedom of Choice form. This form indicates as individual has chosen waiver services in lieu of institutionalization in a nursing facility, including the setting of their choice.

CMS agrees that the state's response is sufficient.

- Confirmation that individuals have the opportunity to control their own personal resources [42 CFR 441.301(c)(4)(i)].

Ohio Response:

Individuals are informed upon admission of their rights regarding choosing to have the setting manage their personal resources or manage them on their own. The setting has a process describing how an individual may choose to have the setting manage or not manage the individual's resources. The process also describes how an individual who originally chooses to have their resources managed by the setting, may change the decision from the setting to themselves to manage their resources. (See ORC 3721.13)

CMS agrees that the state's response is sufficient.

- Verification that individuals in the setting have a lease or legally enforceable tenancy agreement that offers protections that address eviction processes and appeals that are comparable to those provided under the jurisdiction's landlord tenant law [42 CFR 441.301(c)(4)(vi)(A)].

Ohio Response:

All Ohio licensed assisted living providers, are required to have a lease or legally enforceable tenancy agreement. Upon admission, individuals are given a legally enforceable tenancy agreement and a copy of their resident's rights pursuant to ORC 3721.13, ORC 3721.13, and OAC 3701-16-07. Individuals who are issued a 30-day notice for discharge are also afforded due process hearing rights pursuant to ORC 119. Ombudsman are available to appear at discharge hearings with residents.

CMS agrees that the state's response is sufficient.

- Confirmation that individuals sharing units have a choice of roommate [42 CFR 441.301(c)(4)(vi)(B)(2)].

Ohio Response:

Ohio respectively notes this provider is not currently a certified assisted living waiver provider, but rather an applicant for certification. With the recommended remediation outlined in the state's original submission of Villa Vista Royale, LLC to CMS, Ohio believes the provider's setting may overcome the presumptions of an institution.

In Ohio, generally an assisted living waiver provider provides each consumer with a private, residential living unit that is designated solely for the consumer, with limited exceptions as outlined in OAC 173-39-02.16(B)(2)(a)(ii). During Ohio's onsite observational reviews, state reviewers only learned of married couples sharing living units, and it was their choice to have this living arrangement. Case managers are trained on the circumstances under which individuals may share their living unit and provider staff review assisted living waiver providers at least annually to ensure providers are compliant with both OAC 173-39-02(E) and OAC 173-39-02.16.

CMS agrees that the state's response is sufficient.

- **Confirmation that the setting is physically accessible to the individual [42 CFR 441.301(c)(4)(vi)(E)].**

Ohio Response:

In Ohio, assisted living waiver providers must comply with Ohio Department of Health regulations to become licensed as a residential care facility (AL), pursuant to ORC 3721.04.

During Ohio's onsite observational review, the reviewer noted the setting is a one-story building and main entrances are level with and open to a sidewalk area, which is right next to the visitor and individual parking area. Additionally, state staff observed individuals were leaving and entering the setting without any accessibility issues. Also, individuals were seen entering their living units without any physical barriers or limitations.

CMS agrees that the state's response is sufficient.

- **With respect to accessing the broader community, verification that individuals have control over their own schedules, and that the variation and frequency of engagement in community activities of individuals' choosing (including group and individual outing options in the broader community) are consistent with the preferences and desires outlined in each individual's person-centered plan as identified through a review of the person-centered service plan, setting activity records/notes and/or direct on-site observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(4)(vi)(C)].**

Ohio Response:

During Ohio's onsite observational review, state reviewers observed individuals setting their own schedules (observed during Ohio's onsite observational review—individuals were leaving on their own or with family and friends). Additionally, during Ohio's onsite observational review individuals confirmed they set their own schedules and participate in activities with the setting, as they choose. The setting has an active residential council who provides input regarding on site setting activities and in the community.

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

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 had a choice in selecting their non-residential service providers separate and distinct from their choice in the ALF [42 CFR 441.301(c)(4)(v)], and that the setting provides information and referrals to individuals who are interested in opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].

Ohio Response:

In Ohio, assisted living waiver providers are required to follow the Residents' Rights codified in ORC 3721.13, which sets forth both the individual's right to choose their own providers and also their right to be integrated into the community in many ways, including employment.

Interviews confirmed individuals choose their own providers for services and choose when and where they have them delivered. Additionally, the setting has a written description of their process in place to support individuals who choose to work or volunteer outside of the setting. During this setting's public comment period, a letter of support also indicated the setting is ideally located for individuals who wish to pursue volunteer opportunities in the community.

CMS agrees that the state's response is sufficient.

- Verification that the provider has in place a process for allowing modifications to the additional settings criteria in provider owned and controlled residential settings that is supported by a specific assessed need and justified in the person-centered service plan [42 CFR 441.301(c)(4)(vi)(F)(1)-(8)].

Ohio Response:

Prior to moving to an assisted living setting, the individual, their case manager, any family/friends, meet with the setting administrator to discuss their physical needs to determine if any modifications are needed. This is addressed in Ohio's Person-Centered Services Plan and Ohio's Resident Agreement (See ORC 3721.13 and OAC 3701-16-07) also requires this be addressed.

CMS agrees that the state's response is sufficient.

- Verification of the date when the setting begins to provide Medicaid HCBS to individuals with an assurance that individuals have a person centered plan that meets the requirements outlined at 42 CFR 441.301(c)(1)-(3).

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: Monarch Meadows Nursing and Rehabilitation, Inc.

Address: 299 Commerce Drive, Seaman, OH 45679

Type of Setting: Residential Assisted Living Facility licensed for 12 individuals

HS Category: Setting is co-located in the same building as a nursing facility

Date Submitted: April 26, 2018

Brief Description of Setting: The setting is a licensed assisted living (AL) facility co-located with a nursing facility and adjacent to a public institution (Adams County Regional Medical Center). The AL has submitted an application to become a waiver provider.

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

Individuals can choose to decorate their doors and living units with family photos and other artwork.

Unit doors can close for privacy and are lockable if needed. Individuals have keys to their living units and only the nurse on duty has access to a master key for use in the event of an emergency.

Individuals have access to food at any time.

Individuals may have visitors of their choosing at any time.

Individuals have the freedom and support to control their own schedules and activities, and have a choice among several group activity options.

Individuals may access transportation, with or without assistance of the AL staff. Taxis, Senior Transportation, and other options are available. Family members and friends also help with transportation needs.

State considered the following evidence to demonstrate the setting is integrated in and supports full access into the community by the individuals: onsite evaluation tool (including observations of interactions, and interviews with residents and staff), abuse policy, activity calendar, assessment care meetings, assisted living services, various dining and food options, floor plan and aerial shots, food menus, freedom of choice and control over scheduled activities, grievance policy, incident reporting, key and lock policy, letters of support from family members, Ohio Department of Health (ODH) survey, photos, physical environment provisions of service, physical and chemical restraint policy, Residential Care Facility (RCF) survey, resident accommodations and right to decorate, residential agreement, residential council, resident employment, resident handbook, resident rights, resident survey, staff schedule, staff training, telephone and electronic devices, transfer discharge, transportation list, and transportation policy.

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 Ohio provide the following:

- Attestation from the state through the review of person-centered service plans and/or

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

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)].

Ohio Response:

Ohio respectively notes this provider is not currently a certified assisted living waiver provider, but rather an applicant for certification. With the recommended remediation outlined in the state's original submission of Monarch Meadows Nursing and Rehabilitation, LLC to CMS, Ohio believes the provider's setting may overcome the presumptions of an institution.

Additionally, Ohio has protections in place for waiver enrollees, which ensure they understand their choices. Individuals work with a case manager, their families, their provider(s), and the setting administrator or other setting official(s) to ensure the setting of choice is their best option. Upon enrollment, the individuals are offered the same protections as an individual who is not enrolled on a waiver and they sign the Freedom of Choice form. This form indicates as individual has chosen waiver services in lieu of institutionalization in a nursing facility, including the setting of their choice.

CMS agrees that the state's response is sufficient.

- **Confirmation that individuals have the opportunity to control their own personal resources [42 CFR 441.301(c)(4)(i)].**

Ohio Response:

Individuals are informed upon admission of their rights regarding choosing to have the setting manage their personal resources or manage them on their own. The setting has a process describing how an individual may choose to have the setting manage or not manage the individual's resources. The process also describes how an individual who originally chooses to have their resources managed by the setting, may change the decision from the setting to themselves to manage their resources. (See ORC 3721.13)

CMS agrees that the state's response is sufficient.

- **Verification that individuals in the setting have a lease or legally enforceable tenancy agreement that offers protections that address eviction processes and appeals that are comparable to those provided under the jurisdiction's landlord tenant law [42 CFR 441.301(c)(4)(vi)(A)].**

Ohio Response:

All Ohio licensed assisted living providers, are required to have a lease or legally enforceable tenancy agreement. Upon admission, individuals are given a legally enforceable tenancy agreement and a copy of their resident's rights pursuant to ORC 3721.13, ORC 3721.13, and OAC 3701-16-07. Individuals who are issued a 30-day notice for discharge are also afforded due process hearing rights pursuant to ORC 119. Ombudsman are available to appear at discharge hearings with residents.

CMS agrees that the state's response is sufficient.

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

- Confirmation that individuals sharing units have a choice of roommate [42 CFR 441.301(c)(4)(vi)(B)(2)].

Ohio Response:

Ohio respectively notes this provider is not currently a certified assisted living waiver provider, but rather an applicant for certification. With the recommended remediation outlined in the state's original submission of Monarch Meadows Nursing and Rehabilitation, LLC to CMS, Ohio believes the provider's setting may overcome the presumptions of an institution.

In Ohio, generally an assisted living waiver provider provides each consumer with a private, residential living unit that is designated solely for the consumer, with limited exceptions as outlined in OAC 173-39-02.16(B)(2)(a)(ii). During Ohio's onsite observational reviews, state reviewers only learned of married couples sharing living units, and it was their choice to have this living arrangement. Case managers are trained on the circumstances under which individuals may share their living unit and provider staff review assisted living waiver providers at least annually to ensure providers are compliant with both OAC 173-39-02(E) and OAC173-39-02.16.

CMS agrees that the state's response is sufficient.

- Confirmation that the setting is physically accessible to the individual [42 CFR 441.301(c)(4)(vi)(E)].

Ohio Response:

In Ohio, assisted living waiver providers must comply with Ohio Department of Health regulations to become licensed as a residential care facility (AL), pursuant to ORC 3721.04.

During Ohio's onsite observational review, the reviewer noted the setting is a one-story building and main entrances are level with and open to a sidewalk area, which is right next to the visitor and individual parking area. Additionally, state staff observed individuals were leaving and entering the setting without any accessibility issues. Also, individuals were seen entering their living units without any physical barriers or limitations.

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 had a choice in selecting their non-residential service providers separate and distinct from their choice in the ALF [42 CFR 441.301(c)(4)(v)], and that the setting provides information and referrals to individuals who are interested in opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].

Ohio Response:

In Ohio, assisted living waiver providers are required to follow the Residents' Rights codified in ORC 3721.13, which sets forth both the individual's right to choose their own providers and also their right to be integrated into the community in many ways, including employment.

Interviews confirmed individuals choose their own providers for services and choose when and where

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

they have them delivered. Additionally, the setting has a written description of their process in place to support individuals who choose to work or volunteer outside of the setting. During this setting's public comment period, a letter of support also indicated the setting is ideally located for individuals who wish to pursue volunteer opportunities in the community.

CMS agrees that the state's response is sufficient.

- Verification that the provider has in place a process for allowing modifications to the additional settings criteria in provider owned and controlled residential settings that is supported by a specific assessed need and justified in the person-centered service plan [42 CFR 441.301(c)(4)(vi)(F)(1)-(8)].

Ohio Response:

Prior to moving to an assisted living setting, the individual, their case manager, any family/friends, meet with the setting administrator to discuss their physical needs to determine if any modifications are needed. This is addressed in Ohio's Person-Centered Services Plan and Ohio's Resident Agreement (See ORC 3721.13 and OAC 3701-16-07) also requires this be addressed. The setting includes this in sections (V)(C) of the Monarch Meadows Assisted Living Resident Admission Agreement.

CMS agrees that the state's response is sufficient.

- With respect to accessing the broader community, verification that individuals have control over their own schedules, and that the variation and frequency of engagement in community activities of individuals' choosing (including group and individual outing options in the broader community) are consistent with the preferences and desires outlined in each individual's person-centered plan as identified through a review of the person-centered service plan, setting activity records/notes and/or direct on-site observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(4)(vi)(C)].

Ohio Response:

During Ohio's onsite observational review, state reviewers observed individuals setting their own schedules (observed during Ohio's onsite observational review—individuals were leaving on their own or with family and friends). Additionally, during Ohio's onsite observational review individuals confirmed they set their own schedules and participate in activities with the setting, as they choose. The setting has an active residential council who provides input regarding on site setting activities and in the community.

CMS agrees that the state's response is sufficient.

- Verification of the date when the setting begins to provide Medicaid HCBS to individuals with an assurance that individuals have a person centered plan that meets the requirements outlined at 42 CFR 441.301(c)(1)-(3).

Heightened Scrutiny Summary of Findings

Setting Information

Name of Setting: The Lodge at New Dawn, Inc.

Address: 2336 Greentree Ave SW, Canton, OH 44706

Type of Setting: Residential Assisted Living Facility licensed for 62 individuals

HS Category: Setting is attached to a skilled nursing facility

Date Submitted: April 26, 2018

Brief Description of Setting: The setting is a licensed assisted living (AL) facility attached to a skilled nursing facility (SNF). The AL is a single-story building with 4 wings and is licensed for 62 individuals. The AL has submitted an application to become a waiver provider.

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

Individuals have access to food at all times.

Individuals choose their own daily schedules and activities from a variety of group community options as well as numerous group and individual options onsite.

Individuals can decorate their units. Units have locks and individuals are given keys to their room. The nurse on duty and the administrator have access to the master key in the event of an emergency.

Transportation into the community is offered by the provider. Individuals can also access public transportation options with or without assistance from the staff.

State considered the following evidence to demonstrate the setting is integrated and supports full access into the community by the individuals: onsite evaluation tool (including observations of interactions, and interviews with residents and staff), abuse policy, activity calendar, admissions policy, ethics policy, floor plan, grievance policy, key and lock policy, letters of support from families, medication regimen policy, menu and snacks, organization chart, person centered policy, photos, privacy policy, residential agreement, residential council minutes, residential employment policy, residential handbook, residential rights, RN availability policy, social media policy, staffing schedule, staff training, transportation list, transportation services, and visitation policy.

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 Ohio provide the following:

- Attestation from the state through the review of documentation within 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)].

Ohio Response:

Ohio respectfully notes this provider is not currently a certified assisted living waiver provider, but

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

rather an applicant for certification. With the recommended remediation outlined in the state's original submission of The Lodge at New Dawn, Inc. to CMS, Ohio believes the provider's setting may overcome the presumptions of an institution.

Additionally, Ohio has protections in place for waiver enrollees, which ensure they understand their choices. Individuals work with a case manager, their families, their provider(s), and the setting administrator or other setting official(s) to ensure the setting of choice is their best option. Upon enrollment, the individuals are offered the same protections as an individual who is not enrolled on a waiver and they sign the Freedom of Choice form. This form indicates an individual has chosen waiver services in lieu of institutionalization in a nursing facility, including the setting of their choice.

CMS agrees that the state's response is sufficient.

- **Confirmation that individuals have the opportunity to control their own personal resources [42 CFR441.301(c)(4)(i)].**

Ohio Response:

Individuals are informed upon admission of their rights regarding choosing to have the setting manage their personal resources or manage them on their own. The setting has a process describing how an individual may choose to have the setting manage or not manage the individual's resources. The process also describes how an individual who originally chooses to have their resources managed by the setting, may change the decision from the setting to themselves to manage their resources. (See ORC3721.13)

CMS agrees that the state's response is sufficient.

- **Confirmation that individuals have access to visitors at all times, including during hours of 10:00 p.m. –6:00 a.m. when the facility is locked [42 CFR 441.301(c)(4)(vi)(D)].**

Ohio Response:

Prior to Ohio state staff conducting their onsite observational review, they received documentation, including a visitation policy from The Lodge at New Dawn. The policy states, in part: "Residents of the Lodge have the right to receive visitors of their choosing at a time of their choosing in a manner that does not impose upon the rights of another resident, subject to the residents' right to deny visitation."

CMS agrees that the state's response is sufficient.

- **Verification that individuals in the setting have a lease or legally enforceable tenancy agreement that offers protections that address eviction processes and appeals that are comparable to those provided under the jurisdiction's landlord tenant law [42 CFR 441.301(c)(4)(vi)(A)].**

Ohio Response:

All Ohio licensed assisted living providers are required to have a lease or legally enforceable tenancy agreement. Upon admission, individuals are given a legally enforceable tenancy agreement and a copy of their resident's rights pursuant to ORC 3721.13, ORC 3721.13, and OAC 3701-16-07.

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

Individuals who are issued a 30-day notice for discharge are also afforded due process hearing rights pursuant to ORC 119. Ombudsmen are available to appear at discharge hearings with residents.

CMS agrees that the state's response is sufficient.

- **Confirmation that individuals sharing units have a choice of roommate [42 CFR 441.301(c)(4)(vi)(B)(2)].**

Ohio Response:

Ohio respectively notes this provider is not currently a certified assisted living waiver provider, but rather an applicant for certification. With the recommended remediation outlined in the state's original submission of The Lodge at New Dawn, Inc. to CMS, Ohio believes the provider's setting may overcome the presumptions of an institution.

In Ohio, generally an assisted living waiver provider provides each consumer with a private, residential living unit that is designated solely for the consumer, with limited exceptions as outlined in OAC 173-39-02.16(B)(2)(a)(ii). During Ohio's onsite observational reviews, state reviewers only learned of married couples sharing living units, and it was their choice to have this living arrangement. Case managers are trained on the circumstances under which individuals may share their living unit and provider staff review assisted living waiver providers at least annually to ensure providers are compliant with both OAC 173-39-02(E) and OAC 173-39-02.16.

CMS agrees that the state's response is sufficient.

- **Confirmation that the setting is physically accessible to the individual [42 CFR 441.301(c)(4)(vi)(E)].**

Ohio Response:

In Ohio, assisted living waiver providers must comply with Ohio Department of Health regulations to become licensed as a residential care facility (AL), pursuant to ORC 3721.04.

During Ohio's onsite observational review, the reviewer noted the setting is a one-story building and main entrances are level with and open to a sidewalk area, which is right next to the visitor and individual parking area. Additionally, state staff observed individuals were leaving and entering the setting without any accessibility issues. Also, individuals were seen entering their living units without any physical barriers or limitations.

CMS agrees that the state's response is sufficient.

- **With respect to accessing the broader community, verification that individuals have control over their own schedules, and that the variation and frequency of engagement in community activities of individuals' choosing (including group and individual outing options in the broader community) are consistent with the preferences and desires outlined in each individual's person-centered plan as identified through a review of the person-centered service plan, setting activity records/notes and/or direct on-site observation [42 CFR 441.301(c)(4)(i) & 42 CFR 441.301(c)(4)(vi)(C)].**

Ohio Response:

During Ohio's onsite observational review, state reviewers observed individuals setting their own schedules (observed during Ohio's onsite observational review—individuals were leaving on their own or with family and friends). Additionally, during Ohio's onsite observational review individuals confirmed they set their own schedules and participate in activities with the setting, as they choose. The setting has an active residential council who provides input regarding on site setting activities and in the community.

CMS agrees that the state's response is sufficient.

- **Description of the interconnectedness (i.e. administrative functions, personnel providing clinical and HCBS services) between the skilled nursing facility and the assisted living facility to ensure adherence to the settings criteria by the assisted living facility [42 CFR 441.301(c)(5)], and explanation/rationale behind the requirement that the only open entrance to the ALF between the hours of 10:00 p.m. – 6:00 a.m. is via the skilled nursing facility.**

Ohio Response:

The assisted living setting administrator and owner stated the skilled nursing facility staff were only used in place of assisted living staff when they could not meet staffing needs with current staff. All staff in both the skilled nursing facility and the assisted living setting receive training regarding: "Is This Normal Aging or Not?", "Normal Aging Process: Changes, Memory Eyesight, Hearing and More", and "Aging What to Expect".

Additionally, the administrator at the assisted living, conducts an orientation for all staff who are going to work at the assisted living setting using the "National Center for Assisted Living Guiding Principles".

As reported in Ohio's summary of The Lodge at New Dawn Inc, there are multiple ways to access the setting after hours other than using the skilled nursing facility main entrance. The State has worked with the setting to ensure there are options for accessing the setting after hours, including providing examples of strategies adopted by other settings. The setting chose to adopt a buzzer system which is heard throughout the setting and allows residents near immediate access to their living units through the assisted living entrance. Residents (and visitors) may also pre-arrange an arrival time at the assisted living entrance. Lastly, the nursing facility's nurse's station is staffed around the clock for resident support including responding to requests for access to the assisted living setting. The access options have been outlined in the "new resident" written materials. Two staff trainings were held to reinforce the residents' rights to control access to the setting at any time and ensure staff were knowledgeable of the options.

CMS encourages the state to consider additional remediation to allow individuals continuous and immediate access to the assisted living.

- **Confirmation through a review of person-centered service plans and/or interviews with the individuals that the individuals had a choice in selecting their non-residential service providers separate and distinct from their choice in the ALF [42 CFR 441.301(c)(4)(v)], and that the setting provides information and referrals to individuals who are interested in**

Additional Information Requested To Confirm Setting Is Compliant with the Federal HCBS Settings Criteria and has Overcome any Institutional Presumption:

opportunities to seek employment and work in competitive integrated settings [42 CFR 441.301(c)(4)(i)].

Ohio Response:

In Ohio, assisted living waiver providers are required to follow the Residents' Rights codified in ORC 3721.13, which sets forth both the individual's right to choose their own providers and their right to be integrated into the community in many ways, including employment.

CMS agrees that the state's response is sufficient.

- Verification of the date when the setting begins to provide Medicaid HCBS to individuals with an assurance that individuals have a person centered plan that meets the requirements outlined at 42 CFR 441.301(c)(1)-(3).