Ohio Department of Medicaid

HEIGHTENED SCRUTINY EVIDENCE PACKAGE

Setting Information

Provider's Name		
Diversicare of St. Theresa, LLC		
Location of the Setting	**Type of Setting**	**Number of Individuals Served at the Setting**
Hamilton County, Ohio	Assisted living	0 waiver licensed for 11 individuals
Waiver Services Being Provided at the Setting		
Assisted living services		

Heightened Scrutiny Prong

- [x] Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment.
- [ ] Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.
- [ ] Prong 3: Setting has the effect of isolating individuals from the broader community.

Recommendation

As required by 42 CFR 441.301 (c) (5), the State of Ohio submits this request for heightened scrutiny review for the setting identified above. The State has compiled evidence that the setting is integrated and supports full access of individuals to the greater community, is selected by the individual from among disability and non-disability-specific settings, ensures individual rights, and promotes individual initiative, autonomy, choice, and independence.

Section One

On Site Visit Observation

Date(s) Conducted	State Agency that Conducted the On-Site Visit
December 10, 2019	Ohio Department of Aging

Description of the Setting

Diversicare of St. Theresa, LLC, is privately owned by Diversicare Leasing Company (hereafter AL or setting). The setting is in the urban community of Mariemont, Ohio which is about ten miles outside of Cincinnati. The setting has an assisted living (AL) setting co-located with a nursing facility (NF). The AL and the NF share the administrator and director of nursing (DON). There is one aide who is assigned to only the AL, Monday through Friday during the day. The aides in the evenings and weekends are shared between the AL and NF. The nurses are shared between the AL and NF. The AL has a separate operating budget from the NF.
• Separate administrative/fiscal structure
o CMS Guidance: Home and Community-based Setting Requirements, June 26, 2015, Heightened Scrutiny, Page 4, Q4

The setting sits on a small hill and used to be a hospital. There are two exterior signs identifying the campus from the main road, each in front of the two different driveways used to access the setting. One of the driveways at the top of the hill is used to access the setting's shared main entrance which runs along the back side of the setting and opens to the setting's shared parking lot. The other driveway, located down the hill, connects to a parking lot and an outdoor stair case leading up to the setting's main entrance. The setting is in a residential area and is less than two miles from a public library, a local high school, churches, Chipotle Mexican Grill, Kroger, the Mariemont Theatre, and private residences. Individuals living in private residences have the same proximity to the community as individuals residing in the AL.
• 441.301(c)(4)(i) Proximity to the community

The setting is configured in a U-shape and has four floors, with the AL located on the fourth floor. The large parking lot in front of the shared main entrance connects with another parking lot on the front side of the setting. This parking lot connects to an outdoor stair case and entrance to the building. The main entrance parking lot has designated handicapped parking for individuals residing at the setting or for visitors. Immediately outside the covered main entrance is a gazebo.

There are two sets of sliding glass doors at the shared main entrance. There is a large waiting area in between the two sets of glass doors which has several lounge chairs, a love seat, and a table. The second set of doors opens immediately into the shared lobby. In the middle of the lobby is a reception desk and behind the reception desk is a hallway leading to the chapel. On the far-right side of the lobby are several wingback arm chairs, two love seats, and a coffee bar. On the far-left side of the lobby is a large fish aquarium.
• Meaningful Distinction/Separate entrances
• CMS Guidance: Home and Community-based Setting Requirements, June 26, 2015, Heightened Scrutiny, Page 4, Q4
• 441.301(c)(4)(vi)(E) Accessible

About 15 feet from the fish aquarium is the elevator. There is a large sign next to the elevator identifying what is on each floor of the facility and shows the AL on the fourth floor. Once on the fourth floor and to the left of the elevator is the AL dining room, sunroom, activities room, and AL living units. To the right of the elevator are additional AL living units, the laundry room and lounge areas. Directly in front of elevator is the AL nurse's station.
The AL dining room is furnished with several dining room tables and chairs. The sunroom has lounge furniture and a fireplace. The activities area contains books, crafts, games, magazines, and puzzles.
The individuals interviewed had their own cell phone and some also had a land line. The state reviewer also observed some individuals had their own personal computers. There are telephones located at the AL nurse's station, the nurse's office, and activity office. These are not cordless phones, but staff leave the office if an individual needs privacy. Additionally, there is an empty office on the fourth floor with a phone. Individuals may use the phone in the office at any time, and the setting added a chair in this office for individuals to use, when they are making calls.
• Meaningful Distinction/Separate entrances
o CMS Guidance: Home and Community-based Setting Requirements, June 26, 2015, Heightened Scrutiny, Page 4, Q4
• 441.301(c)(4)(vi)(B)(3) Individualized living spaces
• 441.31(c)(4)(iii) Freedom from coercion and restraint
• 441.301(c)(4)(iv) Optimizes independence in making life choices

Is there anything standing out, you want the reader to know about the setting? If not, describe just the dining experience, and food availability.
One of the individuals interviewed previously worked for the setting. When the individual could no longer remain independent in the community, the individual chose to move into the AL. The individual said the relationships developed at the AL were like family. Visitors are welcome at anytime and are encouraged to join individuals during meals. Visitors may bring pets to the setting for a visit as long as the pet is registered at the first-floor reception desk. Individuals may use the beauty shop on the first floor of the setting.
Individuals have the option to eat when, where, and with whom they choose. According to both individuals and staff there are no seating assignments during meals. Individuals have the option to eat in their living unit when they desire. Alternative and daily food menus are posted outside of the AL dining room. Individuals may get a snack from the AL dining room at any time or may ask staff to bring a snack to their living unit. Snacks available in the AL dining room are coffee, crackers, fruit, cookies, and chips. Additionally, there are vending machines on the first floor of the setting. Individuals may keep snacks in their living units, as well. Individuals may ask staff to save a meal for them, if they are going to miss a meal due to being out of the setting at the particular meal time.
• 441.301(4)(C) Control schedule, activities, and access to food at any time
• 441.301(4)(D) Visitors welcome at any time
• 441.301(c)(4)(iv) 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

Several individuals have decorated their living units with their own furniture, family photos, seasonal décor including advent calendars, wreaths, snowmen, and other personal decorations. Each living unit bathroom has a walk-in or roll-in shower with grab bars. Some living units have a small sink, stove, and refrigerator. Individuals may also use the refrigerator in the AL dining room to store food and they may use the microwave in the lounge area.
Living units are equipped with locking doors, curtains, and other privacy supports. Individuals are given a key to their living unit, if they choose to have one. The maintenance director, director of nursing, assistant director of nursing, and aides each have master keys to individuals' living units. The circumstances in which a master key is used is in an emergency situation, wellness check, the illumination of a call light, and when an individual loses their key and requests to have their door opened. All staff must knock and announce themselves prior to entering the individuals' living units. All staff receive training for using the master key.
• 441.301(c)(4)(iv) 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
• 441.301(c)(4)(iii) Right to privacy, Dignity
• 441.301(c)(4)(vi)(B)(1) Locked entrance doors with only appropriate staff having keys
• 441.301(c)(4)(vi)(B)(3) Individualized living spaces

Ohio has protections in place for waiver enrollees to ensure they understand they have the ability to choose their providers. Individuals work with a case manager, their families, their provider(s), and the setting administrator or other setting official(s) to ensure the setting is the best option to meet their needs. Upon enrollment, individuals residing in the setting are offered the same protections as an individual who is not enrolled on a waiver. Individuals also sign the Ohio Department of Aging's enrollment agreement form which indicates an individual has chosen waiver services in lieu of institutionalization in a NF, including the setting of their choice.

Prior to attending a review, reviewers request evidence from each AL setting administrator, including the resident agreement. This setting confirmed individuals execute or sign a legally enforceable agreement pursuant to ORC 3721.13, ORC 3721.16, OAC 3701-16-07, OAC 5516-44-01, and OAC 173-39-02(C)(4) and (D)(4).
• 441.301(4)(ii) Setting is selected by the individual from among a variety of setting options, including non-disability specific settings
• 441.301(4)(v) Individuals had a choice in selecting their non-residential service providers
• 441.301(c)(4)(vi)(A) Lease or legally enforceable tenancy agreement

Reviewers discussed individuals having a roommate with the administrator and were advised no one at this setting was sharing a living unit. The administrator stated they would discuss this option if an individual was interested and adhere to OAC 173-39-2.16(B)(2)(a)(ii). During the review, reviewers noted no seclusion rooms or restraints used in this setting.
• 441.301(c)(4)(vi)(B)(2) Individuals offered choice of roommates
• 441.301(c)(4)(iii) Freedom from coercion and restraint

Activity calendars are posted throughout the setting and are given to individuals at the beginning of each month. Outings are scheduled at least once a week. Outings include shopping, trips to the art barn, going out to lunch, and going to the movies. Individuals can go on outings with their family, friends, and on their own as they wish. One of the individuals interviewed still drives and prefers to attend activities alone.
If an individual chooses not to participate in an activity in the community, there are activities to choose from at the setting: Bingo, pet visits, crafts, different religious services, and other entertainment. There are books, puzzles, board games, newspapers, movies, and magazines available for individuals to use in a group setting or in their living units if they choose not to participate in group activities. The setting also supports full access to individuals to the greater community by helping them seek employment to work, engage in community life, and manage personal resources, if the individuals desire this assistance.

During the review, individuals were making holiday crafts for a holiday craft bazaar. The proceeds from the holiday crafts help supplement the activities budget. The setting utilizes community volunteers in the activities department, and many have volunteered at the setting for over twenty years. Other individuals were observed spending time with their visitors in their living units and participating in activities alone in the lounge areas.
• 441.301(c)(4)(iv) and (v) How schedules meet peoples' individualized needs
• 441.301(4)(C) Control schedule, activities, and access to food at any time
• 441.301(c)(4)(i) Full access to the greater community, control of resources and services
• 441.301(c)(4)(i) Opportunity to control their own personal resources
• 441.301(c)(4)(i) Individuals have opportunities to seek employment and work in competitive settings
• 441.301(c)(4)(iv) 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
• 441.301(c)(4)(vi)(D) Visitors welcome at any time

Individuals may access transportation, with or without assistance of AL staff. They may also contact their case manager to assist in arranging transportation. The AL has two vans which are used for outings and other transportation needs. The vans are also utilized by the NF. Transportation companies available to individuals are Universal Transportation Systems (UTS), ride sharing, Yellow Cab Taxi, Express + Mobile Transport, Cincinnati Tank Bus, as well as family members and friends. Individuals may use their own cars and park at the setting's parking lot.
• 441.301(c)(4)(iv) and (v) How schedules meet peoples' individualized needs
• 441.301(c)(4)(i) & 42 & 441.301(c)(4)(vi)(C) Proximity to and availability of transportation
• Meaningful Distinction/Separate transportation
o CMS Guidance: Home and Community-based Setting Requirements, June 26, 2015, Heightened Scrutiny, Page 4, Q4

All exterior doors are locked from 8:00 p.m. to 6:00 a.m. Individuals and visitors may use a key pad next to the telephone to enter the building. If they do not have or remember the code individuals and visitors may use the telephone located on the wall outside the first set of glass doors to call the setting's transitional care nurse's station on first floor phone. The phone will ring, and a staff member will open the front door.
• 441.301(4)(C) Control schedule, activities, and access to food at any time
• 441.301(c)(4)(iv) and (v) How schedules meet peoples' individualized needs
• 441.301(c)(4)(i) Supports full access to the greater community
Staff and Training
During the day shift Mondays through Fridays there is an aide who is assigned only to the AL. On evenings and weekends the aide is shared between the AL and NF. The nurses are always shared between the AL and NF. According to the administrator the setting will have AL only staff when the need arises, but due to a low census in the AL they have to share staff between the AL and NF. All staff are trained upon hire and annually. Additional in-service training is done through an online program. Some of the trainings include: Abuse & Neglect, Challenging Behaviors, Dementia HIPAA and Privacy, and Resident Rights.
• Meaningful Distinction between setting and facility
o CMS Guidance: Home and Community-based Setting Requirements, June 26, 2015, Heightened Scrutiny, Page 4, Q4
• 441.301(c)(4)(iv) and (v) Staff training regarding supporting chosen activities

Section Two

Community Integration Observations and Input from Individuals, Family Members/Guardians, and Staff

Three individuals were interviewed without the presence of administrative staff. The questions are a set of standard questions used in a conversational tone with individuals to ensure they are at ease during the interviews. All individuals interviewed said they enjoy living at the setting. One individual said the staff were polite. Everyone reported they are comfortable talking with staff members if they have a concern. Individuals confirmed they are allowed to eat in their living units when they desire, and they are all aware of the alternate food menu. All individuals said there is no assigned seating during meals or activities. Everyone said they keep snacks in their living units or grab a snack from the AL dining room. One individual has suggested to the AL administrator to start a cooking club and the administrator is reviewing the request for potential implementation. Individuals can come and go as they please and stated there are no time restrictions for when individuals must return to the setting. All three said they can lock their living unit. Everyone said staff will knock before entering and will ask permission to enter the living unit. One of the individuals regularly attends resident council meetings. All three manage their own finances, adhere to their own schedules of their choice, and use their own doctor in the community. Everyone stated the activities director comes to each individual residing in the AL for suggestions on the scheduled outings for the next month. Lastly, all three stated they could have visitors without restrictions.

• 441.301(c)(4)(iii) Right to privacy and dignity
• 441.301(4)(iv) and (v) Evidence that people participate regularly outside the facility
• 441.301(4)(C) Control schedule, activities, and access to food at any time
• 441.301(4)(D) Visitors welcome at any time
• 441.301(c)(4)(iv) and (v) How schedules meet peoples' individualized needs
• 441.301(4)(iv) and (v) People participate in activities with others without disabilities/paid staff
• 441.301(4)(i) Interactions with community settings
• 441.301(c)(4)(v) Facilitates individual choice regarding services and supports, and who provides them
• 441.301(c)(4)(iv) 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

Employees were interviewed without the presence of administrative staff. All three said they knock before entering a living unit, wait for a response, and ask for permission to enter. Each staff member interviewed has a master key and they only use it in an emergency situation, to conduct a wellness check, when a call light is on, or if an individual loses a key and they request the door be opened. All three said they receive training upon hire and annually. Staff confirmed individuals follow their own schedule and do not have assigned seats during meals or activities. Staff agreed individuals may ask for a meal to be saved if they miss a meal or staff will call down to the kitchen for a meal replacement. All three said individuals can eat meals in their living unit and can keep snacks in their living units. Staff stated family and friends help with most of the transportation needs, but staff will assist with scheduling other transportation options, like UTS, if the individual needs assistance. Staff report there are several scheduled outings a month and one individual drives to community events and still works. Staff respect privacy by talking to individuals in private and shutting doors when providing care. Staff report the AL setting doors close at 8:00 pm and individuals can use the telephone to call the receptionist desk or use the key pad to enter the setting after hours.

• 441.301(c)(4)(iii) Right to privacy and dignity
• 441.301(4)(C) Control schedule, activities, and access to food at any time
• 441.301(c)(4)(vi)(B)(1) Locked entrance doors with only appropriate staff having keys
• 441.301(4)(iv) and (v) People participate in activities with others without disabilities/paid staff
• 441.301(4)(i) Interactions with community settings
• 441.301(c)(4)(iv) and (v) How schedules meet peoples' individualized needs
• 441.301(4)(iv) and (v) Individual schedules vary to correspond with flow of community activities
• 441.301(4)(iv) and (v) Evidence that people participate regularly outside the facility
• 441.301(4)(iv) and (v) People participate in activities other than those organized by the provider
• 441.301(c)(4)(iv) and (v) Staff training regarding supporting chosen activities
• 441.301(c)(4)(iv) 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

Section Three

Additional Evidence

The following evidence has been compiled that demonstrates the setting is integrated in and supports full access of individuals receiving HCBS into the greater community.

The state has considered all of the following to demonstrate the setting is integrated and supports full access of individuals receiving Home and Community-Based Services into the greater community. Where the state has identified deficiencies, remediation has been requested.

- Abuse Policy
- Activity Calendar
- After Hours Policy
- Alternative Food Menu
- Appeal Policy
- Employment Policy
- Floor Plan
- Food Menus
- Grievance Policy
- Letters of Support
- Master Key Policy
- Organization Chart
- Residential Agreement
- Residential Council Minutes
- Residential Handbook • Residential Interviews
- Residential Rights
- Staff Interviews
- Transportation Policy
- Visitation policy

Section Four

Public Comments Summary

Public Comment Period
Summary of Public Comments Received

Summary of the State's Response to the Public Comment Received