



State of Wisconsin  
Department of Health Services

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Scott Walker, Governor  
Kitty Rhoades, Secretary

June 18, 2015

Sylvia Mathews Burwell, Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Burwell:

The purpose of this letter is to request your consideration under heightened scrutiny status for the planned construction by St. Croix County of a community based residential facility (CBRF) on the grounds of their existing public nursing facility. The Wisconsin Department of Health Services supports the arguments that their proposed facility would be compliant with the intent of the regulations governing settings for the provision of home and community-based services.

Attached, please find a letter from St. Croix County which provides information about the County's proposal to construct the CBRF, along with their business plan and a related addendum.

The Department has invested considerable resources over the past three years, working with a wide array of stakeholders to improve our collective capacity to better support persons with dementia so they may live in settings integrated in their communities with the dignity and respect they deserve.

Through our dementia initiative, and in collaboration with stakeholders, we are redesigning the state's dementia care delivery system. Part of the redesign effort is to ensure that care options are sufficient and appropriate to meet the range of needs of people with dementia and that there is sufficient service and facility capacity, to respond to people whose behavior presents a safety risk to themselves, their caregivers and others where stabilizing in place is not possible. The ability to leverage facilities, such as this, assists the Department in furthering these goals.

The Department fully supports St. Croix's plans as we believe the proposed model is consistent with this objective and the goal of community inclusion. The CBRF would create critically needed capacity for high quality dementia care in the St. Croix County area and we believe the business model reflects the culture of a dementia capable community that we want to support and further develop.

Secretary Burwell

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Since CMS has yet to issue guidance related to the heightened scrutiny process, we do not know what evidence or level of detail CMS requires for its review, or the criteria CMS will use in making its determination. If CMS does not consider the information submitted with this request sufficient, please detail what additional information is needed or what types of modifications the provider would need to make in order to meet CMS' requirements.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kitty Rhoades".

Kitty Rhoades  
Secretary

cc: Brian Shoup, Administrator, Division of Long Term Care  
Margaret Kristan, Director, Bureau of Managed Care

Attachments (3)



Ms. Margaret Kristan Bureau of Managed Care  
Division of Long Term Care  
1 West Wilson Street, Room 518  
Madison, WI 53707

Re: St. Croix County

Dear Ms. Kristan:

As we have discussed over the past few weeks, St. Croix County is in the process of developing a replacement nursing home for its current facility located in New Richmond, Wisconsin. The path to this development has been long, but we are excited for the community and for the current and future residents served who will be provided a state of the art facility that will provide a homelike and community integrated setting for the frail elders of our county.

In furtherance of offering the best setting for our community, our plans include the addition of two Community Based Residential Facilities (CBRFs) to provide a continuum of care opportunity that does not exist with our current free standing nursing facility (the "Project"). Significant decisions about this Project, including final bonding approval is upcoming, however, the application of the January 16, 2014 Final Rule implementing the Home and Community Based Services (HCBS) "setting" requirements has created some concern regarding this project. Specifically, in order to best serve the residents we propose to site the CBRFs on the on the grounds of, and physically connected to, the nursing home.

As you can see from the provided designs, there are two distinct CBRFs associated with the Project. The larger of the two is envisioned to serve a traditional frail elderly population, with the client groups to be served to include frail elder, dementia, and physically disabled. This CBRF is proposed to have 40 beds and will be on the grounds of the nursing home. While the building will be physically distinct from the nursing facility, it will be connected via a walkway to allow for convenient access to certain shared services, notably the main kitchen and laundry services. This CBRF is denoted on the attached plans as CBRF 1. St. Croix County is a public entity, the placement of CBRF 1 on the grounds of the nursing facility, subjects this facility to the heightened scrutiny of the HCBS rule.

The second CBRF will be smaller, at 10 beds, and will be physically connected to the nursing facility. It will not be "within" the nursing facility; rather, it will be a distinct section of the building attached to the nursing home. See area denoted as CBRF 2 on the attached plans. It is envisioned that this CBRF will serve exclusively individuals with Alzheimer's and related dementias, particularly those individuals whose needs cannot be met in traditional nursing home

or memory care CBRFs due to challenging behaviors associated with their disease progression. Consistent with the county's mission and the direction of the DHS dementia redesign efforts, we are anticipating this smaller CBRF to serve as a Dementia Crisis Unit, and will be designated by the county as a Protective Placement setting to offer the specialized, individual care to those who require specific and dedicated services. Again, St. Croix County is a public entity, the placement of CBRF 2 on the grounds of the nursing facility, subjects this facility to the heightened scrutiny of the HCBS rule.

As the proximity of the CBRFs will be such that it would appear that the "heightened scrutiny" of §441.710 (a)(2)(v) will apply, we request a review of our proposal at this time given the need for certainty for planning purposes. The ability for these two facilities to be able to serve Medicaid eligible individuals is very important to the vision and mission of the county. As elected officials, the public and other stakeholders will have a voice in the project, if the CBRFs were to be precluded from offering services to a Medicaid waiver population, this will certainly impact the decision-making process of how and whether the Project will incorporate the CBRFs envisioned to provide continuity of care and aging in-place services.

Given that the CBRF 1 will be on the grounds of a publicly operated nursing facility, and CBRF 2 will be more closely connected with the same nursing facility, it would appear that the HCBS rule requires the DHHS Secretary to determine through heightened scrutiny that this setting does not have the qualities of an institution and that it has qualities of home and community based settings in order to be able to serve individuals served under the Medicaid waiver programs. As such, we are providing the following to demonstrate to the DHS as to why both CBRFs should be recognized as settings that will have qualities associated with a home and community setting.

Given the planning necessary related to this Project, it is imperative that St. Croix County provide a review at this time as to the CBRFs status with regards to the HCBS "setting" requirements. We strongly believe that both CBRFs should be viewed as a setting appropriate for service to those members of our community that participate in current and future Medicaid waiver programs subject to the HCBS rule.

Before delving into the specific attributes of the CBRFs, it is important to recognize the overall Project, as it impacts the qualities of the CBRFs. Specifically, the HCBS setting requirement, in many respects, seeks to assure that individuals served and funding does not go towards "institutional" settings, with nursing homes being identified as a setting that is not to be considered an HCBS setting. Certainly, the traditional, medical model nursing home would be hard pressed to demonstrate home and community based qualities; however, the design, vision and program of the nursing home associated with this Project will be very different than the traditional nursing home design. The Project calls for the creation of the nursing home using the person-centered neighborhood model. The physical design will be further enhanced by the continuation and expansion of nursing home culture change efforts. This request is not seeking recognition of the nursing home portion of the Project to be recognized as an HBCS setting, however, the attributes of the nursing home itself affect the qualities of both the CBRFs, as the CBRFs will not be associated with a facility that is "institutional." This bears significantly on our request for recognition of CBRF 2, given its greater proximity to the nursing facility building.

It is also important to review this request in the larger context of the state's long history of HCBS services, and the structure and protections that permeate our Medicaid waiver programs. Most notably, under all the affected waiver programs, there is beneficiary involvement in the setting and service selection, as well as choice, autonomy, and protections. Individuals that would access our CBRFs will not have this setting imposed upon them; rather they will have options available through the patient centered planning process that exists currently, and as enhanced, in Wisconsin's waiver programs.

Below are the qualities and attributes associated with the CBRFs that we feel strongly demonstrate that these facilities will be home and community settings, thus should easily pass the "heightened scrutiny" of the HCBS setting requirement.

### **1. Regulatory Requirements for CBRFs Address Community Setting and Rights**

As the proposed CBRFs will be regulated by the applicable provisions of Wis. Stat. Ch. 50 and Wis. Admin. Code Ch. DHS 83, the facilities will conform and adhere to the expectations therein. As Wisconsin has a long history of incorporating non-institutional settings within the CBRFs, the requirements for licensure and operations is reflected in the regulatory structure of CBRFs. In fact, compliance with the regulations alone assures the incorporation of many of those qualities associated with a homelike and community based setting. Importantly, DHS 83 is not a regulatory dictate carrying forward antiquated concepts, rather, this chapter was originally designed to provide an alternative to "institutional" settings, and importantly has been through a major revision several years ago which incorporated even more current resident-centered concepts. These included the physical environment, safety and building design requirements of DHS 83, which require the facilities to offer many of the home and community like qualities. As you can see from the plans provided, the Project considers the DHS 83 design requirements as simply a minimum expectation, and the Project design calls for elements and qualities that will enhance the homelike environment of the resident living and community space.

As importantly, the resident rights and protections sections of DHS 83 address most, if not all, of the rights expectations contained within the HCBS rule. The regulatory requirements that will be followed are addressed further in the sections below.

### **2. Physical Location and Design**

We appreciate conceptually the concerns within the HCBS settings requirements that create the presumption that a setting connected to a nursing facility or on the grounds of a public institution is not "home and community-base," and further appreciate the historic concerns, particularly related to the intellectually disabled population, of this presumption; however, we feel that the physical location of the facilities will actually *increase* the home and community qualities for the elders to be served. Given the broad categories of individuals served by the various affected waiver programs, we understand the need to create general rules to assure that all individuals are served in the most appropriate setting, but the strict application of this setting requirement, when applied to the frail elder population, can create the unintended consequences of limiting the development of "community" or the ability to "age in place" when applied to the population to

be served at the proposed CBRFs (and other facilities with similar locations in proximity to a nursing facility.)

The grounds of the proposed development will not be isolating to the residents served; in fact, the development of the campus is in proximity to an area that will see mixed used development in the coming years. Provided with this request is documentation of the city planning map for the area. In the coming years, we envision this Project to further stimulate development in the area that will further enhance the integration of our facilities into the New Richmond community. While not sited in a “residential” area, there is residential housing across the street from the property of the facilities, with future development likely in this small, but growing community. New Richmond, WI is traditionally a quiet, rural community, with a significant portion of the population living distances from their closest neighbor. It is has however seen significant growth in the past decade, as the county itself is the fastest growing community in the state given its proximity to the expanding Minneapolis/St. Paul metro area. While growth is expected to continue, many of the residents to be served will come from the traditional rural population. For some, this Project location will be more population dense than from where they lived for most of their lives.

With CBRF 2 being new construction, it will be built to current code, including ADA requirements. CBRF 1 will be renovated and all updates will be to current code, including ADA requirements. Given the population to be served, the design specifically addresses the frail elder population and will not include any mobility obstructions.

### **3. Community Integration:**

The CBRFs will offer options for community integration, both within the facilities and within the community at large. While options will be available for the residents to be served, the extent such are accesses will be largely dependent on the residents’ preferences, abilities, and clinical conditions. Residents will have access to regular shopping trips, day trips, religious services (both internal and external). Regular outings from the campus will include at least weekly shopping trips to the local stores, dining out at the local restaurants at least 1-2 times per month, Senior Citizen 500 card club, that some resident choose to belong, includes monthly trips to the local library. Additional episodic and recurring events will be provided, driven by the expressed needs and preferences of the residents and families served.

While New Richmond does not have a public transportation system, there is a very convenient and subsidized transportation/taxi service that includes handicapped accessible vehicles, so even those less mobile residents are able access this service at their convenience. Assistance with scheduled trips, as well as those individually selected by residents, will be provided by the CBRF staff who will have access to the county owned handicapped accessible van.

In addition residents have freedom to access the greater New Richmond community, the campus regularly serves as the hub and host of community involvement that the residents will be able to access at their choosing. This includes the many programs in which community members comes to the campus, such has hosting the Ladies Aid, bible study and prayer groups, bi-weekly church services from our local churches. Intergenerational programming and opportunities include many

community youth and school programs. The campus also hosts community support groups for the visually impaired, Alzheimer's Families and Grief support, as well as multiple fund raising and educational programming throughout the year.

Residents of the CBRFs will be fully integrated into the community at large. Many may actually be afforded greater opportunities for involvement than what they experienced before coming to our campus, given the rural population served, which can be particularly limiting for individuals as they become dependent more on others.

#### **4. Residents Rights**

Residents served in the CBRF will have extensive rights that will be respected to the utmost degree. With the campus being operated by the county itself, the leadership and stakeholders are uniquely diligent in assuring that the residents' rights are respected. In addition to compliance with the regulatory expectations monitored by state officials, the public employees and county board add an additional layer of oversight protection.

As required by regulations, all CBRF residents will have a written, legally enforceable agreement for residency. This residency agreement will be consistent with DHS 83 requirements, which will clearly identify the term of the agreement; the cost for any and all charges (any changes to which require at least 30 days notice); a description of the premise; and importantly, the residents' rights as to eviction/discharge conditions and appeal rights. While the DHS 83 discharge protections are not directly aligned with Wisconsin's landlord tenant law, it does provide significant limitations regarding the basis for discharge/eviction, as well as the process to challenge a discharge. In several respects, the DHS 83 protections are greater than those found in the state's landlord/tenant law, particularly in that there are limited and enumerated conditions under which a CBRF may discharge an individual, which are more narrow than Wisconsin's landlord/tenant law (which was recently revised affording fewer tenant protections).

Each resident unit will have lockable entrance doors. Those residents, for whom it is determined safe and in their best interest, will be afforded the choice to have the ability to lock their own unit and have their own keys. For safety, and with the understanding and acknowledgment of the resident, staff members will have keys to units also. Regardless of whether a resident has their own lockable unit or not, facility policy, consistent with privacy expectations, will be that all staff must knock and receive permission to enter the resident's living space.

Residents served in CBRF 2, which will be dedicated to those with dementia, will be assessed and it is anticipated will be less likely to be able to, based on cognitive level, have the preference or even ability to safely have their own lockable unit, yet the units will be designed to allow for this.

The programming and design of the facilities will afford residents privacy and freedom within their living space. As all units are designed to be private units, therefore residents will not need to have input on their choice of roommates, as there will be none. While units can be furnished, residents will have the ability and will be encouraged to furnish and decorate and personalize their unit. Clearly, some safety and damage protection limitations will be necessary, but these

will be explained to residents prior to admission and will be contained in the residency agreement and resident handbooks.

Resident units will be equipped with phone access, wireless internet access and cable television, so residents will have individual autonomy in access to communications. Privacy will be afforded to residents in such communication and information access.

Rights of residents will be prominently provided to all upon admission and will be posted for all to see. Staff training on resident will be provided, consistent with the DHS 83 requirements. All staff will be expected to know and respect the rights of residents. Failure to respect such rights will be reported both internally, and externally, consistent with state law requirements.

## **5. Person's Experience**

As required by regulation, residents' needs and preferences will be assessed in the development of individualized service plans. Residents will be afforded many leisure opportunities and activities, which are required to be based upon the individual preferences. The assessment process will identify those preferences of residents, with programming developed to address preferences of both the individual residents and those of the CBRF community as a whole. Participation will be encouraged but not required. Scheduled/calendared events will be prominently displayed, but programming will also emphasis the particular preferences of individual residents. Options will not be limited to only "group" activities. This is consistent with both the facility philosophy, as well as regulatory expectations. A resident's schedule will be largely driven by their preferences.

Each unit in CBRF 1 will have space for residents to store food of choice. Small refrigerators will be in the units for personal storage based on resident choice, with the larger units providing for microwaves.. All residents will be able to furnish their units, should they wish to have additional food storage and preparation. More importantly, there will be 24 hour access to food and snacks for all residents. Common area preparation and dining will be primary means for breakfast, lunch and dinner, with menus based upon the identified needs and preferences of the residents served. With CBRF 2 serving and advanced dementia population, additional structure and assistance with dining and food service will be necessary, but food options will be available at all times to meet the individual needs of residents.

Laundry services will be provided to residents through our common laundry facilities, but residents will have access to washers and dryers if they desire.

While privacy, if so desired, will be available to residents via their individual unit, the design of both CBRFs provides common space for resident use at times of their choosing. Such space will include a sewing or quilting area, craft area, day room for socialization and activities. Also provided will be a sun room for relaxation and socialization as well as a large and private dining and living room area. A large wellness area that will be used for exercise and education. Space will be available for parties and social events per residents' choice, and will be in excess of the square footage requirements of DHS 83.




Visitors will be encouraged. To respect the privacy and quiet enjoyment of all residents, certain rules and limitations, consistent with regulatory requirements, will be in place for visitors; however, access will be available at all times. Residents' ability to come and go from the CBRFs will be based upon the person-centered care planning process. Those that have the preference and ability will be able to come and go as they please. We will ask that residents let us know when they are leaving and expected return, but there will be no specific "curfew" rules.

Given the need for protection of the residents served in CBRF 2, there will be greater security systems in place for these individuals with dementia. Delayed egress doors will be in place to prevent wandering, but freedom of movement within the facility will not be restricted. All residents served in CBRF 2 will have a legal decision-maker (either guardian or health care agent), who will be involved in the patient-centered care planning process. Residents will still however, to the extent possible based on their disease progression, be afforded the ability to participate in the care planning process. While CBRF 2 will require greater limitations, the care planning process within the waiver program, along with state laws that limit surrogate decision-maker authority on placement, will dictate whether this location will be least restrictive environment for the individuals served.

Restrictive measures for individuals will not, and cannot, be used in CBRF settings except in very narrow situations. Regulatory dictates alone require prior approval for the use of restrictive measures, such as physical or chemical restraints. We do not anticipate the use of any such restraints, as our nursing facility already is "restraint free" and this philosophy will certainly extend to the lower acuity individuals to be served in the CBRFs.

As you can see from the above and attached materials, the two CBRFs will have the qualities of a home and community setting. While the proximity to a nursing home or location on public grounds might in some instances be limiting of "community" for residents served, the Project under development will actually enhance the home and community attributes of the two CBRFs. As there is a critical need to have advance acknowledgement that these two facilities will be recognized as settings eligible for participation in the Wisconsin Medicaid waiver programs affected by the HCBS requirements, we request review and recognition that these facilities will not be considered to have the qualities of an institution, but rather have the attributes and qualities of a home and community-based setting.

Should you require additional information with regards to this request, please contact me directly.

  
Sandy Hackenmueller, NHA, RN, WCC  
Administrator  
St. Croix Health Center  
1445 N 4<sup>th</sup> St  
New Richmond, WI. 54017  
715-246-8229

**Comprehensive Plan  
Addendum**

**Amendment Date 2-28-2013**

The following addendum is being made to the City of New Richmond Comprehensive Plan adopted in June 2005. The addendum as outlined in this document replaces those sections of the 2005 Plan where terms have been outlined and or a conflict exists to the 2005 plan. Additionally the terms outlined in the addendum as well as those underling policies shall be the basis of directions and policies throughout the New Richmond Planning Area.

The changes to the Comprehensive Plan cover a broad range of topics, although primarily reflected in Exhibit 1 map labeled Highway 64-65 Corridor Land Use & Thoroughfares. The addendum has implications to land use, zoning, subdivision design, transportation systems, storm water management, conservation subdivision, and intergovernmental cooperation policies.

The main changes to the City of New Richmond Comprehensive Plan are the Highway 64/65 Corridor. This is being done as a means of "pulling" travelers and tourists to the downtown area. Therefore it is proposed that the Highway 64/65 Corridor include a mix of uses with design enhancements that create a multi-modal, professional neighborhood. Included in this area are new proposed land uses expanding and replacing that of the 2005 plan.

These expanded land uses are low density residential, medium density residential, commercial, mixed-use commercial and mixed-use industrial which integrate the following policy directions:

- ☐ Incorporation of building design features. A mix of architectural standards that encourage long life cycle buildings of brick, block, steel, and similar materials astatically integrated into the district. Avoiding pole style built structures.
- ☐ Establishing direct connections and limiting negative impacts of dead-end streets and long cul-de-sacs.
- ☐ Conservation subdivision practices with the use of engineered swales, ponds, & appropriately sized impervious surfaces when and where needed. For example decreasing parking standards and creating a maximum standard.
- ☐ Pedestrian connectivity standards with the establishment of sidewalks, bicycle and connectivity plans.
- ☐ Establishment of form and function zoning standards.
- ☐ Minimizing impacts of light thru development of photometric standards eliminating negative aspects of light.

The *Land Use* updates planed can best be understood by viewing the map attached as exhibit 1 labeled Highway 64-65 Corridor Land Use & Thoroughfares and the revised categories that follow below. Whereas the map only reflects a portion of the New Richmond plan area it will later be developed for the entire community and has impacts throughout.

#### **Land Use City of New Richmond Highway 64/65 Corridor**

- ☐ Low Density Residential- This classification provides for development of one to three dwelling units per acre. Low Density Residential is comprised primarily of single-family detached dwellings.
- ☐ Medium Density Residential- Dwelling types within this classification include single-family residential and multiple unit dwellings. Medium density residential includes a

density range from three dwelling units per acre to four dwelling units per acre. Common open space and light-imprint design standards are required for this land use.

- ▣ Commercial- This use is intended to serve as a Gateway District within the New Richmond area. This commercial land use includes a mix of retail uses. Uses within this general commercial area include local shops as well as regional retailers and super-regional retailers. Higher design standards are required for this land use. As secondary use Medium Density Residential will be allowed as a conditional use.
- ▣ Mixed Use Commercial- This mixed use is intended for a mix of retail, service office and public use. Light industrial is also allowed as a secondary use within this district. Higher design standards will be required within this district.
- ▣ Mixed Use Industrial- This mixed use is intended for a mix of light manufacturing, processing, distribution centers and assembly, and warehouse facilities. Mixed use commercial is also allowed as a secondary use within this district. Higher design standards will be required within this district.
- ▣ Parks/Conservation- This area is intended to preserve the natural state of scenic areas in the community, serve as places to protect and recharge water resources, and provide for both active and passive recreational resources for the area.

Where conflicts exist between the 2005 Land Use Plan and the new addendum Land Use map designation the addendum designations shall supersede all policy decisions and direction.

*Issues and Opportunities* occurring at this time in the New Richmond area which are bringing about the modifications to the Plan are:

- ▣ Bridge Construction for Hwy 64 connection to Twin Cities Highway system over the St. Croix River announced to be complete in three years or 2016.
- ▣ Boundary Agreement between Town of Star Prairie & City of New Richmond approved by the State of Wisconsin in December of 2012.
- ▣ Substantial land availability and transfers within New Richmond planning area, ie St. Croix County Farm, Francois Family Farm, Lakeside Foods, Wickenhauser,
- ▣ New Richmond is integrating the development of a pedestrian system into the transportation plan officially mapped and adopted in 2007.

An *Intergovernmental Cooperation* milestone achieved is the adoption of a Boundary Agreement with the Town of Star Prairie. The agreement included conclusions on how certain properties, currently planned to stay outside the City and some to be attached to the City now in the urban reserve will be transitioned and access fresh water resources. A planned step will be the City of New Richmond working with the Urban Reserve Committee to establish zoning for the Urban Reserve, set to transition into the City. This, as well as the addendum, will enable more accurate planning of utility resources.

The *Plan implementation* for the addendum is for the City to develop zoning ordinances as they relate to the new categories of the land use plan. The addendum land use changes and zoning is planned in time to be utilized for all of the New Richmond plan area. The City also plans to put in place a form based code to obtain a more euclidean based or shape and form based code rather than the current use based code.

Other implementation steps planned are to work with the three surrounding towns to explore what shared rational exist for the development of boundary agreements similar to that done with Star Prairie. They are the towns of Stanton, Erin Prairie and Richmond.

# Highway 64/65 Corridor Land Use & Thoroughfares

City of New Richmond, Wisconsin  
February 27, 2013

- EXPLANATION**
- Land Use Proposed 2013**
- Parks/Conservation
  - Low Density Residential
  - Medium Density Residential
  - Commercial
  - Mixed Use Commercial
  - Mixed Use Industrial

- Thoroughfares**
- Existing
  - Future

- City Limits
- Future City Limits
- ETZ Boundary (1.5 miles)
- Highway 64 Corridor

- Surface Water
- Wetland

