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HCBS Implementation Update – Implementation from Residential Provider Perspective

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- A. The HCBS Final Rule includes additional requirements for provider-owned or controlled home and community-based residential settings. The Centers for Medicare & Medicaid Services (CMS) has indicated that these additional requirements include the following:
- The individual has a lease or other legally enforceable agreement providing similar protections;
 - The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;
 - The individual controls his/her own schedule including access to food at any time;
 - The individual can have visitors at any time; and
 - The setting is physically accessible
- B. CMS has also indicated that any modification to these additional requirements for provider-owned or controlled home and community-based residential settings must be supported by a specific assessed need and justified in the person-centered service plan.

CMS has provided the following additional guidance regarding plan modifications:

Documentation in the person-centered service plan of modifications of the additional requirements includes:

- Specific individualized assessed need;
- Prior interventions and supports including less intrusive methods;
- Description of condition proportionate to assessed need;
- Ongoing data measuring effectiveness of modification;
- Established time limits for periodic review of modifications;
- Individual's informed consent;
- Assurance that interventions and supports will not cause harm.

Please see other side.

C. Key factors listed in Michigan's Statewide Transition Plan in determining whether the residential setting has home and community-based characteristics are as follows:

- Do individuals live and/or receive services and supports in a setting where there is regular (more than once per week) opportunity for contact with people not receiving services?
- Can individuals choose to come and go from the home when they want?
- Can individuals move inside and outside the home when they want?
- Is accessible transportation available for individuals to make trips to the community?

D. Joint Guidance Document (JGD) dated May 15, 2017 from Michigan Department of Health and Human Services (MDHHS) and Department of Licensing and Regulatory Affairs (LARA)

The JGD clarifies various compliance issues related to the HCBS Final Rule including the following:

- Visiting hours are not allowed.
- House rules are not allowed.
- Choice of providers requires evidence that the individual chose this setting from among a variety of other settings. In addition, there must be evidence of the individual's awareness that by choosing to live in this setting the individual would be required to accept services from the provider and agreed to this condition.
- Freedom of movement includes that individuals must be able to move freely inside and outside of the setting with or without support as needed.

Note: This handout is intended to provide a general overview of the HCBS Final Rule requirements for residential settings. Various resources should be reviewed for more information on compliance with the HCBS Final Rule including the MDHHS website.