

Joint Guidance Document

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PRESENTATION OVERVIEW

- Review of the Joint Guidance Document developed collaboratively by MDHHS and LARA. JGD advises providers about the HCBS requirements identified by the Federal Government (CMS) and how departments of the state of Michigan are working together to ensure requirements across the state work together and do not contradict one another.
- Overview of Person Centered Planning process.
- Overview of Heightened Scrutiny process
- Review of tools available to support providers.

TERMS AND CONDITIONS OF THE JGD

- Lockable doors
- Visiting hours
- Residency Agreement / Landlord Tenant Law
- House Rules
- Choice of Providers
- Freedom of Movement
- Choice of Roommate
- Access to Income
- Modifications
- Person Centered Planning

Purpose of the Joint Guidance Document (JGD)

- The purpose of the Joint Guidance Document is to ensure that licensing rules and the HCBS requirements are aligned and that individual providers can follow the guidelines established by LARA and still meet the HCBS requirements outlined by the Center for Medicaid Services (CMS).
- CMS required states to review their policies across systems to ensure there were no conflicting rules, laws or requirements.
- Because there were some rules set down by LARA that either conflicted with or were silent on aspects of HCBS the Behavioral Health and Development Disabilities and the department of Licensing have developed guidance related to these conflicts and how these areas should be addressed

Lockable Doors

- The Final Rule requires that individuals have the ability to lock their bedroom and bathroom doors.
- If the individual lives in a private suite with the bathroom attached to the bedroom a lock on the outer bedroom door is sufficient.
- This is a matter of privacy and dignity
- Only appropriate staff should have access to the keys to these doors.
 - Keys should not be kept in a public area where anyone can access them.
 - Agreements should be made with residents regarding under which conditions the keys will be used
- Doors have to have the type of latch that can be opened with one hand in one motion that allows exit from the inside even when locked

Visiting Hours

- Visiting hours are not allowed.

House Rules

- House rules are not allowed

Access to Income

- Individuals must have control of their own resources including personal funds
- A provider may offer a safe place to store money but the individual must have choice about using it and be able to access it at any time they wish.

Choice of Providers

In the event that the provider of services is also the owner of the setting (provider owned and controlled) the following applies:

- Evidence that the individual chose this setting from among a variety of other settings.
- There must be evidence that the individual was aware that if they chose to live in the setting they would be required to accept services from the provider and agreed to this condition
- Evidence that the individual was provided with information regarding how to choose another provider and the array of options available should the individual want to change settings.
- Evidence that the individual is aware that they can use private funds to purchase other skilled services such as PT, OT etc.

Freedom of Movement

- Individuals must be able to move freely inside and outside of the setting with or without support as needed.
- Individuals should have free access to public areas of the home including the kitchen, living room, laundry facilities.
- There are no house rules or requirements related to curfews or when an individual can come or go.
- There are processes in place to ease access to the community at large including transportation options.
- There are no gates, barriers, or locked doors (outside of private sleeping areas) to restrict the movement of individuals around their home setting.

Choice of Roommate

- Choice of roommate may be impacted by the number of open rooms available in the setting in which the individuals chooses to live. There should be evidence of the following as is applicable to the situation:
- Individuals should be informed of limited roommate choices and what their choices are before agreeing to move in.
- Individuals must be made aware of the process to request a different roommate if they wish to do so.
- Individuals have to be informed that they can decide they want a private room, if their resources allow, and that they can move from the residence if they would like to do so in order to secure a private room.
- Individuals must be informed that they can change heir minds about their roommate at any time.

Resident Care Agreement

- An agreement by the licensee to respect and safeguard the resident's rights and to provide a written copy of these rights to the resident.
- An agreement between the licensee and the resident or the resident's designated representative to follow the home's discharge policy and procedures.
- A description of how a resident's funds and valuables will be handled and how the incidental needs of the resident will be met.

Access to Income

- The HCBS Final Rule requires that individuals be able to control their own resources including personal funds.
- State licensing rules do not permit a licensee to restrict access to earned income. A provider may offer a safe location for a participant to store individuals funds, but the provider must make provisions for individuals to access their funds when desired as part of this arrangement.

Modifications to the HCBS Final Rule

In order to be considered home and community based settings and providers must meet guidelines as identified by CMS. Any modification must be outlined in the individuals person centered plan.

Health or safety needs are the only acceptable justifications for restricting individual rights and freedoms and must follow these guidelines:

- Identify a specific and individualized assessed safety or health related need
- Positive interventions and supports used prior to modification
- Less intrusive methods tried
- Describe the condition that is directly proportionate to the specified need
- Regular collection and review of data to review effectiveness
- Established time limits for periodic review to determine if modification is still needed
- Informed consent of the individual
- Assure interventions and supports will cause no harm

Person Centered Planning

- CMS requires that the person centered planning process be utilized with all waiver participants.
- The person centered plan will:
 - a. Focus on the person's life goals, interests, desires, choices, strengths and abilities as the foundation for the PCP process
 - b. Identify outcomes based on the person's life goals, interests, strengths, abilities, desires and choices
 - c. Make plans for the person to achieve identified outcomes
 - d. Determine the services and supports the person needs to work toward or achieve outcomes
 - e. After the PCP process, develop an Individual Plan of Services (IPOS) that directs the provision of supports and services to be provided through the community mental health services program

Person Centered Planning cont.

- The person's choices are implemented unless there is a documented health and safety reason that they cannot be implemented. In that situation, the PCP process should include strategies to support the person to implement their choices or preferences over time.
- Modifications, as described previously, must be outlined as required in the participants "individualized plan of service".

Corrective Action Planning

- Corrective Action Plans (CAP) will be required for settings who have areas of non compliance that can likely be corrected.
- Providers will receive notification that identifies any area(s) where corrective action is required.
- The provider will then have 30 days to submit a CAP to the regional HCBS lead who will review and approve or deny the plan.
- If a CAP is denied the provider must redevelop and resubmit the plan.
- Once approved CAPs are monitored for completion by the PIHP.

Corrective Action Planning cont.

- When successfully completed the PIHP notifies MDHHS that the provider is in compliance with the HCBS rule.
- The initial notification the provider receives from the PIHP HCBS lead will provide links to provider readiness tools that will help providers make required changes.
- These tools are located at the [MDHHS HCBS web page](#):

Heightened Scrutiny Process

- The first step in the Heightened Scrutiny (HS) process is to determine if the individual who receives services/supports wishes to continue in the setting. If the individual does not then the HS process will end and transition planning will begin.
- If the individual does want to remain in the setting the provider will be asked does s/he wish to apply for HS in order to be able to continue to provide the support for HCBS participants
- If both the provider and the participant wish to continue the provider will receive information related to evidence they must provide to MDHHS to be considered for review and for possible submission to CMS who makes the final decision.

Heightened Scrutiny Process cont.

- Evidence for HS is gathered by MDHHS or its designated entity.
- Once this evidence has been collected it will go through a review process.
- Those settings that MDHHS believes **are** HCB will be submitted to CMS who will make the final decision regarding the status of the setting.
- If CMS finds that the setting is HCB the setting will be required to remedy any areas of noncompliance with the rule.
- If CMS finds that the setting is **not** HCB the PIHP and local CMHSP will begin to develop transition plans with the individual receiving services/supports to transition the individual to HCB complaint settings.

Evidence Table Heightened Scrutiny 1 Institutional

Why is the setting presumed not to be home and community based?

The setting is located: In the same building as a publicly or privately owned facility that provides treatment –OR- On the grounds of or immediately adjacent to a public institution

What the evidence must demonstrate:

- There is a meaningful distinction between the facility or institution and the HCBS setting such that the setting is integrated in the community and supports full access for individuals receiving HCBS

How the evidence can demonstrate this:

- Interconnectedness between the facility and the HCBS setting, including staff and finances does not exist or is minimal. Residential license status- zoning requirements. ***Documentation that supports the existence of separation between the institution and home; financial and administrative***
- Any facility /institution staff that are occasionally assigned to support HCBS staff have the same training and qualifications. ***Staff qualifications that indicate training in HCB services and support. Evidence of different staff for each location or cross trained.***
- Participants in the setting do not have to rely primarily on transportation or other services provided by the facility or institution, to the exclusion of other options. ***Evidence that residents do not rely primarily upon institution staff for transportation***
- The HCBS setting and facility have separate entrances and signs (if setting is located within a facility) ***Photographs of residence-evidence of separate entrances and signage***

- The setting is integrated in the community to the extent that a person or persons without disabilities in the community would not associate the setting with the provision of services to people with disabilities. ***Photographs of residence. Evidence that the setting is in the community among other private residences.***
- The individual participates regularly in typical community activities outside the setting to the extent that the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and /or involving only paid staff. ***Evidence that residents are encouraged and supported to engage in activities in the larger community; individual schedules, progress notes etc.***
- Services to the individual, and activities in which the individual participates, are engaged with the broader community. ***Evidence that residents are encouraged and supported to engage in activities in the larger community; individual schedules, progress notes etc. from most recent 30 day period***

Evidence Tables Heightened Scrutiny –Isolation

Table 2

Why is the setting presumed not to be home and community based?(Isolation)

The setting appears to have:

The effect of isolating individuals receiving home and community based services (HCBS) from the broader community of individuals not receiving HCBS

What the evidence must demonstrate:

The setting does not isolate participants from the broader community of individuals not receiving HCBS.

How the evidence can demonstrate the setting does not isolate:

- The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities. ***Photographs of residence. Individuals receiving HCBS live/receive services in the same area of the setting as individuals not receiving Medicaid HCBS. The setting is in the community among other private residences not providing services to HCBS participants exclusively.***

- The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff; community activities should foster relationships with community members unaffiliated with the setting. ***Evidence that: individuals come and go at will, that visitors have been present at regular frequencies, the setting is in the community among other private residences not providing services to HCBS participants exclusively. Individual participants have varied activities based upon their interests and abilities. Individuals have access to materials to become aware of activities occurring outside of the setting***

Additional resources

The following documents are available on the [MDHHS HCBS webpage](#)

- Residential provider readiness tool
- Non residential provider readiness tool
- Joint guidance document
- State of Michigan's HCBS transition plan
- Contact information

Contact Information

Questions related to the HCBS Final rule and state of Michigan requirements should be directed to the CMHSP staff working with the individual.

If further information is needed you may contact the regional HCBS PIHP lead. Contact information for the leads can be found at the [MDHHS HCBS web page](#) .