STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

GRETCHEN WHITMER
GOVERNOR

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DIRECTOR

DATE: May 17, 2024

TO: Executive Directors of Prepaid Inpatient Health Plans (PIHPs) and Community Mental Health Services Programs (CMHSPs)

FROM: Belinda Hawks, MPA
Director
Adult Home and Community Based Services Division

SUBJECT: Home and Community Based Services (HCBS) Final Rule Requirements Regarding use of Restrictions and Modification of Rights

The purpose of the communication is to clarify the position of the Michigan Department of Health and Human Services (MDHHS) related to the requirements of the Home and Community Based Services (HCBS) Final Rule regarding the use of restrictions or the modification of a Medicaid beneficiary's rights. The rule identifies that Medicaid beneficiaries shall enjoy the same rights and freedoms as non-Medicaid beneficiaries.

It is our intent to ensure that any restriction of a person's rights is supported through the adherence to a person-centered planning process and is present in the Individual Plan of Service (IPOS).

The following criteria will assure compliance with these requirements:

- Any restriction of a person's rights is identified through the adherence to a person-centered planning process.
- The restriction is being instituted as the last resort when less restrictive measures have been unsuccessful.
- The IPOS shall include justification that the restriction is needed to ensure the health or safety of the person or those around them,
- Restrictions placed upon a person shall be the minimum that can be expected to be effective.
- Document that any modifications of the HCB settings requirements are based upon a specific assessed health and safety need and justified in the person-centered service plan including the following:

    - Identify the specific assessed need(s),
    - Document the positive interventions and supports used previously,
    - Document less intrusive methods that were tried and did not work, including how and why they did not work,
    - A clear description of the condition that is directly proportionate to the assessed need,
    - Identify the services and supports that will be in place to reduce the need for the restriction,

- Regular collection and review of data to measure the effectiveness of the modification,
- Established time limits for periodic review of the modification,
- Informed consent of the individual and,
- Assurances that the modifications will cause no harm to the individual.

Additionally, it is important to note that:

- All settings providing an HCBS service have a current, signed copy of the IPOS.
- HCBS Providers will be trained on any restrictions or modifications present in the individual IPOS. Please note that the Behavior Treatment Plan (BTP) is not a substitute for the IPOS. An updated IPOS with the approved restriction in place must be provided to the setting prior to implementing the restriction.

Please see attachment A for supplementary detail related to the applicable policies and additional resources.

Questions related to the HCBS rule may be directed to the HCBS team at HCBSTransition@michigan.gov .

Thank for your continued support in our successful implementation of the HCBS Final Rule.

c: Kristen Jordan, Director, Bureau of Specialty Behavioral Health Services
Lyndia Deromedi, Federal Compliance Section, Manager
Millie Shepherd, HCBS Specialist