HCBS Provider Readiness Tool for Residential Settings
Habilitation Supports Waiver

Introduction to Provider Readiness Tool

Note: This HCBS provider readiness tool for residential settings is provided for informational purposes only. It is not intended to be the sole source of guidance in achieving compliance with the HCBS Final Rule.

Revised May 18, 2017

The purpose of the provider readiness tool is to assist providers in their efforts to achieve compliance with the Home and Community-Based Services (HCBS) Settings Final Rule. Centers for Medicare and Medicaid Services (CMS) issued a fact sheet dated January 10, 2014 with a summary of key provisions of the Final Rule. This fact sheet includes the following information for the overview of the settings provision.

"The final rule requires that all home and community-based settings meet certain qualifications. These include:

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

The final rule also includes additional requirements for provider-owned or controlled home and community-based residential settings. These requirements include:

- 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.

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 additional following 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.

Note: This readiness tool makes numerous references to potential plan modifications for health or safety reasons. Such plan modifications must comply with the above referenced CMS documentation standards. In addition, the standard that the state of Michigan will apply is only a specific assessed health and/or safety need will meet the standard for plan modifications.

Additional information regarding the HCBS Final Rule including Michigan's Statewide Transition Plan and survey documents is available at the website of the Michigan Department of Health and Human Services. The website address is www.michigan.gov/mdhhs. Click on Assistance Programs, then Health Care Coverage and followed by Home and Community-Based Services Program Transition.

The format for the tool is as follows:

First Column – The questions are listed as they appear in the Provider Survey for the Habilitation Supports Waiver.
Second Column – Required evidence of compliance with HCBS rules.
Third Column – Guidance on achieving compliance and potential actions.
Fourth Column – Guidance on exemplary practice or transformational change. The information provided in this column is to encourage practices in support of self-direction, independence and freedom along with consistent integrated opportunities for community participation.
Fifth Column – CMHSP/PIHP guidance on achieving compliance and potential actions.

Note: The tool makes several references to gathering evidence through observation and/or interview with the individual and provider. This process may include the individual's legal guardian or other person authorized by state law or federal law to represent the individual in decision-making related to the individual's care or well-being.

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Section 2					
Physical Location and Operations of Residential Living Supports		**Required Evidence of Compliance with HCBS Rules**	**Guidance on Achieving Compliance and Potential Actions**	**Guidance on Exemplary Practice or Transformational Change**	**CMHSP/PIHP Guidance on Achieving Compliance and Potential Actions**
1. Is the residence separate from, outside of the building, and off the grounds of a hospital, nursing home, or Institute for Mental Disease (IMD)?	☐ Yes ☐ No	• If the answer is no, then the setting is presumed not to be home- and community-based. Please see Charts 2, 3 and 4 from Michigan's Statewide Transition Plan regarding settings presumed not to be home- and community-based and the heightened scrutiny process. These charts are included with this tool.			
2. Is the residence located away from multiple home settings (for people with disabilities)?	☐ Yes ☐ No	• If the answer is no, then the setting must have all of the characteristics listed on Tier 4 (residential) of Chart 2 from the Statewide Transition Plan. • If the home is near other disability specific homes, then indicate how an individual avoids isolation and is able to access their community and has choice of their living situation. • Examples include how an individual is able to interact with the broader community including opportunities for visits with family and/or friends, volunteering, religious services, community activities, working and social/recreational activities. • Evidence may include documentation of choices offered during the Person Centered Planning process including pre-planning.	• Identify various potential sources of transportation such as the provider for the residential setting, local county transportation services or private drivers.		• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.

3. Does the residence offer a continuum of care? Note: Chart 2 from the Statewide Transition Plan includes this question and the following question: Does the setting offer all services in house?	☐ Yes ☐ No	• If the answer is yes, then the setting must have all of the characteristics listed on Tier 4 (residential) of Chart 2 from the Statewide Transition Plan.	• To the extent possible individuals should be supported in accessing services outside of their home and in the community. This may include community living supports, supported employment and other community-based services.		
4. Can people with different types of disabilities and individuals without disabilities live in the home?	☐ Yes ☐ No	• If the answer is no, then the setting must have all of the characteristics listed on Tier 4 (residential) of Chart 2 from the Statewide Transition Plan. • Evidence will be gathered through observation and/or interview with the individual and provider to determine if the home allows persons with different types of disabilities such as mental illness or developmental disabilities, or persons without disabilities to reside in the home. • Evidence must include documentation of choices offered during the Person Centered Planning process. • If the home is specific to persons with disabilities, then indicate how an individual is able to interact with the broader community including opportunities for visits more than once per week with family and/or friends, volunteering, religious services, community activities, working and social/recreational activities.			• This item should be addressed in the psycho-social/annual social work assessment in a community inclusion section. • Assess the level of integration and community inclusion. • If OK, document this. • If not OK, flag this item to be discussed at the Person Centered Planning meeting.

5. Is the residence located outside of a building and off the campus of an education program, school or child-caring institution?	☐ Yes ☐ No	• If the answer is no, then the setting is presumed not to be home- and community-based. Please see Charts 2 and 3 from Michigan's Statewide Transition Plan in the appendix to this tool regarding settings presumed not to be home- and community-based and the heightened scrutiny process. • If the answer is yes, then the setting must have the characteristics listed on Tier 4 (residential) of Chart 2 from the Statewide Transition Plan.			

Section 3					
Community Integration of Residential Setting		**Required Evidence of Compliance with HCBS Rules**	**Guidance on Achieving Compliance and Potential Actions**	**Guidance on Exemplary Practice or Transformational Change**	**CMHSP/PIHP Guidance on Achieving Compliance and Potential Actions**
6. 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 (e.g. visitors who are friends, family members, others in the larger neighborhood or community)?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider.	• Indicate how an individual is able to access their community and avoid isolation. Examples include how each individual is able to interact with the broader community including opportunities for visits with family and/or friends, volunteering, religious services, community activities, working and social/recreational activities. • The focus should be on opportunities for individuals to participate in activities in the community. • The person may have their own calendar showing the plans they have made. • Staff provide supports in assisting the person in planning and implementing activities for his/her day, week, month, etc. • Staff support individuals in participating in the neighborhood when necessary.	• Peers/supports brokers are helpful in connecting individuals to community activities including employment.	

7. Does the residence allow friends and family to visit without rules on hours or times?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • Individuals must be allowed to have visitors at any time. Any restrictions to this right will require a modification in the individual's Person Centered Plan due to health or safety needs.	• The provider's policies should specifically state that individuals may have visitors of their choosing at any time. The policies should address emergency circumstances such as visitors who present a health or safety threat to any of the individuals living at the residential setting.	• Individuals living together identify issues or concerns regarding visitors.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

Section 4					
Individual Rights Within Residential Setting		**Required Evidence of Compliance with HCBS Rules**	**Guidance on Achieving Compliance and Potential Actions**	**Guidance on Exemplary Practice or Transformational Change**	**CMHSP/PIHP Guidance on Achieving Compliance and Potential Actions**
8. Does each individual have a lease for the residential setting? Note: A residential care agreement is not a lease. If individuals only have residential care agreements you should mark "No" to this question.	☐ Yes ☐ No	• MDHHS and LARA have determined that the BCAL-3266 Form meets the requirements of the HCBS Final Rule if the licensee also provides information on discharge processes and complaints to the individual. Note: This determination is included in the Joint Guidance document dated May 15, 2017 from Michigan Department of Health and Human Services (MDHHS) and Department of Licensing and Regulatory Affairs (LARA). The Joint Guidance document and supplemental document on Discharge Processes and Complaints referred to as "Summary of Resident Rights: Discharges and Complaints" are provided as the final part of this readiness tool. The documents are also on the MDHHS website (please see page 2 of this tool for the MDHHS website address and applicable links).	• Please refer to the Joint Guidance document from MDHHS and LARA regarding residency agreement and state landlord-tenant law. • MDHHS and LARA have also created a supplemental document known as "Summary of Resident Rights: Discharges and Complaints." Licensees may still use their own residency agreements if the residency agreement outlines the relevant discharge and complaints processes and meets all applicable state and federal requirements. • A lease should be in effect for people living in an apartment/home which is not a licensed setting.		

9. Does the lease explain how an eviction happens and what to do? Note: For example, a landlord might tell the renter to move out because the person did not pay their rent.	☐ Yes ☐ No	Please refer to information provided above under Question 8.			
10. Have individuals been provided with information on how to request new housing?	☐ Yes ☐ No	• Evidence will be gathered through discussion with the individual and provider. The discussion should include actions taken if the individual indicates that they no longer want to live at the home such as informing the supports coordinator and guardian, if applicable, of the desire to move and planning or exploring alternative housing. • Evidence must include documentation of choices offered during the Person Centered Planning process including pre-planning and/or visits to the home prior to move in.	• Provide materials in a service information packet to the person that includes housing resource organizations in the area. • Place links on the provider's website to housing resources.		• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.
11. Is information about filing a complaint provided in a way the individual can understand and use?	☐ Yes ☐ No	• Evidence will be gathered through observation of Recipient Rights information and other complaint mechanisms that should be available in every residential setting including but not limited to CMS, Michigan Protection & Advocacy Service and Adult Foster Care Licensing Division. • Discussion must include ways that an individual's concerns are addressed.	• Use of video and pictures could be used to explain how to file a complaint.	• Complaint acknowledgement is part of the orientation and annual review process for the individual.	

12. Do individuals know who to call to file an anonymous complaint?	☐ Yes ☐ No	• Evidence will be gathered through observation of Recipient Rights information and other complaint mechanisms that should be available in every residential setting including but not limited to CMS, Michigan Protection & Advocacy Service and Adult Foster Care Licensing Division. • Discussion must include ways that an individual's concerns are addressed.	• Provide evidence that information about anonymous complaints are provided in complaint materials and residency agreement. • Conduct satisfaction surveys by providers and external sources.	• Do periodic reviews with people teaching them again how to resolve issues and make a complaint so they can find resolution to problems. • Train staff on HCBS setting requirements.	
13. Do the staff talk about individuals' personal issues in private? Note: In private means that staff do not talk about individuals' personal issues in front of other people.	☐ Yes ☐ No	• Staff are prohibited from discussing personal issues related to individuals in public areas of the home at all times. • Evidence can be provided by provider personnel policies on employee standards of conduct. • Interview individuals.	• Provide documentation of training to staff on how to support and teach privacy such as discussing issues separate from others, closing doors, knocking and asking to enter, etc.	• Train staff on HCBS setting requirements and privacy.	
14. Do individuals have access to their personal funds? Note: Access means the individual's money is available to them.	☐ Yes ☐ No If No, why? _____ _____ _____ _____	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to their personal funds are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Provide documentation/ authorizations on how the person accesses or wants assistance in accessing their personal funds.	• Work towards everyone carrying their own money as much as they are able to manage always moving towards increasing the amount and independence. • Train staff on HCBS setting requirements.	

15. Do individuals have control over their personal funds? Note: Control means the individual can decide how his or her money is spent.	☐ Yes ☐ No If No, why? _____ _____ _____ _____	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's control over their personal funds are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Teach people how to safeguard their own money and choose options to keep personal funds locked. • Provide training to persons served.	• Supported decision-making is a means of involving individuals to the fullest extent possible in managing their lives, including control over their personal funds. This exemplary practice applies throughout this readiness tool. • Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
16. Do individuals have a place to store and secure their belongings away from others?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to their belongings are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Assist people in learning to safeguard their belongings and assist them in choosing how to keep them secure.	• Provide training to staff on storing and securing individuals' belongings. • Provide a locker, safe or locked cabinet for individuals to store and secure their belongings. • Individuals served can readily speak about their personal space and storage areas.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

17. Do individuals pick the agency who provides their residential services and supports?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and/or provider. • Evidence must include documentation of choices offered during the Person Centered Planning process.	• Document any visits, meetings and/or interviews with providers.		• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.
18. Do individuals pick the direct support workers (direct care workers) who provide their services and supports?	☐ Yes ☐ No	• Evidence will be gathered through discussion with the individual and/or provider. • The discussion must include ways in which an individual can indicate their preference of worker within a setting. • Evidence must include documentation of choices offered during the Person Centered Planning process.	• Include people served in the interview process to the extent possible and document their response. • Provide pictures of all support staff to facilitate the individual's choices. • Provide formal process for individuals to indicate confidentially when they do not want a specific staff person working with them or have concerns about staff.	• Provide evidence of input from individuals served and their opportunity to readily talk about the process.	• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.

19. Can individuals change their services and supports as they wish?	☐ Yes ☐ No	• Evidence will be gathered through discussion with the individual and/or provider. • Evidence must include documentation of choices offered during the Person Centered Planning process. • The discussion must include ways in which an individual can indicate that they wish to change their supports and services.	• Conduct monthly meetings with the people receiving supports on an individual and group basis or as requested by the individuals and ask for suggestions for improvements, satisfaction, etc.	• Train staff on HCBS setting requirements.	• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.
20. Are individuals allowed to participate in legal activities – for example, voting in public elections if they are 18 years or older, drinking alcohol if they are 21 years or older?	☐ Yes ☐ No If No, why? _____ _____ _____ _____	• Evidence will be gathered through observation and/or interview with the individual and provider. • Indicate how an individual is able to access their community. Examples include how an individual is able to interact with the broader community including opportunities for visits with family and/or friends, volunteering, religious services, community activities, working, social/recreational activities and voting. • If restrictions on an individual's ability to participate in legal activities or drink alcohol are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Assist the individual in obtaining voter registration card and photo ID. • Assist the individual to access activities in the community.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

Section 5 (Part A)					
Individual Experience Within Residential Setting		**Required Evidence of Compliance with HCBS Rules**	**Guidance on Achieving Compliance and Potential Actions**	**Guidance on Exemplary Practice or Transformational Change**	**CMHSP/PIHP Guidance on Achieving Compliance and Potential Actions**
21. Did the individual have choices of where to live?	☐ Yes ☐ No	• Evidence will be gathered through discussion with the individual and provider. • The discussion must include actions taken if the individual indicates that they no longer want to live at the residential setting such as informing the supports coordinator of the individual's desire to move. • Evidence must include documentation of choices offered during the Person Centered Planning process including pre-planning and/or visits to the residential setting prior to move in.	• Document any visits, phone calls, meetings with roommates, etc. prior to moving in. Include why the individual chose where they live in the Person Centered Plan or provider assessment. • If this was an unplanned/crisis move-in, then document that the person is continuing to search for other housing options and the ongoing assistance provided.	• Provider training of staff on availability of resources based on the individual's resources.	• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.
22. Did the individual choose to live at this residential setting?	☐ Yes ☐ No	• Evidence will be gathered through discussion with the individual and provider. • The discussion must include a description of how an individual makes their choices known. • Evidence must include documentation of choices offered during the Person Centered Planning process including pre-planning and/or visits to the residential setting prior to move in.	• Please see guidance in Question 21.		• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.

23. If the individual lives with other people, did the individual pick their housemates?	☐ Yes ☐ No If No, why? _____ _____ _____ _____	• Evidence will be gathered through discussion with the individual and provider. • The discussion must include a description of how an individual makes their choices known. • Evidence must include documentation of choices offered during the Person Centered Planning process including pre-planning.	• Document the options available to the individual and meetings with housemates and why they are choosing to live together. If it is due to not having enough money, show how the provider is teaching the individual on budgeting to save to move if they choose.	• Evidence of policies and procedures that document opportunities for individuals to provide choice or input on prospective housemates.	• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.
24. If the individual lives with other people, did the individual have the option of having their own bedroom?	☐ Yes ☐ No	• Evidence will be gathered through interview with the individual and provider. • Evidence must include documentation of choices offered during the Person Centered Planning process including pre-planning.	• Please see guidance in Questions 21 and 23. • Document options available and their choice.	• Train staff on HCBS setting requirements.	• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.

25. If the individual lives with other people, did the individual pick their roommate(s)?	☐ Yes ☐ No ☐ Not applicable to the individual. The individual does not have a roommate.	• Evidence will be gathered through interview with the individual and provider. • The discussion must include a description of how an individual makes their choices known. • Evidence must include documentation of choices offered during the Person Centered Planning process including pre-planning.	• Please see guidance in Questions 21, 23 and 24. • Document how the person chose to live there. Ensure visits occurred prior to moving in such as coming to dinner or meet and greet meeting.	• Train staff on HCBS setting requirements. • Create documentation on policy and procedure that is reviewed at the time a roommate is chosen and on at least an annual basis.	• This topic can be addressed in the psycho-social/annual social work assessment and/or preplanning meeting. • If individual is satisfied with current residential placement, record that this has been discussed. • If the person is not satisfied with their placement, then this along with options should be discussed and documented during the Person Centered Planning.
26. Can individuals close and lock their bedroom door? If "No," why? ☐ Bedroom doors do not have locks. ☐ The individual cannot turn the door knob without assistance. ☐ The individual is not allowed to lock the bedroom door.	☐ Yes ☐ No	• If there is no lock on an individual's door or it must remain open due to health and safety reasons, it must be identified and documented in the individual's Person-Centered Plan.	• Install locks on all bedroom doors. • If not, this exception to the HCBS Final Rule must be identified and documented in the individual's Person-Centered Plan or assessment plan. Please refer to the Joint Guidance document from MDHHS and LARA for additional guidance regarding this exception. • See MDHHS/LARA Joint Guidance document for section on lockable doors.	• Train staff on HCBS setting requirements. • Individuals are afforded privacy, dignity, respect and as much independence as possible.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

27. Can individuals close and lock their bathroom door? If "No," why? ☐ Bathroom doors do not have locks. ☐ The individual cannot turn the door knob without assistance. ☐ The individual is not allowed to lock the bathroom door.	☐ Yes ☐ No	• Evidence will be gathered through observation of locks on bathroom doors. • If an individual is physically incapable of closing and locking the bathroom door, then an explanation of how their privacy is assured must be given. Examples include closing the door fully when receiving assistance and monitoring other residents so that they do not interfere with the individual's privacy. • If there is no lock on the bathroom door or it must remain open due to health and safety reasons, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Please refer to information provided above under Question 26. • See MDHHS/LARA Joint Guidance document for section on lockable doors.	• Train staff on HCBS setting requirements. • Individuals are afforded privacy, dignity, respect and as much independence as possible.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
28. Do staff ask before entering individuals' living areas (bedroom, bathroom)?	☐ Yes ☐ No	• Staff are required to ask before entering an individual's private living area. • Evidence can be provided by provider personnel policies on employee standards of conduct.	• Document privacy training with all employees. Include this topic in staff meetings as ongoing training and document in meeting minutes.	• Train staff on HCBS setting requirements. • Individuals are afforded privacy, dignity, respect and as much independence as possible.	

29. Can individuals choose what they eat?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to and/or choice of food are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Provider must establish a written policy which allows individuals to choose what they eat. • Document menu planning with the people supported. Include coupon cutting, sales at local grocery stores, purchasing food together, cooking together, etc. Teach budgeting that it may be more cost effective and enjoyable to eat shared meals. Keep other food items available for when individuals desire other eating options.		• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
30. Have individuals agreed to the rules on food in their Person Centered Plan?	☐ Yes ☐ No	• Note: Although this question refers to "rules" the more appropriate term is "restrictions". • Evidence will be gathered through observation and/or interview with the individual and provider. • The Person Centered Plan must include the individual's agreement to the restrictions on food. • If restrictions on an individual's access to and/or choice of food are necessary due to health and safety reasons, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• If a person has a special diet, it must be noted in the Person Centered Plan and included in the menu planning.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

31. Can individuals choose to eat alone or with others?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to and/or choice of eating alone or with others are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Provider must establish a written policy which ensures individuals can choose to eat alone or with others. • Provide alternative options for eating such as TV tray, card table or outdoor furniture.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
32. Do individuals have access to food at any time? Note: Access means the individual has a way of getting food whenever they want.	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to food at any time are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have access to food at any time. • During menu planning, include a discussion on items to purchase and have available for snacks or if someone does not like the meal, misses the meal, etc.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
33. Have individuals agreed to the rules on food access in their Person Centered Plan? Note: Access means the individual has a way of getting food whenever they want.	☐ Yes ☐ No	• Note: Although this question refers to "rules" the more appropriate term is "restrictions". •Evidence will be gathered through observation and/or interview with the individual and provider. • The Person Centered Plan must include the individual's agreement to the restrictions on food access, if any. • If restrictions on an individual's access to food are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Assist individuals to document in a journal why they want to be healthier with pictures, symbols and words.		• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

34. Can individuals choose what clothes to wear?	☐ Yes ☐ No	• Individuals must have the freedom to dress as they choose. • If restrictions on an individual's ability to choose the clothes they wear are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required. • If a person is incapable of voicing this preference, describe how their preference is considered.	• Providers must develop a culture in which persons served can dress how they want. • Training should be provided to staff on how to teach people to choose clothing which is weather appropriate.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
35. Do individuals have access to a communication device? For example, a cell phone, landline phone, a personal computer, a tablet, or an augmentative and alternative communication device. This means the individual can use it to communicate with people they want to contact. This also means the individual can use it if people want to contact them. Note: Access means the individual has a way of getting and using a communication device whenever they want.	☐ Yes ☐ No	• Individuals must have the ability to access communication devices. • If restrictions on an individual's ability to use the communication device is necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Include in provider service information that people must have their own communication device if they do not want to share with others.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

36. Can the individual use the communication device in a private place? Note: In private means the individual has a place in their house to use the communication device without anyone around.	☐ Yes ☐ No	• Individuals must have the ability to communicate with others of their choice in a private manner. • If restrictions on an individual's ability to use the phone are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals can use the communication device in a private place. • Create an area where people can use a shared phone with privacy. Teach roommates to provide privacy to each other.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
37. Do individual bedrooms offer a telephone jack, wireless internet or an Ethernet jack?	☐ Yes ☐ No	• Individuals must have the ability to communicate with others of their choice in a private manner. • If restrictions on an individual's ability to use the telephone jack, wireless internet or an Ethernet jack are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.		• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
38. Is the inside of the residence free from cameras, visual monitors or audio monitors?	☐ Yes ☐ No	• Spaces in the homes of individuals must be free of cameras, visual monitors and audio monitors. • If cameras, visual monitors or audio monitors are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required which does not conflict with recipient rights.		• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
39. If an individual needs help with personal care, does the individual receive this support in privacy?	☐ Yes ☐ No	• Provide an explanation of how an individual's privacy is assured. Examples include closing the door fully.	• Evidence can be provided by provider personnel policies on employee standards of conduct. • Document privacy training with both employees and people living at the residential setting.	• Train staff on HCBS setting requirements.	

40. Do individuals (with or without support) arrange and control their personal schedule of daily appointments and activities (e.g. personal care, events, etc.)?	☐ Yes ☐ No	• Evidence will be gathered through interview with the individual and provider. • Other evidence could be copies of daily calendar/ schedule and/or activity log. • If restrictions on an individual's ability to arrange and control their own schedule are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Assist individuals to maintain a calendar/schedule to document the choice they made in organizing their life activities. • Policies should exist to accommodate individual choice. • Documentation should be provided of denied requests to come and go and frequency of granting requests.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

Section 5 (Part B)					
Individual Experience Within Residential Setting		**Required Evidence of Compliance with HCBS Rules**	**Guidance on Achieving Compliance and Potential Actions**	**Guidance on Exemplary Practice or Transformational Change**	**CMHSP/PIHP Guidance on Achieving Compliance and Potential Actions**
41. Do individuals have full access to the kitchen? Note: Access here means that the individual has a way of getting into the kitchen and using it.	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the kitchen are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have full access to the kitchen. Note: it is very important to include the people living there in menu planning, grocery shopping, meal preparation, etc. • Ensure appliances are accessible if the individual utilizes a wheelchair. • Purchase utensils that can be used safely by individuals.	• Train staff on HCBS setting requirements. • Make design modifications to support the needs of the individual.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
42. Can individuals access the kitchen at any time?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the kitchen are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals can access the kitchen at any time.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

43. Do individuals have full access to the dining area? Note: Access means that the individual has a way of getting into the dining area and using it.	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the dining area are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have full access to the dining area at any time.	• Train staff on HCBS setting requirements. • Make design modifications to support the needs of the individual.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
44. Can individuals access the dining area at any time?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the dining area are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals can access the dining area at any time.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
45. Do individuals have full access to the laundry area? Note; Access means that the individual has a way of getting to the laundry area and using it.	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the laundry area are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have full access to the laundry area. • Ensure individuals utilizing wheelchairs are able to access the laundry and can reach both washer and dryer to load and unload clothes.	• Make design modifications to support the needs of the individual.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
46. Can individuals access the laundry area at any time?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the laundry area are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals can access the laundry area at any time.		• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

47. Do individuals have full access to the comfortable seating area? Note: Access means that the individual has a way of getting into the comfortable seating area and using it.	☐ Yes ☐ No	• Evidence will be gathered through observation of the residence. Examples may include a "homelike" atmosphere as well as comfortable, clean, uncluttered, and individualized furnishings and decoration. Are there enough seats for everyone in the home? • If restrictions are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have full access to the comfortable seating area.	• Make design modifications to support the needs of the individual.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
48. Can individuals access the comfortable seating area at any time?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the seating area are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals can access the comfortable seating area at any time.		• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
49. Do individuals have full access to the bathroom? Note: Access means that the individual has a way of getting into the bathroom and using it.	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the bathroom are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have full access to the bathroom.	• Train staff on HCBS setting requirements. • Make design modifications to support the needs of the individual.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
50. Can individuals access the bathroom at any time?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's access to the bathroom are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals can access the bathroom at any time.		• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

51. Is there space within the home for individuals to meet with visitors and have private conversations?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's ability to meet with visitors and have private conversations are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Create a room where anyone can have privacy and teach everyone in the home to honor that area and take turns using it.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
52. Can individuals choose to come and go from the home when they want?	☐ Yes ☐ No	• Evidence will be gathered through interview with the individual and provider. Individuals should be able to choose to come and go from the home when they want including with direct support staff if needed. • Other evidence could be copies of daily calendar/ schedule and/or activity log. • If restrictions on a resident's ability to come and go are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Policies should exist to accommodate individual choice.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

53. Can individuals move inside and outside the home when they want?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • If restrictions on an individual's ability to move inside and outside the home are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have the ability to move inside and outside the home when they want. • Providers must ensure that the Person Centered Plan and authorizations are signed to include any modifications.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
54. Has the individual agreed to the rules for accessing common areas in the home in the individual's Person Centered Plan? Note: Although this question appears in the Provider Survey for the Habilitation Supports Waiver, please note that the provider is clearly prohibited from having house rules pursuant to the MDHHS/LARA document. Agreements may be made by housemates regarding accessing common areas in the home.	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and provider. • The Person Centered Plan must include the individual's agreement to the restrictions, if any, for accessing common areas. • If restrictions on an individual's access to common areas in the home are necessary, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Providers must establish a written policy which ensures individuals have full access to common areas in the home.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
55. Is the home physically accessible to all individuals? For example, does the home have grab bars, shower chairs or wheelchair ramps if needed?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or back up from assessments or treatment plan that describe the need for home modifications. • Examples include wheelchair ramps, accessible doors, toilets, sinks and tubs/showers.		• Train staff on HCBS setting requirements. • Make design modifications to support the needs of the individual.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.

Note: physically accessible means individuals are able to do what they want and need, around the house as independently as possible.		• If there are restrictive/intrusive measures that limit accessibility, a modification in the individual's Person Centered Plan due to health or safety needs is required.			
56. Can individuals reach and use the home's appliances as they need?	☐ Yes ☐ No	• Evidence will be gathered through observation and/or interview with the individual and/or provider.		• Train staff on HCBS setting requirements. • Make design modifications to support the needs of the individual.	
57. Is the home free of gates, locked doors or other ways to block individuals from entering or exiting certain areas of their home?	☐ Yes ☐ No If No, why? (Check all that apply) ☐ For health reasons that individuals have agreed upon in their Person Centered Plans. ☐ For safety reasons that individuals have agreed upon in their Person Centered Plans. ☐ For other reasons that must be documented in the Person Centered Plan (please specify).	• Evidence will be gathered through observation of the residential setting. • If there are restrictions on entering or exiting certain areas of the home, a modification in the individual's Person Centered Plan due to health or safety needs is required.	• Provider must provide a written statement that the home is free of gates, locked doors or other ways to block individuals from entering or exiting certain areas of their home.	• Train staff on HCBS setting requirements.	• The rationale for restrictions should be documented in the Person Centered Planning and may require Behavior Treatment Review Committee approval and review.
58. Is accessible transportation available for individuals to make trips to the community?	☐ Yes ☐ No	• Evidence shall be provided by the provider that vehicles and employees are available for accessible transportation including wheelchair access. • Information related to other means of	• Providers must have a process as to how people served can organize transportation such as a provider vehicle, community transportation, private drivers,		

Note: Accessible transportation means having transportation services going where and when one wants to travel.		transportation (bus schedules, taxi numbers etc.) will be easily accessible to individuals.	etc. Use of a calendar would show availability of provider vehicle.		
59. If public transit is limited or unavailable, do individuals have another way to access the community? Access: A means of entering a place.	☐ Yes ☐ No	• Evidence must be provided in the provider's policies as to how individuals have access to the community if public transit is limited or unavailable including wheelchair access.			

Process for Settings Presumed Not To Be Home and Community-Based

Under the rule, some settings may have institutional qualities and may be presumed not to be Home and Community-Based. Settings that fall into this category must be evaluated for compliance by the MDHHS. For settings that appear NOT to fit the definition of being home and community-based, MDHHS must decide whether to apply for special consideration from CMS. If MDHHS believes that a setting is home and community-based, even though it *appears* to have the qualities of an institution, then MDHHS may submit evidence proving its case to CMS in a process called "heightened scrutiny". In the "heightened scrutiny" process, CMS takes a second look at the setting in question and weighs the evidence submitted to determine if the setting can be considered home and community-based. The state must prove to CMS that a particular setting has the qualities of a home and community-based setting and provides services and supports that promote independence and integration with the broader community.

Flowcharts for the Heightened Scrutiny Process

The attached flowcharts depicts the process for determining (1) if a setting fits the home and community-based definition and (2) whether MDHHS will apply for "heightened scrutiny" for the settings that are presumed not to be home and community-based. The flowchart is based on the assessment tools sent to beneficiaries, providers, and health plans. The "tiers" in the MI Choice and Habilitation Supports Waivers flowcharts (charts 1 and 2) correlate with questions from the surveys. The "heightened scrutiny" flowcharts (charts 3 and 4) are based on guidance issued by CMS.

Charts 1 and 2: Identification of Settings that are Presumed Not To Be Home and Community-Based

Chart 1 will be used by the MI Choice Waiver, and Chart 2 will be used by the Habilitation Supports Waiver.

Tier 1: Tier 1 splits the flowchart into **two paths for residential and non-residential settings** (top and bottom, respectively).

Residential Settings

Tier 2: The residential setting path begins with Tier 2, which examines whether the physical location of the setting is part of or attached to an institution. If the setting's location is part of or attached to an institution, then the setting is

automatically presumed not to be home and community-Based and must move immediately to Tier 5. If the respondent answers NO to both categories in Tier 2, then move to Tier 3.

Tier 3: Tier 3 examines if a setting is disability-specific and has any of the isolating qualities of an institution. If a setting **is not** disability-specific and **does not** have any of the qualities of an institution listed in the tier, then the setting is presumed to be home and community-based and **the setting will not require the "heightened scrutiny" process**. If a setting **does** have any of the isolating qualities of an institution listed in the question, then the chart moves to Tier 4.

Tier 4: Tier 4 examines if a setting provides individuals with a certain level of independence and integration within the broader community in accordance with the final rule. If a setting has all four characteristics listed in the question, then the setting is presumed to be home and community-based. **These settings will not require the "heightened scrutiny" process**. If a setting does not have all of the characteristics listed in the tier, then it moves to Tier 5 **where it is presumed not to be home and community-based**.

Tier 5: Once a setting arrives at Tier 5, it is presumed not to be home and community-based, and MDHHS must consider whether to apply for "heightened scrutiny" from CMS to overcome this presumption. This process is depicted on chart 3 entitled "Heightened Scrutiny Process Overview".

Non-Residential Settings

Tier 2: The non-residential setting path begins with Tier 2, which examines if the setting is located in the same building or on the same campus as an institutional treatment option. If a setting is located in the same building or on the same campus of an institutional treatment option, then **it is immediately presumed not to be home and community-based** and must move to Tier 5. If a settings is not located in or on the campus of an institution, move to Tier 3.

Tier 3: Tier 3 asks if the non-residential setting is a disability-specific site. Examples of disability-specific sites include workshops for people with disabilities, work crews of people with disabilities, "Day Programs", etc. If the setting is not a disability-specific site, then the setting is presumed to be home and community-based. **These settings will not require the "heightened scrutiny" process**. If the setting is a disability-specific site, move to Tier 4.

Tier 4: Tier 4 examines if a non-residential setting has characteristics that demonstrate integration with the broader community of people not receiving HCBS. If the non-residential setting has either of the characteristics listed in this tier,

then the setting is presumed to be home and community-based and **the setting will not require the "heightened scrutiny" process**. If the non-residential setting does not have either of the characteristics demonstrating integration, move to Tier 5.

Tier 5: Once a setting arrives at Tier 5, **it is presumed not to be home and community-based**, and MDHHS must consider whether to apply for "heightened scrutiny" from CMS to overcome this presumption. This process is depicted on chart 3 entitled "Heightened Scrutiny Process Overview".

Heightened Scrutiny Process:

Chart 3 "Heightened Scrutiny Process Overview"

Chart 3 depicts the process for applying to CMS for "heightened scrutiny" of a setting to overcome its presumption of not being home and community-based.

Once a setting is presumed not to be home and community-based, MDHHS, through the person-centered planning process, will ask each participant receiving Medicaid-funded HCBS if they would like to remain in the setting. **If any participant does not wish to remain in the setting, then the appropriate waiver entity will help that participant transfer to a compliant setting regardless of whether his or her current setting applies for "heightened scrutiny"**.

If **any** participant in the setting indicates (through the person-centered planning process) that he or she would like to remain in his or her setting, then MDHHS will ask the setting if they wish to apply for the "heightened scrutiny" process to overcome the setting's presumption of not being home and community-based.

If a setting **does not** want to apply for the "heightened scrutiny" process, **then the setting can no longer be considered home and community-based. The appropriate waiver entity will help every participant receiving Medicaid-funded HCBS transfer to a compliant setting.**

If a setting **wants** to apply for the "heightened scrutiny" process, MDHHS and the appropriate waiver entity will begin gathering additional information about the setting to determine if it will submit evidence to CMS for "heightened scrutiny". As part of the information-gathering process, MDHHS will conduct a site visit to the setting. After the site visit, MDHHS will solicit public comment on the setting. The public will have the opportunity to review the evidence collected by the

department and comment on the setting's home and community-based classification. Once the public comment period is finished, MDHHS will review all of the information collected to determine if it will submit its evidence to CMS for "heightened scrutiny". See Chart 4 for the criteria MDHHS will use in making this decision.

If MDHHS decides **not** to submit evidence about a setting to CMS for "heightened scrutiny", **then the setting can no longer be considered home and community-based. The appropriate waiver entity will help every participant receiving Medicaid-funded HCBS transfer to a compliant setting.**

If MDHHS decides to submit evidence about a setting to CMS for "heightened scrutiny", then CMS will review all information related to the setting, including possible input from other federal partners, to determine if the setting has the qualities of a home and community-based setting and does not have the qualities of an institution.

If CMS reviews the evidence and determines that the setting **does not** have the qualities of a home and community-based setting and is institutional in nature, **then the setting can no longer be considered home and community-based. The appropriate waiver entity will help every participant receiving Medicaid-funded HCBS transfer to a compliant setting.**

If CMS reviews the evidence determines that the setting has the qualities of a home and community-based setting and does not have the qualities of an institution**, then the setting is considered home and community-based.***

Chart 4 "Heightened Scrutiny Evidence Criteria"

Chart 4 entitled "Heightened Scrutiny Evidence Criteria" describes the criteria MDHHS will use in evaluating if the evidence is sufficient to submit to CMS for "heightened scrutiny". The chart is split into two criterion depending on the reason why the setting is presumed not to be home and community-based.

If the setting is presumed not to be home and community-based because its location appears to be within or connected to an institution or inpatient treatment facility, then the evidence must demonstrate there is a meaningful distinction between the institution or treatment facility and the HCBS setting. The chart lists several examples of how the evidence can demonstrate this distinction.

If the setting is presumed not to be home and community-based because it *appears* to have the effect of isolating the individuals from the broader community, then the evidence must demonstrate that individuals are not isolated. The chart lists several examples of how the evidence can demonstrate the setting does not have the effect of isolating participants from the broader community of individuals not receiving HCBS.

Chart 1: Identification of Settings that are Presumed Not To Be Home and Community-Based (MI Choice Waiver)

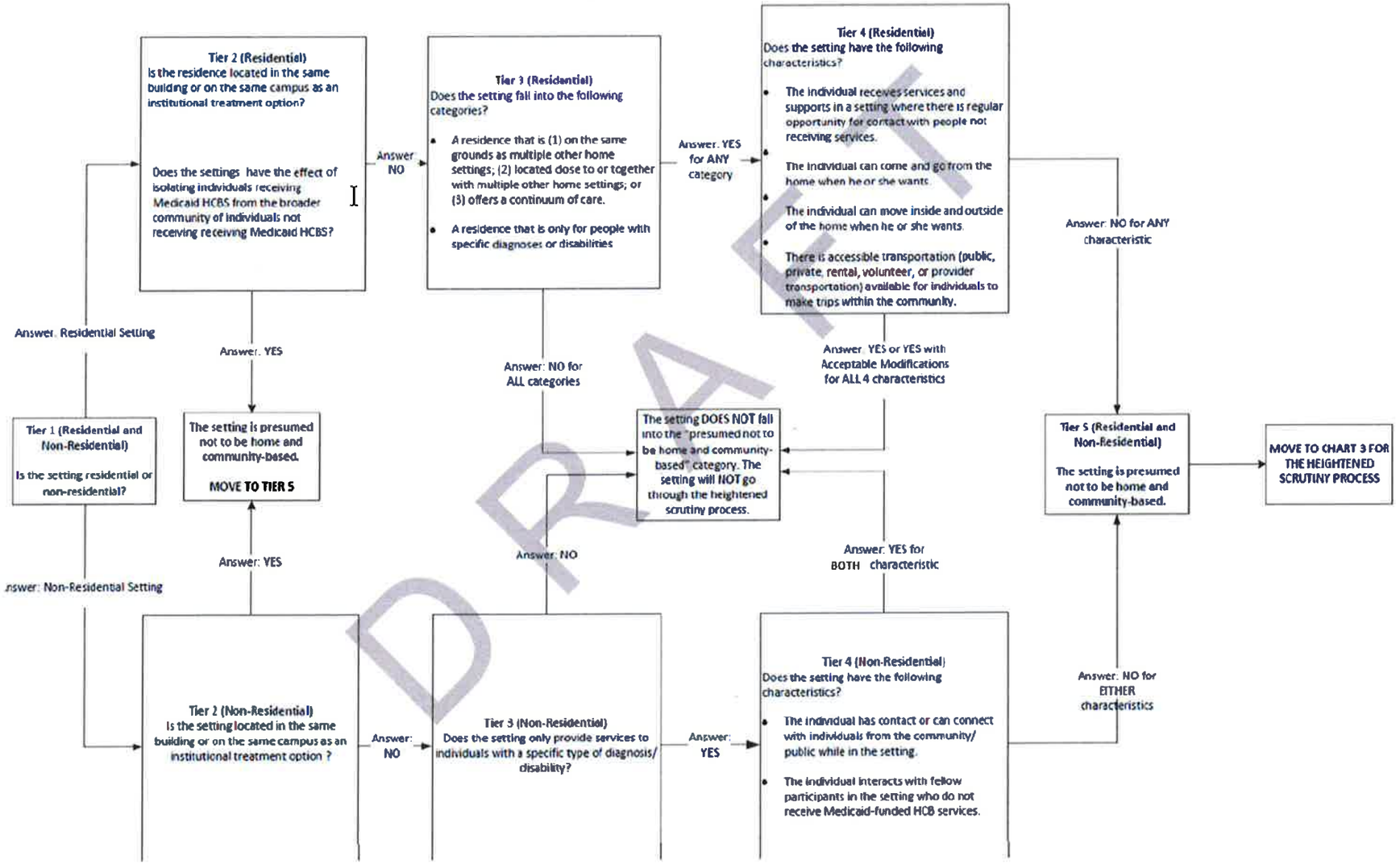


Chart 2: Identification of Settings that are Presumed Not To Be Home and Community-Based (Habilitation Supports Waiver and the Managed Specialty Services and Supports Waiver Program - §1915(b)(3))

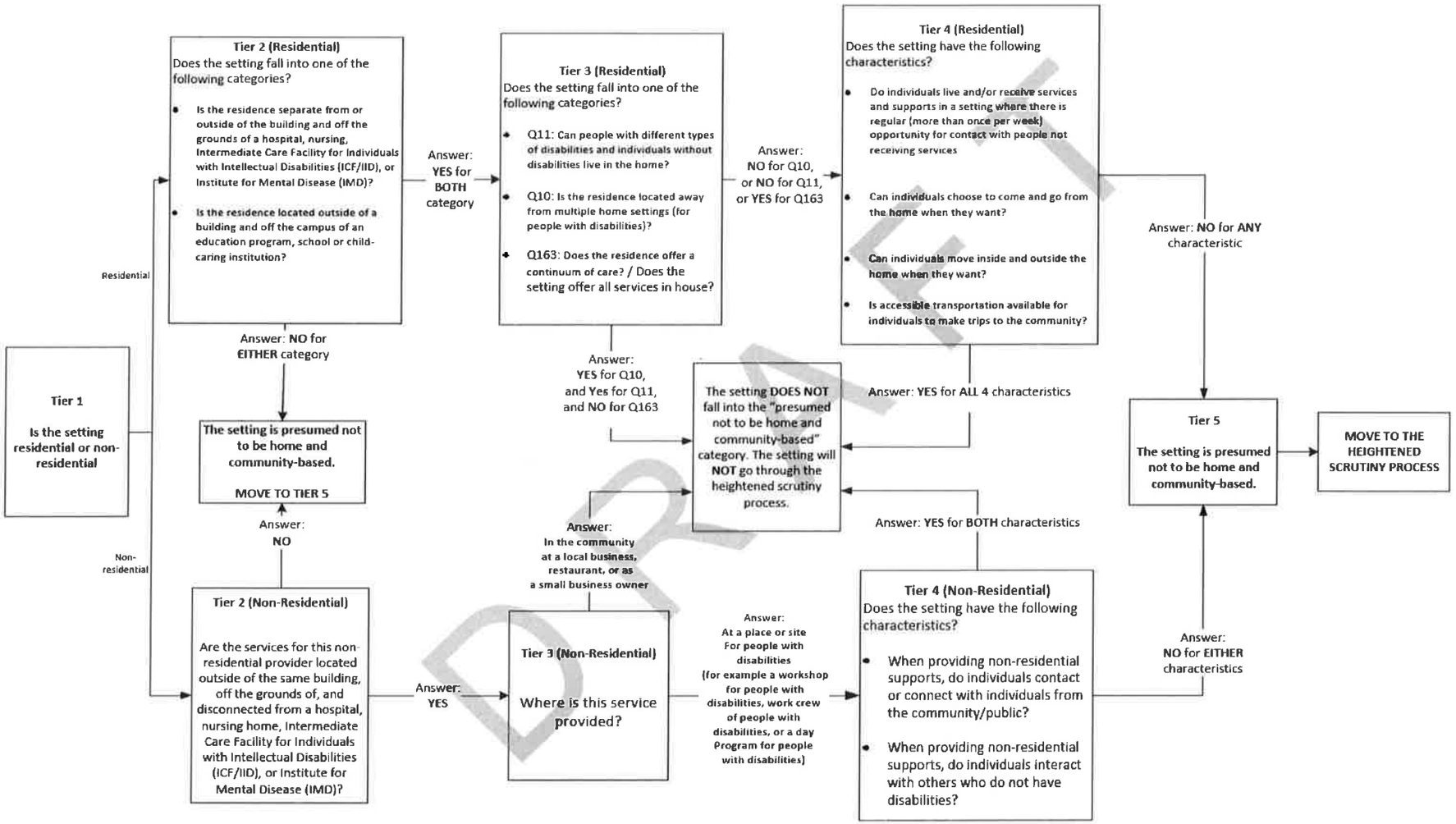


Chart 3: Heightened Scrutiny Process Overview (MI Choice, Habilitation Supports Waiver, and the Managed Specialty Services and Supports Waiver Program - §1915(b)(3))

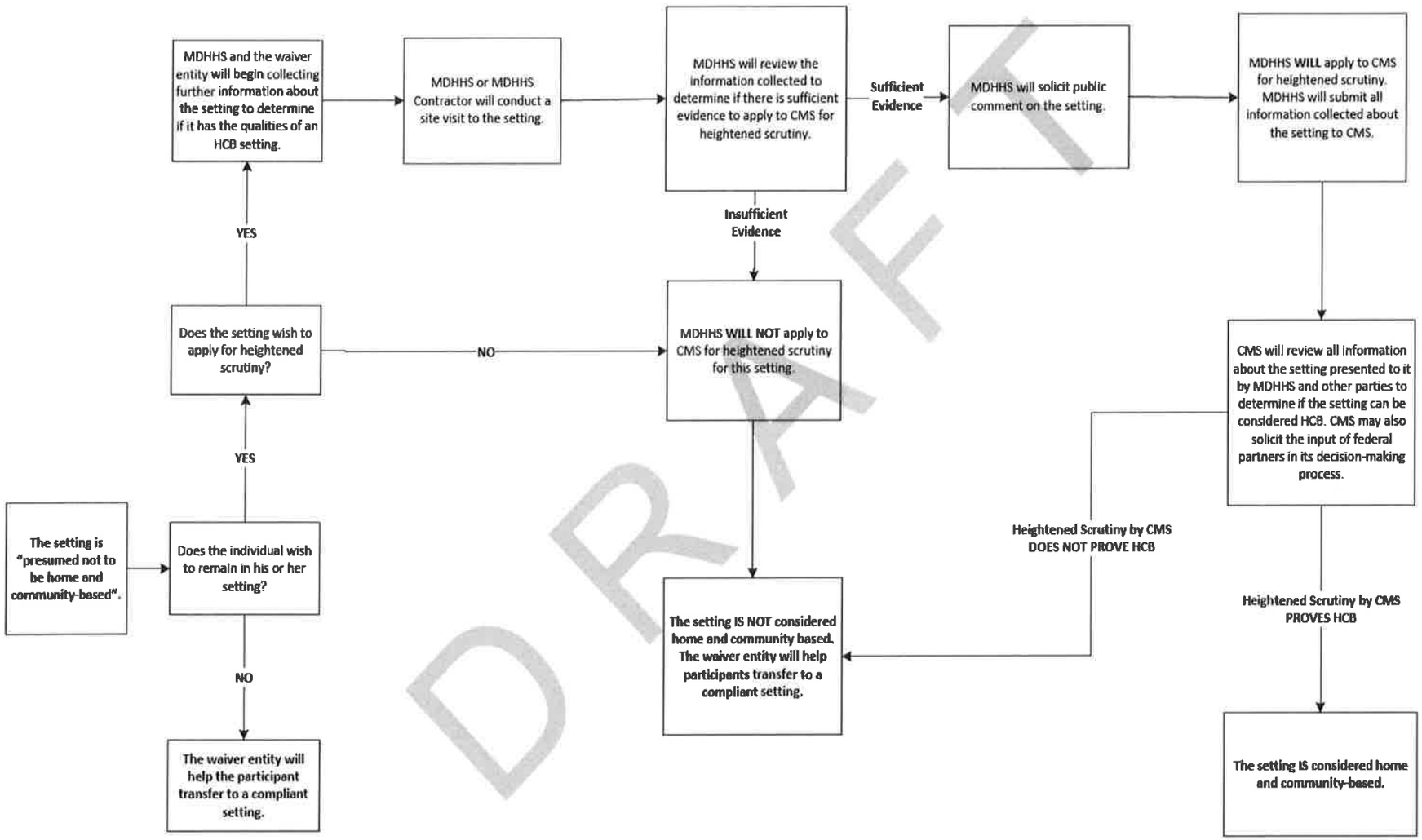
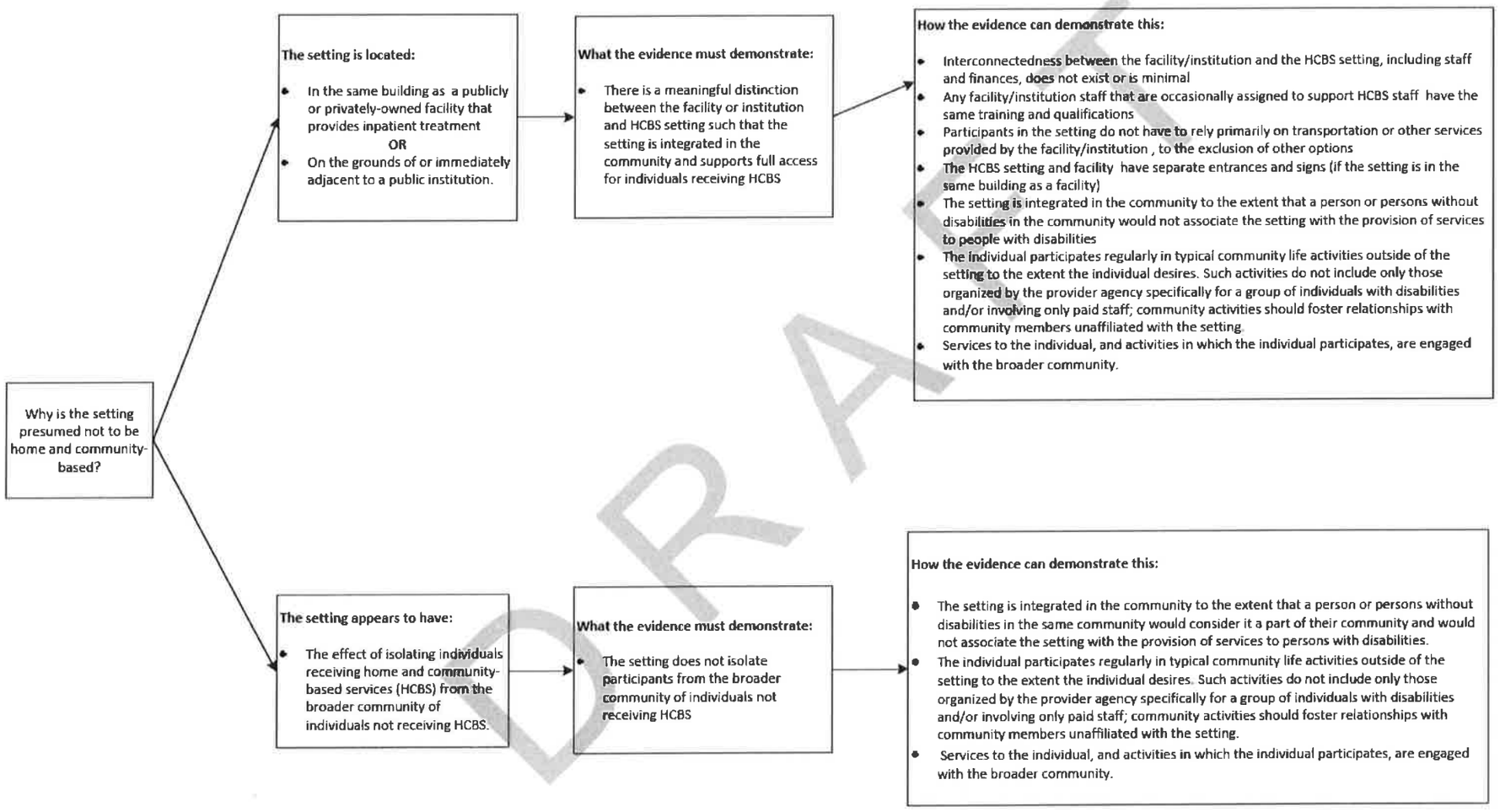


Chart 4: Heightened Scrutiny Evidence Criteria (MI Choice, Habilitation Supports Waiver, and the Managed Specialty Services and Supports Waiver Program - §1915(b)(3))



STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
DIRECTOR

May 15, 2017

Dear Provider:

The Centers for Medicare and Medicaid Services issued a new rule for Medicaid waiver programs that offer home and community-based services (HCBS). The federal rule affects home and community-based service programs that are authorized under the 1115, 1915(b)(3), 1915(c), 1915(i), or 1915(k) sections of the Social Security Act. The HCBS Final Rule establishes new requirements for characteristics that home and community-based settings must have in order to receive Medicaid funding.

The Michigan Department of Health and Human Services (MDHHS) must assess settings under the following four waivers for compliance with the characteristics outlined in the HCBS Final Rule:

- MI Choice Waiver Program
- Habilitation Supports Waiver Program
- MI Health Link HCBS Waiver Program
- Managed Specialty Services and Supports Waiver - §1915(b)(3) services

As part of the assessment process, MDHHS has been working with the Bureau of Community and Health Systems and the Bureau of Fire Services within the Department of Licensing and Regulatory Affairs (LARA) to address issues related to licensing of Adult Foster Care (AFC) homes and Homes for the Aged (HFA). Stakeholders have raised questions about whether state licensing rules conflict with the characteristics outlined under the final rule. In particular, stakeholders have questioned whether the federal requirements conflict with state licensing requirements on the following issues:

- Lockable Doors
- Visiting Hours
- Residency Agreements and State Landlord-Tenant Law
- Choice of Providers
- Freedom of Movement
- Choice of Roommate
- Access to Earned Income

After reviewing the relevant laws and regulations, MDHHS and LARA have determined that the requirements under the final rule and state licensing rules are in alignment for the aforementioned issues. As part of this review, MDHHS and LARA are issuing the following guidance to stakeholders.
For additional questions regarding the home and community-based services rule or the setting compliance process, please email HCBSTransition@michigan.gov.

Thank you for your attention to this matter.

Richard C. Miles
Director, Bureau of Medicaid Policy and Health System Innovation
Department of Health and Human Services

Thomas J. Renwick
Director, Bureau of Community Based Services
Department of Health and Human Services

Kevin Sehlmeyer
State Fire Marshal
Department of Licensing and Regulatory Affairs

Larry Horvath
Director, Bureau of Community & Health Systems
Department of Licensing and Regulatory Affairs

INTRODUCTION
KEY TERMS AND ASSOCIATED ACRONYMS

The following key terms and associated acronyms are used in this document:

Term	Acronym	Definition
Adult Foster Care Home	AFC	"Adult foster care congregate facility" means an adult foster care facility with the approved capacity to receive more than 20 adults to be provided with foster care. "Adult foster care family home" means a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home licensee shall be a member of the household, and an occupant of the residence. "Adult foster care large group home" means an adult foster care facility with the approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care. "Adult foster care small group home" means an adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care.
Bureau of Community and Health Systems	BCHS	BCHS is the bureau within LARA that is responsible for licensing and certifying facilities and agencies including licensing of Adult Foster Care and Home for the Aged facilities.
Bureau of Fire Services	BFS	BFS is the bureau within LARA that is responsible for ensuring facilities are constructed and maintained in accordance with the Life Safety Code.
Centers for Medicare and Medicaid Services	CMS	A federal agency within the United States Department of Health and Human Services that works in partnership with State governments to administer the Medicaid program.
Continuing Care Community Disclosure Act	CCCDA	An Act to regulate long-term leases in adult foster care facilities, independent living units, nursing homes, homes for the aged, home care service agencies and hospices. (MCL 554.901 et. seq.) This Act excludes adult foster care homes and homes for the aged from the state's landlord tenant laws
Earned Income		Earned income is income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Some rental income is considered earned.
Foster Care		"Foster care" means the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation.

Home and Community Based-Services Final Rule	HCBS Final Rule	The HCBS Final Rule establishes new federal requirements for different Medicaid authorities that allow States to provide home and community-based long term services and supports to eligible persons. The rule requires Medicaid Home and Community-Based Services (HCBS) Waiver Programs to ensure that waiver participants have full access to benefits of community living and opportunity to receive services in the most integrated settings.
Home for the Aged	HFA	"Home for the aged" means a supervised personal care facility, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, non-transient, individuals 60 years of age or older. Home for the aged includes a supervised personal care facility for 20 or fewer individuals 60 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home.
Lockable Door		A lockable door is a side-hinged, permanently mounted door that is equipped with positive-latching, non-locking-against-egress hardware. The hardware must be able to be opened from the inside of a room with a single motion; such as a turn of a knob or push of a handle, even if the door is locked.
Medicaid-Funded Home and Community-Based Services		Services and supports that are offered through a Home and Community-Based Services Waiver program reimbursed by Medicaid.
Medicaid Home and Community-Based Services (HCBS) Waiver Program		Medicaid HCBS Waiver Program allows a State Medicaid Agency to meet the needs of people who prefer to get long-term care services and supports in their home or community, rather than in an institutional setting. The Program requires that HCB services follow an individualized and person-centered plan of care.
Michigan Compiled Laws Annotated	MCLA	Complete text of Michigan statutes, supplemented by succinct annotations.
Michigan Department of Health and Human Services	MDHHS	MDHHS is the Department within the State of Michigan that is responsible for administering the Michigan Medicaid Program. MDHHS is also responsible for implementing HCBS Final Rule.
Michigan Department of Licensing and Regulatory Affairs	LARA	LARA is responsible for safeguarding Michigan's citizens through a simple, fair, efficient and transparent regulatory structure.
Person Centered Planning	PCP	Person-Centered Planning (PCP) means a process for planning and supporting the person receiving services that builds upon his or her capacity to engage in activities that promote community life and that honors the person's preferences, choices, and abilities. The PCP process involves families, friends, and professionals as the person desires or requires. PCP is required by state law (Michigan Mental Health Code MCL 330.1712 and federal law (42 CFR 441.540) as the way that people plan for the services and supports that they receive from

		the community mental health system. PCP is used anytime an individual's goals, desires, circumstances, preferences, or needs change.
Provider-Owned and Controlled		A provider-owned and controlled setting is a setting that is owned and controlled by a Prepaid Inpatient Health Plan, Community Mental Health Service Provider, or contracted provider. A residential setting may be provider-owned and controlled if the waiver participant lives in a private residence that is owned or controlled by the Prepaid Inpatient Health Plan, Community Mental Health Service provider, or the contracted provider. "Controlled" means the person accepts the provider's staff as part of the living arrangement - provider controls the "choice" of who delivers the direct services in a package deal.
Residency Agreement		A residency agreement is a written, legally-enforceable agreement between a resident and owner that outlines the rights and protections when residing in a residential property. A residency agreement must be in compliance with state-landlord tenant law unless the residential setting is regulated under other statutes such as state licensing laws and the Continuing Care Community Disclosure Act. A residency agreement may also be known as a "Lease".
Resident Care Agreement		A resident care agreement is the document which is established between the resident or the resident's designated representative, the responsible agency, if applicable, and the licensee and which specifies the responsibilities of each party. A resident care agreement shall include all of the following: (a) An agreement to provide care, supervision, and protection, and to assure transportation services to the resident as indicated in the resident's written assessment plan and health care appraisal. (b) A description of services to be provided and the fee for the service. (c) A description of additional costs in addition to the basic fee that is charged. (d) A description of the transportation services that are provided for the basic fee that is charged and the transportation services that are provided at an extra cost. (e) An agreement by the resident or the resident's designated representative or responsible agency to provide necessary intake information to the licensee, including health-related information at the time of admission. (f) An agreement by the resident or the resident's designated representative to provide a current health care appraisal as required by subrule (10) of this rule. (g) An agreement by the resident to follow the house rules that are provided to him or her. **(See HCBS house rule exception statement on page 9)**

		(h) 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. (i) An agreement between the licensee and the resident or the resident's designated representative to follow the home's discharge policy and procedures. (j) A statement of the home's refund policy. The home's refund policy shall meet the requirements of R 400.14315. (k) A description of how a resident's funds and valuables will be handled and how the incidental needs of the resident will be met. (l) A statement by the licensee that the home is licensed by the department to provide foster care to adults. (7) A department resident care agreement form shall be used unless prior authorization for a substitute form has been granted, in writing, by the department. A resident shall be provided the care and services as stated in the written resident care agreement.
Service Plan		The individual Plan of Service (IPOS) is a written individual plan of services developed in partnership with the individual receiving services. The IPOS shall consist of a treatment plan, a support plan, or both. It must include the amount, scope and duration for each service and support. A treatment plan shall establish meaningful and measurable goals with the individual receiving services. The IPOS shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation. The IPOS shall be kept current and shall be modified when indicated (reviewed and renewed at least annually). The individual in charge of implementing the IPOS shall be designated in the plan. The use of the Person Centered Planning process (PCP) is required by state law (Michigan Mental Health Code MCL 330.1712 and federal law (42 CFR 441.540) as the way that people plan for the services and supports that they receive from the community mental health system.
State Landlord-Tenant Law		State landlord-tenant law governs the rental of commercial and residential property. For the purposes of this document, the definition of state landlord-tenant law includes but is not exclusively limited to (1) MCL 554.631 to 554.641; and (2) MCL 600.5701 to 600.5759.
State Licensing Administrative Rules		Rules developed by LARA in accordance with the law in order to ensure the safety of residents in HFA and AFC facilities.
Unearned Income		Unearned income is all income that is not earned.

LOCKABLE DOORS

The HCBS Final Rule requires residential settings to offer units that have bedroom and bathroom doors that are lockable by the individual, with only appropriate staff having keys to doors. Both the BFS and the BCHS allows AFC and HFA facilities to have bedroom and bathroom doors that are lockable from the inside of the room. In order to meet both the HCBS Final Rule and AFC/HFA licensing requirements, the bedroom door shall be equipped with a side-hinged, permanently mounted door that is equipped with positive-latching, non-locking-against-egress hardware (hardware that can be opened from the inside of a room with a single motion; such as a turn of a knob or push of a handle, even if the door is locked).

This requirement also applies to bathroom doors. In accordance with the AFC/HFA licensing requirements, appropriate staff must have a key to the bedroom or bathroom door if the individual has a lockable door, this key should be stored in an area not accessible to all staff and residents.

The associated licensing rules for bedroom and bathroom doors are as follows: R 400.1430 (2), R 400.1431 (3), R 400.14407 (3) and R 400.14408 (4) R 400.15407 (3) and R 400.15408 (4).

VISITING HOURS

The HCBS Final Rule requires residential settings to allow individuals to have visitors of their choosing at any time.

RESIDENCY AGREEMENT AND STATE LANDLORD-TENANT LAW

The HCBS Final Rule states that settings must have several "qualities" in order to be considered home and community-based. More specifically, a residential setting that is provider-owned or controlled must demonstrate the following qualities:

The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

The Continuing Care Community Disclosure Act specifically exempts certain facilities, such as AFCs and HFAs from the state's landlord tenant laws. Consequently, these licensed settings, pursuant to HCBS Final Rule, must have a legally enforceable residential agreement that provides protections that address eviction processes and appeals comparable to the state's landlord tenant laws.

MDHHS has determined that current state licensing rules offer comparable protections and rights as the state's landlord-tenant laws on issues related to discharge processes and appeals. Specifically, both the state's landlord tenant laws and state's licensing rules require prior notice and an opportunity to appeal or contest the eviction or discharge to an impartial decision maker. However, unlike the landlord tenant laws, the licensing rules have built in protections to

accommodate the health, safety and wishes of the resident. MDHHS has determined that the variance between the licensing rules and landlord tenant laws, provide comparable protections as the state's landlord tenant laws and additionally allow the setting to make person centered placement decisions in accordance with the resident's wishes and for the resident's health and safety that would not be permitted under the state's landlord tenant laws.

MDHHS and LARA also agreed that both AFC and HFA licensed facilities must have a residential agreement that outlines these protections and rights. Because current state licensing rules offer comparable protections to state landlord-tenant laws, a residency agreement for a licensed setting that meet the requirements of state licensing rules may also meet the requirements of the HCBS Final Rule if the residency agreement includes information on discharge processes and complaints.

Based on these findings, MDHHS and LARA have determined that both AFC and HFA facilities may use residency agreements to meet the requirements of state licensing rules and the HCBS Final Rule under the following conditions:

- AFC Homes: State licensing rules require AFC homes to use the BCAL-3266 Resident Care Agreement form. MDHHS and LARA have agreed that the BCAL-3266 form meets the requirements of the HCBS Final Rule if the licensee also provides information on discharge processes and complaints to the resident. MDHHS and LARA have also created a supplemental document, known as the "Summary of Resident Rights: Discharges and Complaints", which could be used by an AFC home in conjunction with BCAL-3266 form to meet the requirements of state licensing rules and the HCBS Final Rule. Licensees may still use their own residency agreements if the residency agreement outlines the relevant discharge and complaints processes and meets all applicable state and federal requirements.

- HFA Homes: State licensing rules do not require HFA homes to use a specific document as a residency agreement. MDHHS and LARA have agreed that licensees may design and use their own residency agreements to meet the federal requirement if the residency agreement outlines the relevant discharge and complaints processes and meets all applicable state and federal requirements. MDHHS and LARA have also agreed that licensees could use the Summary of Resident Rights: Discharges and Complaints document to fulfill the state and federal requirement to outline relevant discharge and complaint processes.

After also comparing this interpretation to existing state requirements, MDHHS and LARA have agreed that this interpretation complies with rules R 400.14301(6), 400.15301(6), and R 400.1407(5) as outlined by the BCHS.

The BCAL-3266 form and Summary of Resident Rights: Discharges and Complaints document can be found online at the following locations:

Name of the Document	Location
BCAL-3266	www.michigan.gov/lara >> Community and Health Systems >> Adult Foster Care >> Resident Care Agreement BCAL-3266
Summary of Resident Rights: Discharges and Complaints	www.michigan.gov/mdhhs >> Assistance Programs >> Health Care Coverage (Click on the tab) >> Home and Community-Based Services Program Transition

HOUSE RULES

Although house rules are optional under state licensing rules, for the purposes under HCBS Final Rule, house rules will not be permitted.

CHOICE OF PROVIDERS

In many AFC and HFA facilities, the provider of services is the same entity as the owner of the setting. Some stakeholders have contended that this arrangement conflicts with the requirements of the HCBS Final Rule.

The HCBS Final Rule does not expressly prohibit the provision of services in provider-owned and/or controlled settings. The HCBS Final Rule only requires that they be assessed for compliance with the home and community-based characteristics as outlined under the HCBS Final Rule. One of these characteristics is that participants must be offered a choice of providers within the waiver program. A participant could choose a setting that offers services from a specific provider under the following conditions:

1. The participant is offered an array of options in terms of where he or she will receive services by his or her supports coordinator.

2. If the participant chooses a setting where a specific provider offers services, the participant should also be informed by his or her service agency that he or she is choosing a specific provider by choosing that specific setting.

3. The participant should also be provided with information by his or her service agency about how to select a new provider and setting, and the array of available options when he or she desires.

4. The participant may also use private funds to reimburse other providers for additional services such as skilled therapies and other assistance.

MDHHS and LARA have determined that this approach complies with state licensing rules.

FREEDOM OF MOVEMENT

State licensing rules allow for settings to require supervision or place restrictions on the freedom of movement of residents or in accordance with the individual's service plan.

The HCBS Final Rule includes the requirement that individuals must not be unnecessarily restricted in their movement.

If an individual has a specific health or safety related need that requires supervision or restriction on the individual's freedom to move inside the setting or in the community this need must be

clearly documented in the individuals person centered plan and meet all the modification requirements outlined in the modification section of this document.

MDHHS and LARA have determined that this approach complies with state licensing rules.

Specific Licensing Rule Citations: Rule 408, MCLA 400.707(7), R 400.1707(2)(a), and R 400.14301(2)(a)

CHOICE OF ROOMMATE

Residents in many AFC homes and HFA facilities have an option of choosing to live with a roommate.

An individual's choice of roommate and room may be limited by the availability of open rooms within the individual's chosen residential setting. The licensee for the setting should discuss potential options for rooms and roommates with the participant prior to completing the residency agreement. Individuals must be aware of the process to request a different roommate or to change from a shared to a private room should their preferences change over time.

If an individual's preferences cannot be immediately met by a provider individuals must be informed of their right to pursue alternative settings where their preferences related to roommates or private room may be available.

Individuals must be aware of the process to request a different roommate or to change from a shared to a private room

Specific Licensing Rule Citations: R 400.1407(2)(c), R 400.14301(2)(c)

ACCESS TO EARNED AND UNEARNED 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 earned income, but the provider must make provisions for individuals to access their earned income when desired as part of this arrangement. This arrangement does not conflict with the requirement under the HCBS Final Rule for individuals to be able to control their own resources.

Specific Licensing Rules Citation: R. 400.1407(5), R 400.14301(6)(k), R 400.14315(3), and R 400.1421

MODIFICATIONS

Any modifications to the HCBS settings requirements needed by an individual must be supported by a specific assessed health and/or safety need and justified in the person-centered plan.

The following must be documented in the plan:

- 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

Federal Regulation 42 CFR §441.530

SUMMARY OF RESIDENT RIGHTS: DISCHARGE AND COMPLAINTS

If you live in an Adult Foster Care home or Home for the Aged, you have certain rights as a resident of the home. These rights are protected under state licensing laws. Some of these rights help protect you against being wrongfully discharged from your home. This document provides an overview of some of your rights as a resident of an Adult Foster Care home or Home for the Aged. For this document, a licensee is another name for the property owner.

Disclaimer: You may have additional rights as a resident of a licensed setting. Your full rights are outlined in the state licensing rules, which can be reviewed at http://www.michigan.gov/lara >> Community and Health Systems >> Covered Providers >> Adult Foster Care >> Licensing Rules and Statutes.

WRITTEN AGREEMENT

The licensee must sign a written agreement with you, which must include:

- A list of services that you will receive in the home
- A description of your rights and responsibilities as a resident
- A description of the process for being admitted and discharged from the home
- A description of the fees that you must pay as a resident of the home

The licensee must provide you with copies of the written agreement, and the "Admission and Discharge Policy" for the home.

DISCHARGE AND COMPLAINT PROCESS

The licensee can only discharge you from the home for certain reasons. The licensee must follow a specific process to discharge you. If you believe that the licensee wrongfully discharged you from the home, you may contact the Department of Licensing and Regulatory Affairs to file a complaint. The Department may be able to help you return to your home. The discharge and complaint process is outlined on Page 2.

SIGNATURE

If the licensee provided you with a copy of this document, please sign below:

Name: _____

Signature: _____ Date: _____

Parent/Guardian Name: _____

Signature: _____ Date: _____

SUMMARY OF RESIDENT RIGHTS: DISCHARGE AND COMPLAINTS

Discharge and Complaint Process Chart

Type of Home	Adult Foster Care: Family Home	Adult Foster Care: Small or Large	Adult Foster Care: Congregate Home	Home for the Aged
Regular Discharge Process	The licensee must notify you 30 days in advance of the discharge date. The notice must be written and include a reason for discharge. You must be given a copy of the notice.	The licensee must notify you 30 days in advance of the discharge date. The notice must be written and include a reason for discharge. You must be given a copy of the notice.	The licensee cannot discharge you without adequate preparation. The licensee must prove that discharging you is "in your best interest." This	The licensee must notify you 30 days in advance of the discharge date. The notice must be written and include a reason for discharge. You must be given a copy of the notice.

Emergency Process (When there is substantial risk to: (1) you; (2) other residents; (3) the provider; or (4) the property.)	The licensee must provide you with written notice at least 24 hours in advance. This notice must include an appropriate reason for emergency discharge. The licensee must receive written approval from you, your designated representative, or service agency before discharging you from your home.	The licensee must provide you with written notice at least 24 hours in advance. This notice must include an appropriate reason for emergency discharge. The licensee cannot discharge you without: (1) receiving approval from the responsible agency or Adult Protective Services; AND (2) finding another setting that can meet your needs.	decision must take your expressed wishes into consideration. The licensee must provide you with a written notice with a reason for discharge. During discharge, your responsible agency or the Michigan Department of Health and Human Services must work with you to update your service plan.	The licensee must provide you with written notice at least 24 hours in advance. The licensee must also notify the Department of Licensing and Regulatory Affairs and Adult Protective Services before discharging you. The licensee cannot discharge you without finding another setting that can meet your needs.
Complaint Process	If you believe that the licensee has wrongfully discharged you from your home, you can file a complaint online (http://www.michigan.gov/lara/ > Community and Health Systems > Camps > Online Complaint Form) or by phone (866-856-0126).			