

## ATTACHMENT C

# Policy Guidance: Addendum Housing Qualified Residence (B) Apartment with an individual lease



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### **Guidance for How Community Residential Settings Can Meet the MFP Statutory Definition of Qualified Residence (B) Apartment with an individual lease**

The CMS MFP Team prepared the following guidance for MFP grantees to help clarify the conditions under which community residential settings, including Assisted Living Facilities or Settings (ALS) may meet the requirements of a “qualified residence” under the MFP statute. CMS believes this guidance preserves the intent of the Money Follows the Person Demonstration to offer participants options to live in apartment settings that promote independence, choice and privacy.

The MFP Team identified seven issues in the MFP Housing Guidance previously distributed by CMS that may limit participation of key community residential and Assisted Living providers in the demonstration. Each of these issues is described below, followed by the conditions which must be met in order for a community residential provider or (hereto referred to as an ALS) to participate in the MFP demonstration as a qualified residence.

#### **ISSUES**

##### **1. Must have a lease.**

**A lease is a contract in which the legal right to use and occupy property is conveyed in exchange for payment or some other form of consideration. It is generally for a fixed period of time, although it may be a term for life, or may be terminable at any time. States need to**

**evaluate if the following mandatory elements of a lease exist in the ALS resident agreement or contract.**

- A provision that specifies that the ALS provider (possessor of real property) conveys the right to use and occupy the property. The ALS may also offer and provide a set of healthcare services and supports in exchange for rent or a fee.
- A provision that specifies the period of time that is governed by the agreement/contract agreed to by the resident and the ALS, including rights of termination by the resident and the provider and document a formal appeal process for resident terminations.
- A written instrument with a conveyance and covenants detailing the services and residence that will be provided in the Assisted Living agreement or Assisted Living contract.
- Provisions that the residents tenancy rights can be terminated only for violations including non-payment of rent, posing a direct threat to others, and property damage.
- The resident is provided sufficient information and opportunity to consider the possession of the ALS residence and related services and supports to be provided.
- The lease/agreement must state that the ALS will meet all Federal and State Fair Housing Laws.

**2. Must be an apartment with living, sleeping, bathing and cooking areas**

If apartments are not required by the States' ALS licensing regulations, MFP may only contract with ALSs that offer apartment units.

**3. Unit must have lockable access and egress.**

ALSs that serve participants with cognitive impairments must include design features that maximize the participants' capacity to live as independently as possible. Conditions that limit a person's activities must be addressed in the plan of care, be related to risks to the individual's health and welfare, and agreed to by the individual or caregiver in writing.

The ALS must provide the resident with lockable access and egress to and from the resident's apartment, and means to access or leave the facility. This may include key, ID card, keypad number, electronic scanner, or watchman made available to the participant, family member or guardian based on a person-centered plan of care. Participants who are not cognitively impaired and have a plan of care that indicates the capacity to live independently with supports must have full access and egress from their residence.

**4. A qualified residence cannot require that services must be provided as a condition of tenancy or from a specific company for services available in addition to those included in the rate.**

Participants have the right to choose their living arrangements, and one residential option is an ALS that meets the requirements of a qualified setting under MFP. While one of the defining characteristics of an ALS is that the landlord is also the provider of services either directly or through contract, participants who choose to live in an ALS have a choice of providers of Medicaid services that are available in addition to the services that are included in the service

rate paid to the ALS. Traditional ALS services usually include, depending on the needs of the individual, housekeeping, meal preparation, transportation, personal care, and assistance with medication administration.

For an ALS to be eligible as a MFP qualified residence, the tenant (or responsible party) must participate in the care planning process, and there must be a formal process for resolving care plan differences between the ALS and the tenant. Regulations that provide for managed or negotiated risk meet this requirement. If the regulations do not provide a process for resolving care plan differences between the ALS and the tenant, the agreement/contract must define a process.

The agreement/contract should indicate that when the tenant chooses to pay room and board for a unit, they also choose the ALS as their provider for services that are included in the Medicaid rate. Assisted living must be a voluntary choice made by the consumer. Participants cannot be denied services or ALS due to physical, sensory and/or mental health conditions. Before choosing an ALS, the individual should be provided with a choice of potential residences and service providers appropriate to their needs. ALS should not be the only option available to a transitioning individual.

#### **5. ALSs may not require notification of absences from the facility.**

Notice of absences cannot be a condition of the agreement/contract but can be part of the ALS operating practices as long as the expectation is reasonable, noted in the plan of care, and related to one of the following criteria.

- Notice of absence may be required based on an individual assessment, risk to the tenant and the need to assure health and welfare.
- Notification of absence may be required in order to ensure that Medicaid is not billed for days on which services were not delivered.
- Absences for less than 30 days cannot result in termination/discharge.
- To assure health and welfare requirements, the tenant may have to inform the ALS when the tenant leaves the building. The length of the absence that needs to be communicated to the ALS can vary by the predetermined risk as noted in the care plan.

#### **6. Aging in place must be a common practice of the ALS**

An ALS can participate as a qualified residence only if it allows aging in place. This means that a resident contract may not be terminated due to declining health or increased care needs. The state may contract for MFP reimbursed services with ALSs that include aging in place opportunities as provided for in State licensing regulations.

Residents whose service needs cannot be met under the resident agreement or contract may bring in an outside service provider to meet the additional needs if allowed by state regulation; or if able, the ALS may provide the additional services. Additional Medicaid payments to an outside provider would only be made for services that are not included in the rate paid to the ALS

**7. Leases may not reserve the right to assign apartments or change apartment assignments.**

Agreements/contracts may not reserve the right to assign apartments or change apartment assignments beyond the normal provisions of landlord tenant law. However, changes based on the plan of care developed with the resident may be made. In such cases, the written agreement should be modified to reflect the new agreement with the tenant.