Policy Guidance

Housing

February 25, 2008

DHHS/Centers for Medicare & Medicaid Services
Center for Medicaid and State Operations
Disabled and Elderly Health Programs Group (DEHPG)
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

States have questioned CMS as to the meaning of the three categories of "qualified residence" under the MFP Demonstration. The following CMS guidance is intended to help clarify the types of residences in which MFP participants can reside during the MFP Demonstration.

Note that the three categories of qualified residences in this guidance:

- Are mutually exclusive;
- Have the same letter headings as in the statute; and
- Contain bullets with clarifying information.

This guidance does not provide an exhaustive list of all types of living situations; rather, it identifies components that must be present in a qualified residence and conversely, components that would disqualify a residence from consideration for MFP.

CMS recognizes that separation of housing and services often allows for greater levels of self direction for MFP participants; however, some persons may prefer services and supports that are an integral component of their home in the community. Therefore, this Qualified Residence Guidance is intended to support a variety of living situations, including supportive housing arrangements. However, all residences should honor personal choice and control of the MFP participants' home and afford opportunities for independence and community integration.

A qualified residence is:

(A) a home owned or leased by the individual or the individual's family member; the lease/deed must be held by the individual or the individual's family member.

- If leased, the leasee must be the MFP participant or a family representative. Leases as defined by Webster's Dictionary are, "Contracts renting property to another for a specified period of time in consideration of rent".

- If an MFP participant would like to share the home they own or lease with other private individuals, including other MFP participant(s), they may either:

    - Sublet or rent their home with a lease granting the other individual(s) exclusive possession to the space being leased or sublet; or
    - Enter into a co-ownership or co-leasing arrangement with the other private individual(s).

  In either of these circumstances, all parties must retain independent and equal legal rights to enforcement of the lease and/or ownership responsibilities and, if the other parties are MFP participants, those individuals retain responsibility for meeting the qualified residence requirements.

(B) an apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control.

- The dwelling must have a lease that is considered a legal document by all parties signing or referenced in the lease. The lease may be signed by someone other than the individual or the individual's family representative.

- The lease must not name anyone other than the MFP participant or a family representative as having domain and control over living, sleeping, bathing, and cooking areas of the dwelling.

- The building must give access to the community. For example, in order to assure security, safety or privacy many apartment complexes have gates, multiple doors, or security guard checkpoints leading to an exit on the street outside of the complex. Each tenant or their family representative must be provided a key, identification card, or keypunch number to easily get in or out of a complex or facility 24 hours a day.

- The apartment in which the MFP participant resides must have lockable entrance or egress to the unit not just the building.

- The apartment in which the MFP participant resides must comport with federal fair housing guidelines.

To be a qualified residence under MFP, leases should not:

- Include rules and/or regulations from a service agency *as conditions of tenancy* or include a requirement to receive services from a specific company;

- Require notification of periods of absence, e.g. a person who is absent from a facility for more that 15 consecutive days, or discuss transfer to a nursing facility or hospital;

- Include provisions for being admitted, discharged, or transferred out of or into a facility; or

- Reserve the right to assign apartments and change apartment assignments.

(C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside.

- This residence may be owned and operated by a person or organization other than the individual.

- A residence in which no more than 4 unrelated individuals reside and that is part of a larger congregate care setting (campus) separated from typical community dwellings would not be considered a qualified residence.

- Caregivers, such as personal attendants, are not counted in the four maximum unrelated individuals.