

# March 1, 2017

## Special Notice for Assisted Living Providers Seeking Medicaid Waiver Certification



For the past several months, the Division of Aging (DA) has delivered numerous stakeholder presentations, hosted trainings and facilitated an assisted living workgroup regarding its Transition Plan for the Centers for Medicare and Medicaid Services Homes and Community Based Settings final rule (Settings Rule). During these meetings, we discussed the various changes that the DA and providers must make to comply with the Settings Rule. One such change involves the service definition for assisted living which requires licensure of providers.

Our long range plan is to make changes to the service definition; however, in the interim, to ensure providers may continue to provide services and comply with the Settings Rule, providers will be required to obtain a waiver from the Indiana State Department of Health (ISDH) of the residential care facility licensure requirements that do not comport with the Settings Rule found at 42 CFR 441.

The residential care facility rules, in general, use very institutional language. There are a number of areas related to the home and community based characteristics required under the Settings Rule where the residential care facility rules do not go far enough. In areas like visitor policy, provider choice, changes to the residency agreement and others, Medicaid waiver providers will be required to fully comply with the Settings Rule even where it goes beyond the requirements of the residential care facility license.

There is one critical area where the Settings Rule and the residential care facility licensure requirements are in conflict:

### **Transfer and Discharge of Residents (410 IAC 16.2-5-0.5(f) and 410 IAC 16.2-5-1.2(r))**

Under the residential care facility licensure rules, individuals may be involuntarily discharged or transferred. By contrast, the Settings Rule requires that individuals are afforded the same responsibilities and protections from eviction that tenants have under the landlord/tenant law; or, for settings where the landlord/tenant laws do not apply the individual is entitled to protections that address evictions and appeals in a manner comparable to those provided under the jurisdiction's landlord/tenant law.

Furthermore, under the new requirements for waiver assisted living providers are required to engage in a person centered planning process with the case manager to regularly evaluate the appropriateness of the setting and services provided to the participant. The locus of control must be with the participant not the provider.

Starting March 1, 2017, new providers applying for assisted living certification will need to comply fully with the Settings Rule, including obtaining the required waiver from ISDH for any licensure requirements under 460 IAC 16.2 that conflict with the Settings Rule.