

CMS HCBS Settings Final Rule (Final Rule) and the Role of the Waiver Support Coordinator Frequently Asked Questions

CMS HCBS Final Rule

1. Does the Final Rule apply to large group homes that are located on a campus-type setting?

ANSWER: Yes, the Final Rule applies to all Medicaid waiver settings where home and community-based services are provided. This includes large campus-type settings that may be presumptively institutional.

2. How does the Final Rule apply to residents who have been involuntarily admitted to residential services in a non-secure facility?

ANSWER: The Final Rule applies to the home and community-based service settings where Medicaid waiver services are provided – not to individuals specifically.

Lease

1. Are all group home residents required to have a legally enforceable written agreement or lease?

ANSWER: Yes, all Medicaid waiver recipients living in a provider-owned or controlled residential setting are required to have a lease, residency agreement or other form of written agreement that provides protections that address eviction processes and appeals comparable to those provided under the Florida Landlord/Tenant Act.

2. Are waiver support coordinators required to have a copy of the legally enforceable written agreement/lease?

ANSWER: Pursuant to page 1-4 of the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook (the Handbook), the central record must include a paper or electronic copy of legal documents that are recorded, stored, and made available for review. The APD Central Record Maintenance and Records Retention Operating Procedure #04-009 (VI)(2)(A) requires legal/financial documents, including lease agreements, be retained in the active volume of the consumer's central record always as this information is not subject to the retention rule and should never be purged from the file.

3. How would a lease agreement affect someone who has been hospitalized regardless of whether the providers want an individual to return to the group home or not? Can a provider not allow an individual to return to the home or does the lease address them returning to the setting?

ANSWER: There is a termination of services (eviction) clause in all leases. Most leases address the provider's inability to meet a resident's health and safety needs due to recent changes in medical or mental status as a reason to terminate the agreement. Providers are expected to give a 30-day notice to residents when services are being terminated. The resident may appeal the provider's decision to terminate residential habilitation services. When services are terminated for any reason, the provider, the

resident, members of the resident's support team, and APD regional office should work together to ensure a smooth transition to the next residential service setting. .

4. What do I do if a provider does not want to provide the lease to me when I request it?

ANSWER: All APD licensed group home providers have signed a Medicaid Waiver Services Agreement. The Handbook is incorporated into that agreement by reference and the providers have agreed to comply with all the requirements, terms and conditions of their agreement, including complying with Handbook requirements of the lease being in the client file. If a provider is not willing to provide a copy of the lease to the client, their guardian, or to you for the waiver support coordinator client file, please inform the Regional APD Office.

5. Are clients who go to skilled nursing facilities for several months required to keep their leases current? Are they required to pay rent at the group homes while in the skilled nursing facility? How would they be able to pay rent if Social Security requires them to give money to the facility?

ANSWER: To determine the appropriate response to this question, we should look at the procedures that were in place prior to the Final Rule implementation because most leases address what happens when the provider can no longer meet the resident's needs. When an individual requires admission into an inpatient setting for several months and are unable to have their needs met in a home or community-based setting, their enrollment in the waiver is suspended. Group homes may not receive reimbursement for home and community-based services when a person is in an inpatient facility for several months. The policies and procedures to determine accessing services when enrollment in the waiver is suspended did not change with the implementation of the CMS Final Rule.

For more information on what happens to a client's Social Security benefits if they go into a nursing facility or hospital, please use the following link for more information on continued SSI benefits for persons who are temporarily institutionalized:

<https://www.ssa.gov/ssi/spotlights/spot-temp-institution.htm>.

6. When someone lives with a family member but pays rent, should they have a lease?

ANSWER: Yes, if a person is paying rent anywhere, they should have a lease or written agreement that includes protections from evictions and the right to appeal an eviction.

7. Is there anything that states a group home resident must give providers a two-week or 30-day notice to move to another setting?

ANSWER: No, although residents are not required to give a notice prior to moving to another setting, APD expects the current provider to assist with the transition. Although encouraging residents to provide a notice helps to ensure a smooth transition, giving a prior notice is not a resident requirement.

8. Must leases be signed annually or can the person/provider determine lease term?

ANSWER: To be consistent with the Florida Landlord Tenant Act, the expectation is the lease must be executed at least annually. Executing leases more frequently than annually can contribute to administrative hardships.

Privacy/Keys

1. How do I handle a guardian or provider who does not want the individual I represent to have a locking door to their bedroom or a key? What do I do to advocate for this client?

ANSWER: This is an opportunity to educate the guardian on the limitations of guardianship. Pursuant to Section 744.3215(o), Florida Statutes, a person who has

been determined incapacitated retains their right to privacy and therefore a guardian cannot waive this right. Providers can also benefit from education in this area and should be reminded of the rights of individuals with developmental disabilities in Section 393.13(3)(a). Providers may need to be reminded that learning about privacy in one's room is consistent with the residential habilitation focus goals related to social and adaptive skills that enable them to reside in the community. You could work with the consumer to include learning how to benefit from their own privacy and how to respect others' privacy or using a key to help manage privacy as a support plan goal.

2. Can an incompetent individual waive the right to having a house or bedroom key?

ANSWER: Regardless of a person's competence level, anyone can suggest that they would not like to have a key. This, however, does not negate the requirement for the provider to have a keyed entry into the person's bedroom. If one of your clients suggested they didn't want a key, provide them the necessary education and work with them to add a goal to the support plan regarding education on privacy or learning to be responsible with a key. If a person has been educated on the benefits of having privacy in their living quarters and still chooses not to have a key, that is acceptable also. Either way, these discussions should be clearly documented in the progress notes.

3. Does the group home staff or administrator have a copy of the bedroom keys to address safety concerns as they arise?

ANSWER: Yes, the Final Rule requires individuals in group homes to be able to have privacy in their bedrooms using a keyed entrance door that is lockable by the individual, with only appropriate staff having keys to the doors for use to ensure the individuals can live in the home safely.

4. Does the support plan need to address if a person has a room key?

ANSWER: There is no requirement for an individual's support plan to address if a person has a key to their bedroom or not. If you are working with the individual to learn the importance of privacy or the importance of a key for people who live independently, and you and the individual decide to add these as learning goals, you would add the fact that they don't have a key to the support plan. It's up to you but there's no need otherwise to add that to the support plan.

5. If an individual's health or safety would be compromised by having a closed or locked bedroom door, is it okay to just document that in the file?

ANSWER: If a person's privacy is being abridged due to health or safety reasons, the person-centered plan must be thoroughly documented to be compliant with the CMS Final Rule. The CMS Final Rule requirements for thorough documentation when rights are being abridged for privacy, roommate choice, ability to decorate or furnish the room based on their preferences, freedom and support to control their own schedules and activities, having access to food at any time, or being able to have visitors of their choosing at any time are as follows:

Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

- (1) Identify a specific and individualized assessed need.

- (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- (3) Document less intrusive methods of meeting the need that have been tried but did not work.
- (4) Include a clear description of the condition that is directly proportionate to the specific assessed need.
- (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- (7) Include the informed consent of the individual.
- (8) Include an assurance that interventions and supports will cause no harm to the individual.

6. Are all group home bedroom doors required to have a keylock feature? Does APD monitor this during the monthly licensure reviews?

ANSWER: All residents receiving Medicaid waiver HCBS are required to have access to privacy in their group home bedrooms and only appropriate group home staff should have access to the key to their doors. This requirement is monitored during the CMS compliance monitoring and during the Delmarva reviews.

7. Can individuals living in an intensive behavioral or behaviorally focused group home have access to privacy in their bedrooms using keyed entrance door locks?

ANSWER: Although individuals living in intensive behavioral or behaviorally-focused group homes may have locks on their bedroom doors, the safety needs of the individual and the staff must be taken into consideration. Because abridgement of an individual's right to privacy is serious, providers must assess each resident individually to determine if the person requires the abridgement of their right to privacy to be safe. If a determination is made that the resident's right to privacy must be restricted, based on their individually assessed needs, the provider must document the abridgement pursuant to the requirements listed in 42 CFR 441.301(c)(4)(vi)(F).

8. Should support coordinators be aware of which staff member has a key to the residents' bedroom doors? Is there a report requirement that identifies the staff members with keys?

ANSWER: There is no requirement regarding which staff members have keys to the resident bedrooms. If there are concerns regarding people with keys, please speak with the provider.

9. How often should an individual's status of having a key or not be updated?

ANSWER: Because residential habilitation service provides social and adaptive skills training to enable the recipient to ultimately reside in the community successfully, providers should teach residents the importance of privacy and how to use keys. If an individual opted to forgo having a key to their bedroom initially and they changed their minds subsequently, they should get a key. If the provider documented their files to reflect they didn't want the key, the documentation should be updated. Although there

are no scheduled updates to address this, it would be consistent with best practices to discuss of the resident's key status annually during the discussion of privacy rights.

10. Are pinhole locks acceptable options to keyed entrance locks for bedroom doors?

ANSWER: Group home bedroom doors must use keyed entrances with only appropriate staff having keys to the doors. Pinhole locks don't require keys and are not sufficient enough to offer the level of privacy addressed in the CMS HCBS Settings Final Rule.

11. In a supported living home with several others, is it enough to have a key to the whole house or should they also need a key to their individual bedrooms.

ANSWER: The CMS Final Rule requires that individuals can have privacy in their living unit. In a group home, the living unit is the bedroom. In a supported living setting, the living unit is the whole house.

Client File

1. May we get a list of all that is required in the client file by the Final Rule?

ANSWER: The contents of the client file are mandated by the Handbook and APD OP requirements. According to the Handbook the following documentation must be recorded, stored, and available in the client's central record:

- Recipient demographic data (including emergency contact information, parental or legal representative contact information, releases of information, and results of assessments, eligibility determination, evaluations, as well as medical and medication information)
- Legal documents (such as medical powers of attorney, healthcare surrogate, guardianship or guardian advocacy papers, and court orders)
- Service delivery information (including the original, or a copy of, the waiver eligibility determination, the current support plan, cost plan or written authorization of services, and implementation plans, as required)

According to the APD OP, the central records, whether hard copy or electronic file, contains the following six parts:

- Legal/Financial Documents
- Support Plan/Cost Plan
- Reports from Providers
- Contact Record
- Correspondence/Miscellaneous
- Medical Documents

Vocational Rehabilitation (VR) Documents

1. How do we get documents from VR for our clients? Without that, I don't know when to start supported employment to continue help on the job.

ANSWER: Given that the VR documents contain personal health information, you will need a release of information form signed by the individual you represent. If the individual is a mutual VR and APD customer, a signed release should already exist to facilitate the sharing of information about the case. Best practice dictates that APD/VR should have ongoing conversations/meetings regarding mutual customers to ensure that

the services necessary for success are available. An APD/VR meeting may be required to address the lack of access to the documents if the problem continues. If there is an employment provider assigned, it may be helpful to invite them, the individual, and other members of their support team to this meeting.

2. Can a person's guardian refuse to allow an individual access competitive employment?

ANSWER: The CMS HCBS Settings Final Rule requires providers to respect the rights and choices of individuals receiving Medicaid waiver services. The Final Rule also requires individuals receiving home and community-based services to have access to training and opportunities to gain competitive employment. We should listen to the guardian's safety concerns and educate them regarding training and activities providers are offering to maximize the safety of individuals while in the community. Providers and support coordinators can provide information to the guardians about the employment focus of ADTs, the new ADT employment transformation that's taking place, and the VR/APD collaboration to ensure iBudget waiver recipients with the capacity to work, have access to employment opportunities and training.

Section 774.3215(2)(f), Florida Statutes list the right to seek or retain employment as one of the rights that may be removed from a person by an order determining incapacity but not delegated to a guardian.

Roommates

1. Can an individual request not to share their bedroom? What would protect the individual from being given a 30-day notice to terminate the lease because of this?

ANSWER: If the lease suggested the individual's room was a double occupancy room, the individual should not expect to have a single occupancy room. If the lease is for a year and it suggested it would be a single occupancy room and now the provider is planning to change it, the change would go into effect at the end of the lease and the individual would have to determine if they want to continue living there. If they choose to continue living in the group home, it will change after the new lease is executed and will include them having a roommate going forward. Otherwise, the individual should plan to move to another group home that offers single occupancy homes.

2. If a group home has single occupancy rooms but they are no longer available, and your client would like to be added to the waitlist.

ANSWER: Encourage your client to ask the staff and put their request in writing. During your follow-up sessions with the client ask them to be prepared to update you on the status of their movement on the waitlist.

3. What should happen if a resident is coerced to change their room from a single occupancy room to a double occupancy room? The resident is now sharing a room with someone who is not compatible with them.

ANSWER: Waiver recipients should be free from coercion and should be able to give expressed and informed consent. If the living arrangements are not working for the individual, offer to advocate with them or on their behalf with the provider. If the arrangements continue not to work and there are no alternatives, discuss all options with the client, including moving to another group home.

Provider Training

1. Are providers aware of the need for the leases to be in the waiver support coordinator client record?

ANSWER: Providers who are familiar with the Handbook and the APD OP would know the lease should be in the client record. Unfortunately, they may need to be reminded.

Client Choice/Rights

1. How often should individuals be trained on their rights?

ANSWER: Waiver support coordinators should discuss client rights at least annually - during the support planning process. It is consistent with best practice to discuss client rights more frequently than this. Other Medicaid waiver service providers are also required to discuss client rights with waiver recipients and therefore the recipient will have multiple discussions that address their rights over the period of a year.

2. What role does client choice play in house rules? If a person has capacity to contribute to the house rules, can their guardian contribute also.

ANSWER: Pursuant to 65G-2.007(14), Florida Administrative Code, house rules are a form of self-governance and should be developed by the residents of a setting. If the resident is unable to contribute to the development of the house rules, then their guardian can contribute on their behalf. Otherwise the development of the house rules is a process that is reserved for residents. Because house rules must comply with statutes and can't be restrictive in nature, providers can give input to ensure the house rules are consistent with Florida Statutes, the handbook, the Florida Administrative Codes, and other regulatory guidelines.

3. Is there a two-week or 30-day notice requirement when a consumer decides to change providers?

ANSWER: There are specific requirements regarding providers facilitating a smooth transition when consumers decide to change providers. Although there is no specific length of time for notices to providers, the expectation is the client would inform the provider of their intent to switch providers in a reasonable amount of time to ensure all files and documents are transferred to the new provider so the services are not delayed. Although a two-week notice is not required, it should be encouraged to ensure the transition is smooth.

4. Please provide guidance in handling a situation when a waiver recipient is unable to get their choice of activity because they are always outvoted by most other residents.

ANSWER: The support coordinator and the group home providers should explain the process of making choices in a group setting. To ensure everyone can choose activities, there can be a process of taking turns with selecting each resident's activity. If an individual feel that they are unable to make activity choices because they tend to be outnumbered by others' choices, work with the provider or offer additional services, like companion services, to ensure they have access to their activities of choice.

5. What should be done about providers who make consumers all go out together rather than plan for individuals to be able to stay home if they choose to do so?

ANSWER: Providers should both respect and accommodate the individual's choice not to participate. It is acceptable to either encourage them to participate or offer other services to ensure they can engage in meaningful activities. This is an opportunity for

the waiver support coordinator to educate the individual about their rights, discuss all service options and providers available, and empower the client to make an informed choice about what happens if nothing changes. Waiver support coordinators should also offer to advocate on the consumer's behalf with the provider about the consumer concerns.

6. How do I handle it if a provider does not allow an individual to eat or keep food in their room but they want to do so?

ANSWER: The CMS Final Rule supports individuals making choices related to meals. Some of these choices include what to eat, when to eat, and with who to eat. All residents should have access to food at any time also. If residents have limited or restricted access to food, their person-centered plans must document this abridgement of their rights according to the requirements listed in § 441.301(c)(4)(vi)(F). If the decision not to allow individuals to eat in their room is based on safety, this needs to be properly documented. If the provider is concerned about pests and the individual would like the opportunity to eat in their room, work with the individual to develop a goal to eat in the room sometimes and clean up without prompts. Keep in mind that eating with others and with staff supervision can improve table manners and offers socialization opportunities.

7. Does APD keep statistics on what percentage of group home residents transition to supported living arrangements?

ANSWER: Yes, APD maintains statistics on the number of group home residents who transition to supported living settings. This information is available through a public records request.