

Department of Human Services Information Bulletin

To: Agency Providers, Community Care Residence Providers, Distribution
From: Kathy Patrick, Director Office of Licensing
Date: 09/20/22 Updated from 07/28/22
Subject: Privacy in Residential Living Spaces

Purpose:

This Information Bulletin outlines requirements for licensed community residences. Providers must ensure that individuals who reside in provider owned or controlled settings have the means to lock/unlock their homes and bedroom doors so that they have privacy in their residential living spaces.

Background:

The Centers for Medicare and Medicaid Services (CMS) has specific requirements for provider-owned or controlled residential settings in the Home and Community Based Services (HCBS) Final Rule. Among those requirements is the expectation that waiver participants are assured privacy within their homes and bedrooms.

Details of the specific requirements may be reviewed at 42 CFR §441.301(c)(4)(i-v) and include:

In a provider-owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

- A. Each individual has privacy in their sleeping or living unit.
- B. Units have entrance doors lockable by the individual, with only appropriate providers having keys to doors.

These requirements must be met by December 1, 2022.

Definitions:

Provider-owned or controlled setting

A provider-owned or controlled setting is a physical setting in which the individual resides and also meets one of the following criteria:

- A. that is owned, co-owned, leased or rented by a provider of HCBS and is providing services onsite; or
- B. that is owned, co-owned, leased or rented by a third party that has a direct or indirect financial relationship with a provider of HCBS; or
- C. in which receipt of support services is limited to a specific provider while living at the site.

A setting that meets this definition is a provider-owned or controlled setting, regardless of whether a residency agreement is signed by the individual and guardian, if applicable. The existence of a residency agreement **does not** transfer ownership or control of the residential setting from the provider to the individual and/or guardian.

Policy:

Right to Privacy in Homes and Bedrooms

Individuals have the right to privacy within their homes (house, apartment, condominium, etc.) and bedroom unless there is an identified and documented health or safety concern. In such cases, the health and safety concern must be based on individually assessed needs and documented in the Individualized Service Plan, as indicated in the Modification section of this bulletin.

No provider may have a policy or practice that prohibits the right of an individual to lock the doors of their homes and bedrooms unless there is a documented health or safety concern, in which case the provider must follow the Human Rights Committee rules and regulations for rights restrictions.

- A. Providers should afford individuals they support the same respect and dignity as a person not receiving HCBS and as such, the individual must have:
 - 1. A living unit which assures privacy by the following:
 - a. If the program is not shared with another individual (e.g., individual lives alone in their home), a lockable entrance door to their home.
 - b. If the home is shared with others not related to the individual, a lockable door to their bedroom and entrance door to their home.
 - 2. Access through keys, and any other devices used to gain access through any door lock mechanism (e.g., key cards, codes, etc.) to their living unit.
 - 3. Only appropriate providers shall have access to the living unit.
- B. If there are circumstances that would prevent an individual from having a locked bedroom/unit door or having a key to an entrance or any other access to the living unit, these are discussed during the person-centered planning process and described and documented in the Individualized Service Plan.

Provider Access to Bedrooms

- A. Access to the individual's home and bedroom should be limited to individuals who reside in the setting and identified providers, based on circumstances and/or purposes, described in the Individualized Service Plan.
- B. All providers entering an individual's bedroom must knock and receive permission prior to entering.
- C. In an emergency, health, or safety situation, it may be necessary for providers to enter an individual's locked room without permission. For agency providers, entry into an individual's locked room without permission shall be noted in the Critical Information Log, along with the emergent reason and any associated actions taken.

For Community Care Residence providers, entry into an individual's locked room without permission shall be noted on the monthly reports, along with the emergent reason and any associated actions taken.

Locking Mechanisms and Egress

- A. All bedroom door locking mechanisms and systems must allow the door to be easily unlocked/opened simply by turning the doorknob from within the room for purposes of egress. The door may not require a key, tool, or special knowledge (i.e. code) to unlock the door from inside the room. Occupants of the room must have full egress from the room with a turn of the doorknob at all times. Physical accessibility accommodations can be made for individuals who have identified needs.
- B. No additional locks may be placed inside the room. Chain locks, slide bolts, hasps, and other locks that prevent emergency access from outside the room are prohibited.
- C. Doors may have a key, fob, code pad, keycard, etc. that will allow the door to be unlocked from outside the room by the individual and other authorized persons.
- D. If nontraditional keys (e.g., code pad, keycard or any card entry mechanisms) are hardwired, access during power outages must be addressed in each setting's emergency plan.
- E. Settings with multiple living units are permitted to have all living unit door locks keyed so that providers are allowed to use a master key. This ensures unique keys for each resident's living unit while also allowing providers to have access to all resident living units with one master key.

Modification of the Locked Door Requirement

- A. Modifications are considered a deviation from the individual's right to privacy within their living unit and bedroom including access to keys and privacy in their bedrooms. It must be supported by a specific, individually assessed need and justified in the Individualized Service Plan. Modifications also must be reviewed by the Human Rights Committee (HRC) or Behavioral Management Committee (BMC) and must comply with the process outlined in Division Circular 34. The Individualized Service Plan should include the following:

1. Specific and individualized assessed need for which the modification is required.
2. Less restrictive interventions and supports attempted without success prior to imposing any modifications unless the assessment clearly determined less restrictive procedures would endanger the individual's health or safety.
3. Data collection and review of less restrictive interventions and supports. In addition, if the modification is needed due to the presence of behaviors that pose a risk to the individual or others, include collection and review of data related to the effectiveness of methods used to reduce the undesired behavior.
4. Schedule of periodic reviews of data and/or assessments relevant to a rights restriction, at least annually, as outlined in Division Circular 34.
5. Assurance that interventions and supports pose no harm to the individual.
6. Informed consent of the individual and the individual's guardian, if applicable.

B. The prospective, or current residential provider agency, is responsible for providing items 1-6 above and documenting these items in the record. In addition, the Individualized Service Plan must address the specific supports that will be provided to assist the individual to have access to their locked home and bedroom.

Responsibility of the Support Coordinator

- A. The Support Coordinator/Case Manager is responsible for ensuring that the Individualized Service Plan documents the modifications at the time of initial modification and are updated as appropriate per periodic review.
- B. The Support Coordinator/Case Manager will work with the residential provider agency to provide available supporting documentation in the Individualized Service Plan that reflects the need for modifications.

Costs

The service provider is responsible for all costs associated with implementation and ongoing maintenance of locking mechanisms required for compliance with this Information Bulletin. If the service provider intends to charge a resident for the cost of replacing a lost key, this process and the replacement cost must be discussed, agreed to, and reflected in the resident's record. The cost of a replacement key must not be so prohibitive that a resident cannot afford it.

Questions? DHS.OOL@dhs.nj.gov