



STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
DIRECTOR

August 6, 2015

Dear provider:

The Centers for Medicare and Medicaid Services issued a new rule for Medicaid waiver programs that offer home and community-based services. The final rule affects waiver programs that are authorized under the 1915 (c), (i), or (k) sections of the Social Security Act. The final rule establishes new requirements for characteristics that home and community-based settings must have in order to receive Medicaid funding.

The Michigan Department of Health and Human Services (MDHHS) must assess settings under the following three waivers for compliance with the characteristics outlined in the final rule:

- MI Choice Waiver Program
- Habilitation Supports Waiver Program
- MI Health Link HCBS Waiver Program

As part of the assessment process, MDHHS has been working with the Bureau of Community and Health Systems and the Bureau of Fire Services (BFS) within the Department of Licensing and Regulatory Affairs (LARA) to address issues related to licensing of Adult Foster Care homes and Homes for the Aged. Stakeholders have raised questions about whether state licensing rules conflict with the characteristics outlined under the final rule. In particular, stakeholders have questioned whether the federal requirements related to lockable doors and visiting hours conflict with state licensing requirements.

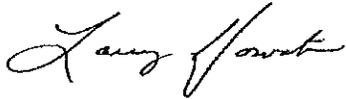
After reviewing the relevant laws and regulations, MDHHS and LARA have determined that the characteristics under the final rule and state licensing requirements are in alignment for the issues of lockable doors and visiting hours. As part of this review, MDHHS and LARA are issuing the following guidance on lockable doors and visiting hours to stakeholders.

For additional questions regarding the home and community-based services rule change, or the setting compliance process, please email HCBSTransition@michigan.gov.

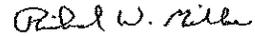
Thank you for your attention to this matter.



Richard C. Miles
Director, Bureau of Medicaid Policy and Health System Innovation
Department of Health and Human Services



Larry Horvath
Director, Bureau of Community & Health Systems
Department of Licensing and Regulatory Affairs



Richard W. Miller
State Fire Marshal
Department of Licensing and Regulatory Affairs

Introduction

The Centers for Medicare and Medicaid Services issued a new rule for Medicaid waiver programs that offer home and community-based services. The final rule affects waiver programs that are authorized under the 1915 (c), (i), or (k) sections of the Social Security Act. The final rule establishes new requirements for characteristics that home and community-based settings must have in order to receive Medicaid funding.

The Michigan Department of Health and Human Services (MDHHS) must assess settings under the following five waivers for compliance with the characteristics outlined in the final rule:

- MI Choice Waiver Program
- Habilitation Supports Waiver Program
- MI Health Link HCBS Waiver Program
- Children's Waiver Program
- Children with Serious Emotional Disturbances Waiver Program

Based upon a preliminary review of settings, MDHHS determined that settings under the Children's Waiver Program and Children with Serious Emotional Disturbances Waiver Program have presumed compliance with the final rule. MDHHS must assess settings under the following three waivers for compliance with the characteristics outlined within the final rule: the MI Choice Waiver Program, Habilitation Supports Waiver Program, and MI Health Link HCBS Waiver program. All settings that provide Home and Community-Based services under these three waivers must come into compliance with the rule: settings cannot be grandfathered into compliance with the rule.

As part of the assessment process, MDHHS has been working with the Bureau of Community and Health Systems (BCHS) and the Bureau of Fire Services (BFS) within the Department of Licensing and Regulatory Affairs (LARA) to address issues related to licensing of Adult Foster Care homes and Homes for the Aged. Stakeholders have raised questions about whether state licensing rules conflict with the characteristics outlined under the final rule. In particular, stakeholders have questioned whether the federal requirements related to lockable doors and visiting hours conflict with state licensing requirements.

Lockable Doors

The final rule requires residential settings to offer units that have bedroom and bathroom doors that are lockable by the individual, with only appropriate staff having keys to doors. Both the Bureau of Fire Services and the Bureau of Community and Health Systems (BCHS) allows Adult Foster Care homes and Homes for the Aged to have bedroom and bathroom doors that are lockable from the inside of the room. In order to meet both the final CMS rule and AFC/HFA licensing requirements, the bedroom door shall be equipped with a side-hinged, permanently mounted door that is equipped with positive-latching, non-locking-against-egress hardware (hardware that can be opened from the inside of a room with a single motion; such as a turn of a knob or push of a handle, even if the door is locked).

This requirement also applies to bathroom doors. In accordance with the AFC/HFA licensing requirements, staff must have a key to the bedroom or bathroom door if the individual has a lockable door.

The associated licensing rules for bedroom and bathroom doors are as follows: R 400.1430 (2), R 400.1431 (3), R 400.14407 (3) and R 400.14408 (4) R 400.15407 (3) and R 400.15408 (4).

Exceptions to the CMS rule may apply in the following circumstances:

- the individual has an assessed need that would be addressed by having a different type of door;
- the need is identified and documented in the individual's person-centered plan or assessment plan;
- the modification is made based upon the individual's need instead of the setting's requirements; and
- the modification meets all other pertinent state and federal regulatory requirements.

Visiting Hours

The final rule requires residential settings to allow individuals to have visitors of their choosing at any time. In the responses to public comment, the Centers for Medicare and Medicaid services stated that "...it would be reasonable for there to be limitations on the amount of time a visitor can stay as to avoid occupancy issues. Such limitations should be clearly stated in a lease, residency agreement, or other form of written agreement."

Based on this guidance, MDHHS interprets the requirement as follows: settings are permitted to set visiting hours in partnership with individuals who are receiving services if the visiting hours are clearly stated in a lease, residency agreement, or other form of written agreement. The visiting hours must apply to all residents of the settings and must also be flexible to allow for special circumstances (e.g., family members or friends who work and cannot participate during regular visiting hours). Restricted and alternative visiting hours should be documented in the individual's person-centered plan or assessment plan. The documentation of the restriction must meet all requirements as outlined in the final rule.

After also comparing this interpretation to existing state requirements, MDHHS and LARA have agreed that this interpretation complies with rules R 400.1409 (1)(K), R 400. 14304 (1)(k), and R 400. 15304 (1)(k) as outlined by the Bureau of Community and Health Systems (BCHS). This rule states that residents have the right to have contact and reasonable visiting time; ~~and~~ any exceptions should be covered in the individual's written assessment plan.