



# Heightened Scrutiny FAQ

The purpose of this document is to explain requirements of the federal Home and Community Based Services (HCBS) Settings Rule and heightened scrutiny review process, and to answer questions related to remediation activities that an assisted living facility (ALF) provider must take to comply with the HCBS Settings Rule.

## HCBS Settings Rule

In March 2014, the Centers for Medicare & Medicaid Services (CMS) issued [new federal regulations](#), which are collectively referred to as the HCBS Settings Rule. The HCBS Settings Rule added requirements for settings where Medicaid HCBS are provided. A primary purpose of the rule is to ensure people get Medicaid HCBS in settings that are integrated in the community. States have until March 17, 2023 to bring Medicaid programs into compliance with the HCBS Settings Rule.

## Heightened Scrutiny

Under the HCBS Settings Rule, Medicaid-funded HCBS can only be provided in settings that are integrated in the community. In determining which settings are integrated in the community, CMS presumes that certain settings have institutional and isolating qualities. These settings must overcome the institutional presumption through a review process called heightened scrutiny.

**HHSC has determined that all ALFs participating in the STAR+PLUS HCBS program must undergo heightened scrutiny.** A full list of ALF settings that will be submitted to CMS for heightened scrutiny is available [here](#).

An evidence packet must be completed for each ALF setting to provide evidence that the setting does, or can, comply with requirements of the HCBS Settings Rule. If an ALF is not compliant with any of the requirements of HCBS Settings Rule, the ALF will work with the MCO to develop a remediation plan. **All remediation activities identified on the evidence packet remediation plan must be completed by November 30, 2022.** (Note that this deadline has been extended from the original deadline of July 31, 2022.)

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## Frequently Asked Questions

### 1. Is an ALF provider required to install locks on a Medicaid recipient's bedroom door?

Yes, an ALF is required to ensure a Medicaid recipient's bedroom door is lockable by the recipient, unless otherwise indicated in the recipient's Medicaid service plan. The HCBS Settings Rule at 42 CFR §441.301(c)(4)(vi)(B)(1) states: "Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed. Any modification... must be supported by a specific assessed need and justified in the Medicaid person-centered service plan."

Alternative features designed for safety, such as doors on living units that are not lockable, or secure exits, should be used only when they are part of the Medicaid recipient's person-centered plan, and after less intrusive methods have been tried and did not work, as provided in the HCBS Settings Rule.

HHSC Long-Term Care Regulatory (LTCR) rules and National Fire Protection Association (NFPA) Life Safety Code policies do not expressly prohibit locks. Thus, **HHSC clarifies that HHSC Regulatory policy or NFPA 101 are not in conflict with the HCBS Settings Rule requirement that Medicaid recipients have locks on doors.** An ALF provider must ensure a Medicaid recipient's bedroom door is lockable, unless there are any door lock restrictions documented in the Medicaid recipient's person-centered service plan. ALF providers must ensure that the lock meets all relevant specifications in HHSC LTCR policies and the Life Safety Code.

An ALF must comply with the applicable occupancy and general chapters in NFPA 101, Life Safety Code, including the requirements related to the type of lock that may be used on a door. NFPA only permits certain types of door locks. A door lock is acceptable as long as the door hardware unlocks all locks and opens with not more than one releasing operation. The locks cannot prevent the occupant(s) from leaving the bedroom or living unit. If the Medicaid recipient has a lock on their door, appropriate ALF staff must be able to unlock the door in an emergency. The staff can have a master key or special tool to unlock the door. The ALF must also have policies and procedures for being able to unlock a resident's door in an emergency. Long-Term Care Regulatory Technical Memorandum 20-01 provides additional guidance to ALFs on the type of locks that may be used.

### 2. How can an ALF provider comply with the HCBS Settings Rule requirement for door locks while serving Medicaid recipients who may wander or exit-seek unsafely, such as individuals in a memory care unit?

An ALF provider can comply with the HCBS Settings Rule requirement for bedroom door locks through the Medicaid person-centered planning process. Person-centered planning, and staff training and care delivery, are core

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components of provider operations used to meet HCBS requirements while responding to unsafe wandering and exit-seeking behavior in an individualized manner.

As indicated in the response to Question #1, an ALF is required to ensure a Medicaid recipient's bedroom door is lockable by the recipient, unless otherwise indicated in the recipient's Medicaid person-centered service plan.

The Medicaid person-centered planning process is led by the Medicaid recipient's MCO service coordinator. ALF staff may participate in the service planning team if requested by the Medicaid recipient. The ALF is responsible for implementing any modifications identified in the Medicaid recipient's person-centered plan.

The HCBS Settings Rule requires that any modification to the conditions described in the rule must be supported by a specific assessed need and justified in the Medicaid recipient's person-centered service plan [42 CFR §441.301(c)(4)(vi)(F)]. This applies to the requirement in 42 CFR §441.301(c)(4)(vi)(B)(1) that units have entrance doors lockable by the Medicaid recipient, with only appropriate staff having keys to doors.

HHSC recommends that an ALF provider develop internal policies related to door locks and assessment processes for determining whether a door lock may not be appropriate for a Medicaid recipient.

**3. Is it appropriate for an ALF provider to assess door lock safety on an ongoing basis for Medicaid recipients, and to address changes in condition over time?**

Yes, HHSC encourages the MCO and ALF provider to conduct regular and ongoing assessments to determine whether a door lock is appropriate for a Medicaid recipient residing in an ALF. HHSC recommends that an ALF provider develop internal policies related to door locks, and assessment processes for determining whether a door lock may not be appropriate for a Medicaid recipient.

The HCBS Settings Rule requires that any modification to the conditions described in the rule must be supported by a specific assessed need and justified in the Medicaid recipient's person-centered service plan [42 CFR §441.301(c)(4)(vi)(F)]. This applies to the requirement in 42 CFR §441.301(c)(4)(vi)(B)(1) that units have entrance doors lockable by the Medicaid recipient, with only appropriate staff having keys to doors.

The Medicaid person-centered planning process is led by the Medicaid recipient's MCO service coordinator. ALF staff may participate in the service planning team if requested by the Medicaid recipient. The ALF is responsible for implementing any modifications identified in the Medicaid recipient's person-centered plan.

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#### **4. Are ALF providers required to allow Medicaid recipients to have visitors at any time?**

Yes, an ALF is required to ensure a Medicaid recipient is able to have visitors at any time, unless otherwise indicated in the recipient's Medicaid service plan and agreed to by the recipient. The HCBS Settings Rule at 42 CFR §441.301(c)(4)(vi)(C) states: "Individuals are able to have visitors of their choosing at any time."

The HCBS Settings Rule requires that any modification to the conditions described in the rule must be supported by a specific assessed need and justified in the Medicaid recipient's person-centered service plan [42 CFR §441.301(c)(4)(vi)(F)]. This applies to the requirement in 42 CFR §441.301(c)(4)(vi)(C) that Medicaid recipients can have visitors at any time.

The Medicaid person-centered planning process is led by the Medicaid recipient's MCO service coordinator. ALF staff may participate in the service planning team if requested by the Medicaid recipient. The ALF provider is responsible for implementing any modifications identified in the Medicaid person-centered service plan.

##### Visitation Policy Expectations:

In general, providers must have policies and procedures that ensure a Medicaid recipient's right to have visitors as they choose.

The provider must allow visitors at any time, unless the restriction is related to a health or safety risk and identified in the Medicaid recipient's person-centered service plan. The provider is not responsible for lodging, meals, and/or care of visitors.

The provider must have a location where Medicaid recipients can visit privately with visitors to ensure privacy and confidentiality of the Medicaid recipient and visitors.

The provider must notify Medicaid recipients in writing if any visitor restrictions apply to their guests.

The provider must make visitation policies available to all Medicaid recipients and their guests specifying:

- Any limitations on the duration of stay, fees for lodging, and visitor meals, etc. The policy may require roommate consent for overnight visitors;
- Any conditions in which visitors are prohibited and/or restricted due to a risk to the health and safety of Medicaid recipients residing at the ALF;
- If visitors are required to sign in; and

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- Any restrictions on visitors who have caused or are causing a disturbance, or who pose a health or safety risk to Medicaid recipients.

## **5. Can an ALF provider enforce a curfew for Medicaid recipients who reside at the ALF?**

The HCBS Settings Rule requires that individuals have the freedom to control their own schedules and activities. While a setting-wide curfew may not be established as a “house rule” or general restriction at an ALF, providers may encourage or recommend, but not mandate, that Medicaid recipients return to the setting by a certain time.

HHSC provides the following example language, which ALF providers may use for their internal policies and procedures:

“Curfew: Residents can come and go as they please. However, residents are asked to notify staff prior to leaving the property as well as what time they plan to return. This gives staff time to coordinate your medication schedule and treatment team appointments.”

## **6. Is an ALF provider responsible for making appliances, such as a washer and dryer, accessible to Medicaid recipients?**

A Medicaid recipient should have the same degree of access to appliances as any individual who is residing in the setting that is not receiving Medicaid HCBS.

If there are not washing machines in the individual units, (as is the case in some rental units), the individual should have access to a place where they can do their laundry if they prefer to do their own laundry, to the same degree as residents not receiving Medicaid HCBS. This would include on-site, shared washer/dryers that are accessible to all ALF residents, including both individuals receiving Medicaid HCBS and individuals not receiving Medicaid HCBS. This could also present an opportunity for community integration by facilitating access to a laundromat for an individual to do their own laundry.

## **7. What is an ALF provider’s responsibility for supporting Medicaid recipient’s access to employment?**

Employment assistance and supported employment services are available through the STAR+PLUS HCBS program to help a Medicaid recipient locate paid employment in the community and sustain competitive employment.

The MCO service coordinator is responsible for developing the Medicaid recipient’s person-centered service plan, which includes assessment of the Medicaid recipient’s service preferences, personal preferences and outcomes. This could include preferences and goals related to seeking employment and working in competitive integrated settings. The MCO service coordinator is

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responsible for assessing and providing information to the Medicaid recipient related to employment assistance and supported employment (Uniform Managed Care Manual 8.3.2.3).

The ALF provider is responsible for providing support to the Medicaid recipient in achieving and maintaining their employment goals, as identified on the person-centered service plan. For Medicaid recipients who are employed, the ALF is responsible for providing or helping the Medicaid recipient arrange transportation to and from their place of work. If staff at the ALF become aware that a Medicaid recipient wants to pursue opportunities for employment, the ALF should encourage and, if needed, assist the Medicaid recipient in contacting their MCO about employment assistance and supported employment services.

HHSC recommends that the ALF provider develop internal policies and procedures related to providing information to a Medicaid recipient about employment services available through Medicaid, and for providing transportation to Medicaid recipients who are employed.

## **Additional Resources**

### **From CMS:**

- [HCBS Settings Rule](#)
- [March 2019 Updated Frequently Asked Questions on Heightened Scrutiny Provisions](#)
- [Frequently Asked Questions Regarding the Heightened Scrutiny Review Process and Other Home and Community-Based Settings Information](#)

### **From HHSC:**

- [HHSC Website](#)
- [List of ALF settings subject to heightened scrutiny](#)

## **Contact HHSC**

If you have questions about the HCBS Settings Rule or heightened scrutiny process, please email [Medicaid\\_HCBS\\_Rule@hhsc.state.tx.us](mailto:Medicaid_HCBS_Rule@hhsc.state.tx.us)