



**INFORMATIONAL LETTER**

<b>Transmittal:</b>	23-INF-02
<b>To:</b>	Care Coordination Organizations (CCOs) CEOs of Voluntary Provider Agencies Developmental Disabilities State Operations Offices (DDSOO) Directors Developmental Disabilities Regional Field Offices (DDRFOs) Provider Associations Willowbrook Consumer Advisory Board
<b>Issuing OPWDD Office:</b>	Division of Policy and Program Development (DPPD) Division of Quality Improvement (DQI)
<b>Date:</b>	September 6, 2023
<b>Subject:</b>	Privacy and lockable doors in certified and provider owned or controlled residential settings providing Office for People with Developmental Disabilities (OPWDD) 1915(c) Waiver Home and Community-Based Services
<b>Suggested Distribution:</b>	Residential Settings Staff and Managers Care Managers and Care Manager Supervisors Medicaid Compliance Officers and Compliance Staff
<b>Contact:</b>	Division of Quality Improvement (quality@opwdd.ny.gov)
<b>Attachments:</b>	Glossary: Types of Doorknobs and Door Locks

<b>Related ADMs/INF</b>	<b>Releases Cancelled</b>	<b>Regulatory Authority</b>	<b>MHL &amp; Other Statutory Authority</b>	<b>Records Retention</b>
-	None	14 NYCRR Parts 633.14 and 633.16	42 CFR 442.301(c)(4) and 441.530(a)(1)(vi) (F)	10 years (NY False Claims Act)

## I. Introduction

In 2014, the Centers for Medicare and Medicaid Services (CMS) released new federal requirements for Home and Community Based Services (HCBS) settings. The transition period for states to achieve compliance with the new HCBS federal requirements ended on March 17, 2023. One of these federal requirements includes the use of locks or locking mechanisms in residential settings. A person's residence and their bedroom within the residence must have entrance doors lockable by the person, with only appropriate parties having keys/access to doors as needed.

The Office for People With Developmental Disabilities (OPWDD) has received numerous questions concerning the requirement for the use of locking mechanisms in certified and other provider owned or controlled residential settings for people who receive HCBS Waiver services. The purpose of this memorandum is to provide answers to some frequently asked questions about the HCBS regulatory criteria, in particular where the regulation requires that "*...units have entrance doors lockable by the individual, with only appropriate staff having keys to doors,*" and "*the setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint...*," located in HCBS federal regulation 42 CFR §441.301(c)(4). New York state's HCBS settings rule general requirements are located in Title 14 of New York Codes, Rules and Regulations (NYCRR) Subpart 636-2.

It is expected that people who receive HCBS Waiver supports and services have privacy in their residence and are, therefore, able to lock their bathroom doors, their bedroom doors, and the entrance doors to their home. People must have locks on these doors as set forth in this letter unless appropriate modifications or limitations have been determined, consented to, and justified in their person-centered plan. These modifications or limitations must comply with federal regulations 42 CFR §§442.301(c)(4) and 441.530 (a)(1)(vi)(F), and state regulations 14 NYCRR §§636-1.4 and/or 633.16. These regulations outline the process for modifying any of the criteria as required to address a person's specific and individualized assessed need. In the event that a person is unable to control the locking mechanisms in their residence, they are still entitled to have locking doors to allow for privacy and securing their belongings. Therefore, positive interventions and supports as well as less intrusive alternatives must be tried and documented in the person's person-centered plan before a rights modification is implemented.

The appropriate staff person(s)/titles allowed to have keys or control of a locking

mechanism to a person's residence, bedroom, or bathroom should be determined by the provider and the person and must be documented in the person's person-centered plan (e.g., the Life Plan (LP) or associated plans such as the Staff Action Plan (SAP), Behavior Support Plan (BSP), or other plans, as applicable). Should the person express interest in learning to operate their bedroom/bathroom/residence lock, the SAP must include goals related to training the person to use the locks or locking mechanism and acquiring the skills to lock the door. If related to a BSP, then this determination and the goals related to training must be documented in the person's BSP. Additionally, this determination and the goals related to training must be included in the Individual's Plan of Protective Oversight (IPOP), which is required for all people residing in certified settings. The provision of keys or control of a locking mechanism to anyone other than the residents of the setting must be limited to appropriate staff persons for the purposes described during the person-centered planning process.

## **II. General Information: Locking Mechanisms**

The federal and state requirements for locking mechanisms are intended to support a person's rights to privacy, dignity, and respect. A person does have the right to choose not to use locking mechanisms, but that does not negate the provider's responsibility to install locks. If a means of egress is located in a person's bedroom, the bedroom door cannot be locked as per the Life Safety Code. In that event, agency staff should take all necessary steps to ensure the person's privacy is protected when in their bedroom.

## **III. Where Are Locking Mechanisms Required?**

Locking mechanisms are required on all entrance doors of a residence, and all bedroom and bathroom doors. The locks must allow the individual to lock the door of their residence and their interior bedroom (if applicable) from the outside when they are away from the residence. Bathroom doors must be lockable from the inside to allow privacy, but do not need to be lockable from the outside. Unless otherwise noted in the person's person-centered plan, staff in each residential setting must knock and receive permission, to the best of the person's ability, prior to entering a person's bedroom or bathroom that is in use to ensure their privacy and demonstrate respect.

## **IV. What Kind of Locking Mechanisms Are Acceptable?**

Prior to selecting and installing a locking mechanism, providers are strongly encouraged to consider a person's wants, needs, and person-centered plan to

determine the most appropriate locking mechanism. Additional considerations:

- Locks that disengage with the turn of the inside knob or lever are recommended.
- Locks must allow a person to exit the residence, bedroom, and bathroom(s) without delay.
- Deadbolts or key locks that can only be unlocked from inside the person's bedroom do **not** meet the federal and state lock requirements.
- Push pin locks for bedroom doors are not acceptable, as they do not afford privacy and can be disengaged by anyone and do not require the use of a key. Push pin locks or locks with a pin key may be used for bathroom doors as they are lockable on the inside for privacy and have the ability to be opened from the outside in an emergency.
- Door handles must meet the physical needs of the persons who reside in the settings. For example, a lever handle may be required for persons with manual strength or dexterity limitations. The door handle must meet the person's functional needs and have a locking mechanism.

Acceptable locking mechanisms include but are not limited to:

- Keyed doorknobs -- turning knob from the inside disengages the latch.
- Double Function locks – only when the person has demonstrated the capability to operate such a lock.
- Keyed door levers -- pushing down on lever handle from the inside disengages the latch.
- Dual chamber locks -- locks with a separate keyhole on the lock that allows a different key to be used to override the lock/unlock function.
- Card-based entry system -- can be disengaged with a computer.
- Electronic door locks -- can be disengaged with a computer and have automatic safeguards in place in case of power failure.

## **V. Frequently Asked Questions & Answers**

**Q. Does a provider need to have a written policy related to a person's access to locking mechanisms?**

Yes. Each residential setting must have a policy in place concerning the distribution

and use of unlocking mechanism tools, such as keys, key cards, codes, and fobs. Procedures for returning/reprogramming unlocking mechanisms upon a person's discharge from a residence and when a staff member is no longer assigned to a residence should be included in the policy.

**Q. Does a provider need to have written policies related to staff access to keys?**

Yes. Residential providers must have a policy in place related to staff access to keys. The policy should state the setting's staff will only use a key to enter a person's home or bedroom under circumstances agreed upon with a person/guardian. The policy must indicate who has access to keys and how the policy will be maintained.

In addition, each setting will have a policy in place to ensure that staff knock and receive permission prior to entering a person's bedroom or when there is a bathroom in use to respect each person's right to privacy. Policies should also describe exceptions in emergency situations.

At the time of an HCBS review, each setting should be prepared to provide a copy of its policies, along with documentation of related staff training to indicate how compliance with the rule is maintained.

**Q. If a person loses a key, can they be charged for a replacement?**

No. In accordance with 14 NYCRR §635-9.1(vi), the provider is responsible for the purchase, operation, and maintenance of all equipment and furniture necessary to operate the facility in accordance with regulations of the applicable facility class, and any other applicable regulations. This includes replacement keys.

As a general rule, when a person loses a key, replacement of an entire lock should not be necessary unless there is a clear risk that a person's safety and privacy will otherwise be violated. This risk must be discussed with the person. Any plans developed or actions taken must be documented in the person's person-centered plan.

If a person is prone to misplacing or losing keys, it does not negate their right to have a locking mechanism on their door. The residential provider should work with the person, their Care Manager, and care planning team to incorporate a procedure into the person's person-centered plan, as applicable, to keep the key in a safe place for the person's use.

**Q. If a person loses a key and their room needs to be unlocked, can they be charged for locksmith services to unlock their door?**

No. Each setting's staff should have a duplicate key or a master key to be able to unlock the door without a locksmith. If a locksmith is needed, the provider must pay for those costs.

**Q. Is it acceptable for a provider to just obtain a person's legal representatives verbal or written consent for a person not to have their own key?**

No. With respect to a person's rights, personal choice and privacy, they must be involved, to the extent possible, in any decisions regarding protection of their personal possessions and use of a key. The conditions that would prevent a person from having a key must be specific and individualized to the person's assessed needs and must be justified and documented in the person's person-centered plan, as applicable. The person may choose to involve others, such as parents, a legal representative, or a significant other in the decision. If a person is not able to utilize a key, it does not negate their right to control the locking mechanisms in their home (see acceptable locking mechanisms above).

**Q. What should a provider do if it could be unsafe for a person to lock their door?**

Based on the HCBS settings rule, OPWDD has determined that providers must install locks on all entrance doors, bedroom doors, and bathroom doors. It is recognized, however, that the use of a door lock may not be safe for some people due to their needs and/or functioning abilities. If there are documented health and safety concerns, any modifications to the HCBS settings criteria, including circumstances that would prevent a person from having a key, must be specific and individualized to the person's assessed needs (i.e., not merely the person's diagnosis) and must be justified and documented in the person's person-centered plans, as applicable. Documentation of any modification to the HCBS settings criteria must be documented in the person's LP and/or associated plans such as the SAP and/or other planning/service-related document(s) (e.g., BSP, Plan of Nursing Services, or other applicable person-centered plans) and available for verification at the residential setting at any time. The policy should be reviewed during a person's person-centered planning process, signed by all parties, and incorporated in the person's person-centered plan.

If a person has been assessed as not having the physical or mental capacity to utilize a locking mechanism, this must be documented in their person-centered plan, as applicable, and in compliance with federal and state requirements for rights modifications.

**Q. What should a provider do when a person cannot manage a key?**

Alternative locking mechanisms must be explored and implemented, if appropriate. If a person is prone to misplacing or losing keys, it does not negate their right to have a locking mechanism on their door. The residential provider should work with the person, their care manager, and care planning team to incorporate a procedure into the person's person-centered plan, as applicable, to keep the key in a safe place for the person's use.

**Q. What if the residence has multiple entrance doors that each have a unique key?**

Residences with multiple entrance doors should consider having all entrance doors useable with a master key.

**Q. If a person or guardian indicates that they don't want a lock, do I need to install one anyway?**

Yes. All entrance doors of residences, bedroom doors, and bathroom doors must have locks installed and available for use.

While a person does have the right to choose to not lock their door, the person's choice does not negate the provider's responsibility to install locks. A lock must only be removed if it is determined to be unsafe as documented in a person's assessment and person-centered plan.

If someone makes the choice to not lock their door or not to possess a key to their bedroom or residence, then the Care Manager must document the person's choice in the person-centered plan such as the LP or residential staff must document this choice in the SAP. The person can change their mind at any time to exercise their right to lock their bedroom doors and/or request a key for their bedroom and/or residence. Providers and Care Managers should remind the person of their right to maintain a key to their bedroom and/or residence at least annually, or more frequently, as needed (e.g., at the annual person-centered planning meeting, or when the person shows an

interest in having a key or additional privacy in their residence, bedroom, or bathroom).

For questions, please contact the DQI mailbox at: [quality@opwdd.ny.gov](mailto:quality@opwdd.ny.gov)