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Memorandum

To: Assisted Living Facilities, Level II
From: Division of Provider Services and Quality Assurance
Date: October 23, 2025
Subject: Advisory Memo for Living Choices Waiver Facilities- Expectation and Compliance with HCBS Settings Rule Requirement on Visitation and Visitor Access

This memo serves as an official update on requirements and expectations associated with the Home and Community-Based Services (HCBS) Settings Rule. It applies to all Assisted Living Facilities Level II (ALF II) that are concurrently enrolled in Medicaid as Living Choices Waiver provider.

Background

Arkansas Statute (A.C.A. § 20-10-1204) requires that all long-term care facilities adopt and make public a statement of the rights and responsibilities of the residents of the facilities and shall treat residents in accordance with the provisions of the statement. Statute requires that each resident is assured: (16)(A)(i) “[t]he right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident’s choice during visiting hours, providing that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident’s losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.”

Additionally, licensing regulations for Level II Assisted Living Facilities currently state “visitors shall be permitted at all times, except when visitation disrupts services to other residents or threatens the health, safety, or welfare of the residents.” (*20 CAR §411-501(1)(A)(B) or Rule 505(a) in the Rules for Assisted Living Facilities Level II issued January 1, 2024*)

The Centers for Medicaid and Medicare Services (CMS) has issued rules requiring specific rights that must be afforded to individuals receiving services funded by a HCBS waiver, regardless of the setting type. Among those rights is the expectation that waiver participants are assured the right to have visitors of their choosing at any time.

Based on feedback received from CMS, the current regulation and standard does not clearly express the expectation for long-term care facilities providing Medicaid-funded services; therefore, effective immediately, the below expectations have been established for all ALF II

providers currently enrolled in Medicaid as a Living Choices Waiver provider. ALFII regulations are currently being revised to reflect this language.

Adherence to Federal Regulation 42 CFR §441.301(c)(4)(vi)(D)

“Individuals are able to have visitors of their choosing at any time”

Provider shall not have a policy or practice that prohibits the right of an individual to have visitors of their choosing at any time unless there is an individualized assessed and documented safety concern. If there are any concerns about a specific visitor inciting unsafe activities (e.g., elopement, violence, etc), an interdisciplinary team consisting of, but not limited to, the DHS waiver nurse, the provider, the individual and the guardian (if applicable) should work together on necessary modifications. For more on the modification process, please refer to the FAQ for ALF II providers located on the Arkansas HCBS Settings Rule webpage.

Individuals have the right to have visitors of their choosing at any time in their homes, including residential facilities, unless there is a clearly identified and documented safety concern regarding a specific potential visitor. In such cases, the safety concern must be based on individually assessed needs and documented in the Person-Centered Service Plan (PCSP), as indicated in 42 CFR 441.301(c)(4)(vi)(F)(1-8). A guardian or POA’s desire to restrict visitors, absent a clearly defined safety concern, does not constitute an assessed need. If an individual is unable to express his or her own preferences, then the guardian will make decisions in the “best interest” of that individual.

Right to Visitors in the Home/Residential Setting

- Individuals living in a waiver funded residential setting, whether individually controlled or provider owned/controlled, must be afforded the right to have visitors of their choosing at any time.
- Providers may not establish visitor hours, nor can they establish a policy requiring advance notification of intended visits.
- It is allowable for a visitor to stay overnight for short-term visits. If an individual who chooses to have a visitor stay overnight has a roommate, the roommate should be consulted prior to the overnight visit. If the roommate does not want the overnight visitor to stay in their bedroom, conflict resolution with the interdisciplinary team and the two roommates should be initiated.

Modification of the Right to Have Visitors of Their Choosing at Any Time Requirement

- Modifications are considered a deviation from the individual’s right to have visitors of their choosing at any time. It must be supported by a specific, individually assessed need and justified in the Person-Centered Service Plan (PCSP). The PCSP 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.

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 for the modification.
 5. Assurance interventions and supports pose no harm to the individual.
 6. Informed consent of the individual and the individual's guardian, if applicable.
- The provider is responsible for providing items 1-6 above and documenting these items in the residents' file.

Responsibility of the Provider in the Event of an Emergent Situation

Should a situation arise where a safety concern has been identified but there is no modification dealing with the safety concern currently in place, providers should first address the immediate concern, assuring the safety of the individual. For example, if a visitor with no previously known aggression issues suddenly becomes aggressive toward any of the individuals in the setting, the visitor should be immediately removed from the property and barred from re-entry pending a meeting regarding a possible modification to the individual's person-centered plan. Once the safety concern has been addressed, the interdisciplinary team should be notified of a potential need for a modification and document notification has been made, as well as the steps taken to assure the individual's (and all others in the setting) safety. Documenting the steps that have been taken will be important should a state or federal regulator visit the site before the modification process has been completed.

Additional Guidance

Details of the HCBS Settings Rule requirements for 1915(c) Medicaid waiver providers may be reviewed at [42 CFR §441.301\(c\)\(4\)\(i-vi\)](#).

Providers are encouraged to visit the updated [HCBS Settings Rule webpage](#) on the DHS website for:

- CMS communications
- Training opportunities
- Compliance resources

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