

**Guidance to HCB New Rule Implementation
Questions and Answers
North Dakota DD Division
June 2015**

Leases

Q: What is required for the lease or legally enforceable agreement and what settings apply?

A: According to the New Rule: *“The unit or dwelling is a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law. For settings in which landlord tenant laws do not apply, a lease, residency agreement or other form of written agreement will be in place for each individual and the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.”*

The lease is established for any home, apartment units, apartment buildings, group home, room, etc. which is provider-owned.

Q: When does the DD Division require the lease template and agency lease policy?

A: Providers will submit a lease template and their agency lease policy to the DD Division by July 1, 2016, according to the Transition Plan timeline. Provider Licensure will be updated to reflect the new requirement and new providers upon initial licensure application will submit a lease template and their agency lease policy.

Ongoing, if there are any changes made to the lease template or agency lease policy, the changes are to be submitted with the provider’s annual licensure renewal.

Q: Providers are to develop a lease policy according to the Transition Plan. What should the policy contain?

A: The only requirement is that the policy addresses and complies with meeting the requirements of the CMS New Rules pursuant to 441.301(c)(4)(vi)(A) and ND landlord/tenant laws. See Question above *“What is required for the lease or legally enforceable agreement and what settings apply?”* for New Rule language/requirement.

Q: Does the sample lease provided by the DD Division need to be the only lease format used?

A: No. The sample lease is provided as a tool, and Providers may develop and use their own format. However, the content contained in the sample lease at minimum needs be incorporated into provider’s formats.

Q: What should the lease or enforceable agreement contain?

A: The DD Division is not establishing a list of specific items. The lease should contain items that comply with the New Rule lease requirement as well as the North Dakota landlord tenant laws and eviction laws. It is recommended that the lease references North Dakota Century Code 47-16 and 47-13 and lease termination language is clear.

Q: What should the lease or enforceable agreement NOT contain?

A: The lease should not contain items that conflict with the landlord tenant laws, eviction laws, and CMS New Rules. Additionally, items such as house rules, visitor restrictions, or anything that conflict with the rights of the New Rules should not be included.

Q: Can the lease be contingent upon an individual receiving services from the provider?

A: This can be a condition of the lease, but it should be clearly listed in the lease. Landlord tenant laws and eviction laws continue to be applicable.

Lockable Doors

Q: What is required for lockable doors?

A: According to the New Rule: *“Each individual has privacy in their sleeping or living unit: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.”*

Individuals should be afforded the same respect and dignity as a person not receiving services. Individuals should have access to their homes unless appropriate limitations have been determined and justified in their plan. Additionally, it is expected that individuals would have keys to their residence in which they live.

Q: What settings apply toward the requirement of lockable bedroom doors by the individual?

A: The requirement is specifically for provider-owned residential waiver settings to ensure the privacy of individuals.

Q: When do lockable doors need to be installed?

A: According to the Transition Plan timeline, by July 1, 2016 all provider-owned settings are to have lockable doors installed. If this requirement cannot be met it needs to be addressed and documented in the individual’s plan why the modification was not made. Future statewide training will be provided and OSP Instructions will be updated.

This requirement will be ongoing for those who reside in the provider owned settings and for new provider- owned settings.

Q: Who is responsible for the cost of the lockable doors for provider owned settings?

A: The provider will be responsible for the changes, however the provider will be able to include the costs for the locks in the “room” charge that the individual is responsible for.

Q: If someone lives in a home or building that is owned publically by a landlord, do they need to have lockable bedroom doors and if so, who’s responsible for the cost?

A: The requirement is only for DD provider-owned settings and there is no expectation that public landlords are to comply with the rule. However, if a lockable bedroom door is being pursued by an individual in these settings, the individual may be personally responsible for the cost.

Q: If someone lives alone in a provider owned setting, are lockable doors still required?

A: Yes, the team and individual should still discuss this option as the individual has staff present in their home with the right to privacy. If this requirement cannot be met it needs to be addressed and documented in the individual’s plan why the modification was not made. Future statewide training will be provided and OSP Instructions will be updated.

Q: What if the team recommends that a lockable bedroom door would be a health and safety concern or not be attainable at the current time?

A: If this requirement cannot be met, it must be supported by a specific assessed need and justified in the person's plan. Requirements for what needs to be documented in the plan is pursuant to 441.301(c)(4)(vi)(F)(1) through (8). Future statewide training will be provided and OSP Instructions will be updated.

Q: If an individual does not want to have a bedroom door that locks or it is not important to them, does one still need to be installed?

A: No, but this does need to be addressed and documented in the person's plan according to the new rules. Future statewide training will be provided and OSP Instructions will be updated.

Q: How is this requirement going to be implemented for individuals who may not be able to lock or unlock a door?

A: It would be appropriate for the team to discuss further and mitigate any associated risks as circumstances are individualized. However, a reason an individual should not have a lockable door should not be based on lack of training.

Q: For these provider-owned settings, should Providers just automatically install locks for bedroom doors?

A: The New Rules does establish that all individuals have this right; however circumstances may call for individualization. If an individual moved into a home where there are lockable bedroom doors and they have an assessed need for not having a lockable bedroom door, provider owned settings must be accommodating and vice versa. Choosing where to live should not be based on the lockable door requirement.

Q: Is there a requirement as to what type of door lock is used (e.g. push button, keyed, etc)?

A: No, the determination can be based on the individual's preference and/or needs to lock and unlock the door. However, appropriate staff needs to be able to have a way to unlock or open the door under circumstances or in emergency situations outlined though the person-centered planning process and identified by the team.