

HCBS Final Rules – Recommendations for Changes to Regulations for GA Medicaid’s HCBS Waiver Programs

Manual	Section	Recommended Change
Zoning Law Overall		Add legislation to OCGA that people being served by HCBS waiver funds are exempt from municipal zoning
Zoning Law		Terminate rules that mandate that CLAs must be at least 1000 feet apart regardless of choice. Isolation and lack of inclusion is addressed in HCBS at the federal level.
Georgia fire code	120-3-3	Requires widening of doorways to 32” and other modifications regardless of mobility needs. This results in an institutional appearance and excessive costs. We recommend prescribing modifications according to a specific set of needs via assessment or consultation.
Dekalb County fire code	24.1.1.5	Dekalb County considers a CLA to require a change of occupancy from a single family residence to a “facility” The following is recommended: <ol style="list-style-type: none"> 1. Consider four individuals with I/DD in a CLA to be a single family regardless of municipality. 2. Discontinue the requirement to obtain a private fire inspector rather than county due to the additional cost.
Georgia fire code		Classifies CLA as a “commercial building.” This directly conflicts with the intention of the federal HCBS mandate.
NFPA 101	24.2	<ol style="list-style-type: none"> 1. The current requirement: 24.2 Means of Escape Requirements. 24.2.2.1.2 A secondary means of escape shall not be required where one of the following conditions is met: (1) The bedroom or living area has a door leading directly to the outside of the building or to the finished ground level. (2) The dwelling unit is protected by an approved automatic sprinkler system in accordance with 24.3.5. This sprinkler provision shall not apply to a community living arrangement. <p>The added CLA requirement that needs to be addressed: Item (2) above was amended in January 2014 by the State Fire</p>

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		<p>Marshal to add to subparagraph (2) the following sentence as follows (bold type by author):</p> <p>“This sprinkler provision shall not apply to a community living arrangement.”</p> <p>Comment: The implication of this change is that a secondary means of escape will be required even if the residence has a sprinkler system. <u>In a non-CLA dwelling, a secondary means of escape is not required if it has a sprinkler system.</u> If interpreted correctly, this apparently means that every bedroom or living area in a CLA (whether or not it has a sprinkler system) needs to have at least 1 door to the outside or 1 window with a width of not less than 20 in., with height not less than 24 in., and the bottom of the opening not more than 44 in. above the floor. In other words, if a CLA residence has an automatic sprinkler system, it will still have to meet the means of escape requirement. This requirement obviously has cost implications 1) if the dwelling needs to add doors or windows, or 2) needs to enlarge existing doors or windows to meet this additional requirement.</p> <p>While an automatic sprinkler system was not required in the existing JF&CS sponsored home, JF&CS did have to provide the secondary means of escape. Using these homes as an example helps to understand the real cost of the added requirement in these 2 houses whether or not a sprinkler system had to be installed.</p> <p>JF&CS had to change out windows in both of its CLA houses. At Dedee Court, this cost \$2,100 for 2 slider windows and \$700 for 1 double hung window. At Zemory Drive, it cost \$1,050 for 1 slider window and \$950 for an added double hung window. These costs represent labor and material only. These costs do not include supervision, painting, overhead and profit, and time spent on</p>

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		<p>custom fabrication of windows to fit into existing openings. If enlarged openings in masonry had been required for these windows, the costs could have been considerably higher. <u>The point is that even with a sprinkler system, a CLA would have had to incur these costs as well as the cost of an automatic sprinkler system.</u> Please also see the related comment in item 3 of this document. This requirement does not apply to non-CLA dwellings.</p> <p>Recommended change: 24.2.2.1.2, (2): Delete the added sentence, “This sprinkler provision shall not apply to a community living arrangement.” Is it really necessary to require the secondary means of escape if there is a sprinkler system? <u>There also needs to be a clear statement that an automatic sprinkler system is not required in existing houses/dwellings in a CLA.</u> (This chapter deals only with a CLA with 1 – 4 residents. The absence of this clarification caused considerable delay to the permitting process because the local officials had to get an interpretation from the State Fire Marshal.</p>
NFPA 101		<p>2. The current requirement: 24.2.4 Doors. 24.2.4.1 Doors in the path of travel of a means of escape, other than bathroom doors in accordance with 24.2.4.2 and doors serving a room not exceeding 70 sq. ft., shall not be less than 28 in. wide. 24.2.4.1.1 Doors in the path of travel as a means of escape in CLA facilities shall not be less than 32 in. wide.</p> <p>The added CLA requirement that needs to be addressed: Sub-paragraph 24.2.4.1.1 was added to 24.2.4.1 by the State Fire Marshal’s amendments in January 2014.</p> <p>Comment:</p>

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		<p>The added sub-paragraph has a large time and cost impact for most <u>existing</u> residences. This added requirement increases the minimum door size from 28 in. to 32 in. At Dedee Court, 2 cased openings had to be enlarged, 6 existing door openings had to be removed and enlarged, and the doors had to be replaced with new frames and doors. At Zemory Court, 2 cased openings had to be enlarged, 5 existing doors and frames needed to be removed, and the doors had to be replaced with new frames and doors. Needless to say, a lot of money was spent to meet this requirement. Most existing residences meet the 28 in. requirement but do not meet the 32 in. requirement. The question is whether there is evidence that would support the cost and work involved for this change. For a new house, the expense of this requirement could be built into the design and the cost would be minimal, if any.</p> <p>Recommended Change: Delete the added sub-paragraph 24.2.4.1.1 so that the minimum door size stays as 28 in. for existing dwellings. If a house needs to be ADA compliant because of a handicapped resident that would be housed in it, the door width would need to be enlarged in existing dwellings to meet ADA requirements. Note that NFPA 101 is not intended to address requirements in the American for Disabilities Act so the door width requirement is not a reason for the increased width.</p>
NFPA 101		<p>3. The current requirement: 24.3.5* Extinguishment Requirements. 24.3.5.1 All new one-and two-family dwellings shall be protected throughout by an approved automatic sparkler system in accordance with 24.3.5.2</p>

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		<p>24.3.5.2 When an automatic sprinkler system is installed, either for total or partial building coverage, the system shall be in accordance with Section 9.7.</p> <p>The * shown in 24.3.5 above references the Annex A section of NFPA 101 which states the following:</p> <p>A.24.3.5 Automatic sprinklers are recognized as an excellent addition to homes to enhance life safety and property protection. Automatic sprinklers can be part of a comprehensive package of fire protection and can assist in the overall master planning of a community. (Note that there is some additional language in this section that is really not germane to the issue being addressed.)</p> <p>Comment: Paragraph 24.3.5.1 states that a sprinkler system is required. Paragraph 24.3.5.2 implies that a sprinkler system is not required. Paragraph A24.3.5 in Annex states that automatic sprinklers are recognized as an excellent addition but by no means states that sprinklers are required.</p> <p>Obviously, there are contradictory and confusing statements here. We know that sprinklers are not installed in the huge majority of new one-family dwellings. The State Fire Marshall did not require a sprinkler system at the JF&CS’s existing homes on Dedee Court and Zemory Drive.</p> <p>Recommendation: There was considerable confusion at DeKalb County permitting regarding the requirements for an automatic sprinkler system. The following issues need to be cleared up:</p> <p>a) Why is an automatic sprinkler system required in a new dwelling when it is not required in an existing dwelling (like JF&CS’s Dedee Court and Zemory Drive houses)?</p>

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		<p>b) Why is an automatic sprinkler system required at all in a one- and two-family dwellings when Annex A says that it is recognized as an excellent addition but not a requirement? It is obvious that automatic sprinkler systems are not installed in most new one-family dwellings so it is unclear how to interpret the requirement.</p> <p>c) Can a residential sprinkler system be installed, if required, rather than the commercial system specified. To install the specified commercial sprinkler system at either Dedee Court (2-stories at 3956 SF) or Zemory Drive (1-story at 2019 SF) would have added \$6,200 and \$4000, respectively, to the cost for each house. A change to a residential system would result in a savings.</p> <p>d) Is a commercial fire and smoke alarm system really necessary in a 4-person CLA that has on-site supervision by the sponsoring agency? Could a residential type system be substituted, as a savings, in lieu of a commercial system as currently required? The commercial fire and smoke alarm systems cost \$6,046 and \$5,224 at Dedee Court and Zemory Drive. Combining the costs of the added commercial sprinkler and commercial alarm systems to these houses would have cost \$12,246 and \$9,224, respectively.</p> <p>e) Does a secondary means of escape still need to be required, if the dwelling has an automatic sprinkler system?</p> <p>Please also see the related comments under item 1 of this document.</p>
NFPA 101		<p>In January 2014, the Georgia State Fire Marshal added an entirely new section to Chapter 24. It is entitled <i>24.4 Community Living Arrangements</i>. It repeats some of the items already defined, but it also adds some other ones. The following issues should be addressed.</p>

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		<p>4. The current requirement: 24.4.3 Means of Egress. 24.4.3.2 Bedrooms for residents shall be separated from halls, corridors and other rooms by floor to ceiling walls capable of resisting fire for not less than ½-hour, which is considered to be achieved if the partitioning is finished on both sides with lath and plaster or materials providing a 15-minute thermal barrier. Sleeping room doors shall be substantial door, such as those of 1-3/4 in. solid bonded wood core construction or other construction of equal or greater stability and fire integrity. Any vision panels shall be fixed fire window assemblies in accordance with 8.3.3 or shall be wired glass not exceeding 1296 sq. in. each in area and installed in approved frames.</p> <p>Comment: The entire requirement was added for a 1- 4 CLA. This requirement does not apply to regular One- and Two- Family residences. Most existing and new residences can probably meet the requirement for the wall rating. <u>The door requirement is another matter, however.</u> JF&CS’s contractor has stated that residential doors are normally 1-3/8” hollow core or solid. Commercial doors are normally 1-3/4” hollow core or solid. A 1-3/4” thick door will not fit in a residential frame that holds a 1-3/8” thick door. In an existing house, this requirement effectively means that every door and frame in living and bedroom areas will need to be replaced, even if the door width is the correct width required by the current code.</p> <p>This issue is also closely related to the comments in items 1 and 3 of this document. The issue is if this 1-3/4 in. requirement is really necessary if the CLA house has a sprinkler system and/or a fire alarm and smoke alarm system.</p>

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		<p>Recommended change: If the State Fire Marshal insists that the fire rating is required and that a solid door is required, he should be asked to consider changing the requirement to a 1-3/8” thick door in existing houses so that existing doorframes can be used. Equally important is that the door width requirement in existing house be reduced from 32” to 38” so that most doors do not need to be widened. This change would save a considerable amount of material and labor expense to have to remove and replace door framing. Any hollow core doors would still need to be replaced with solid doors, but the doorframes would not need to be taken out and replaced with new frames that will accommodate the 1-3/4” thickness.</p> <p>5. The CLA requirement: The following requirement was added that does not: 24.3.3 Means of Egress. 24.4.3.6 Any door in the path of travel of a mean of egress or escaped shall be not less than 32 in. wide.</p> <p>Comment: This is the same requirement amended in 24.2.4.1.1 that I have commented on earlier in this document. It does not apply to regular One- and Two- Family residences that are not CLA. Please also see the comments in item 2 of this document as they are related.</p> <p>Recommended change: Change the door width requirement to 28 in. wide as it is in regular residences.</p>
CLA Regulations	Throughout	Correct “dept” to DBHDD and change ORS to HFR
CLA Regulations	Floor plan	Only require modifications to the floor plan of the home based on who will be living there, i.e. if everyone is ambulatory, ramps and other modifications are not required. If there is no one selected for the

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		home, provider may only place people whose needs match the floor plan requirements as determined by the regions.
CLA Regulations	290-9-37-.03 Applicability	3+. Correct department. Wording, “Residents regulated” vs. Residence.
CLA Regulations	290-9-37-.05 Definitions.	<p>d. Capacity is really a legal determination, not a health care professional decision – there is no uniform tool etc.</p> <p>f. Broaden to include examples from HCBS rule</p> <p>g. Convey to other government entities that it is a residence, not a commercial building or facility.</p> <p>o. Add LPN</p> <p>q. Revise using person centered language</p> <p>jj. Needs to be person centered and redefined. / refined all these services are not required nor provided.</p>
CLA Regulations	290-9-37-.07 Administration	3. Needs to address lease agreements
CLA Regulations	290-9-37-.14 Staffing.	Redefine to be based on a person’s mobility or other needs due to extra staffing not being funded, and three minutes at times not being possible.
CLA Regulations	290-9-37-.16 Admission	<ol style="list-style-type: none"> 1. Conflicts with contracts and Pioneer process which mandate you keep a person. Conflicts with rule that a provider has to keep a person until a new provider is found, as this is not necessarily in the best interest of the person. Need to give providers access to CIR database and require disclosure from families and support coordination. 2. Redefine where this documentation comes from, and specify which health care professional, and how that will be funded.

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CLA Regulations	290-9-37-.17 Admission Agreement	b. violates pioneer process
CLA Regulations	290-9-37-.19 Resident’s Rights.	e. DCH policy says no room sharing.
CLA Regulations	290-9-37-.20 Medications.	1. Who determines capacity? 4, 5, 7. Rights restrictions.
CLA Regulations	290-9-37-.21 Medical Protection Devices and Adaptive Support Devices.	It’s a rights restriction – exclude for wheelchair seatbelts and lap trays for those who permanently use a wheelchair.
CLA Regulations	290-9-37-.22 Use of Personal Restraints and Quiet Time.	5. (b), (c), 6. Exclude wheelchair seatbelts and lap trays for those who are dependent on the use of a wheelchair and cannot get in and out of the wheelchair without physical assistance.
CLA Regulations	290-9-37-.26 Discharge or Transfer of a Resident and 290-9-37-.27 Expedited Transfer or Discharge Planning	Entire section, Discharge language may need to be changed to “Service Termination” language as it may conflict with the notion of choice. Residential agreements will need to include “no eviction” clause.
CLA Regulations	290-9-37-.29 Licenses	Need to address multiple providers in one home if vacating the home is not required upon discharge, as well as provider liability.

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CLA Regulations	290-9-37-.31 Inspections and Plans of Correction	Ignores residents, unannounced inspections, may need language to notify residents or get their permission. Need to specify that resident’s schedules and plans will not be interrupted.
CLA Regulations	290-9-37-.32 Reporting to the Department	Reporting and investigation of gifts, inheritances, etc. should be uniformly addressed as inappropriate whether coerced or not.
Proxy Caregiving HFRD Rules	111-8-100-.01	<p>By virtue of their disability many individuals’ choices of settings (and potentially HCBS participation on the whole) are limited and potentially eliminated. Specifically related to the health maintenance activity of medication administration.</p> <p>If a facility does not provide/permit proxy caregiving within the facility - individual’s housing choices are severely limited. This is particularly true in rural areas of the state where there are limited numbers of facilities for a person to select from. The requirement of RN (vs. LPN) proxy training is a barrier for facilities being able to offer proxy care for medication administration. The result is the unintended consequence of individuals being relegated to nursing homes. Many individuals needing support and care in a licensed facility (PCH or CLA) also require support with medication administration.</p> <p>The HCBS Settings Rule, expects and requires that individuals have a choice of settings for receipt of services (including the actual setting (location) and to have input / influence on who within the setting provides services. However, Proxy Rules make it a necessity for a person with a disability to receive medication (if unable to “competently” self-administer) via a proxy caregiver. The proxy caregiver maybe a person the individual selects who is NOT engaged by the facility or the proxy maybe a person employed by the facility.</p> <p>Recommendations: Modify Proxy Rules specifically as they relate to the <i>Health Maintenance Activity</i> of Medication Administration. The</p>

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		modification possibilities include: placing administration of insulin back in the pch rules and regs rather than requiring a proxy caregiver it would be a shame for someone to have to go to a nursing home because they couldn’t find a place within a reasonable proximity to family and friends); requiring the same medication training annually for pch caregivers as proxy caregivers now receive without the individualization unless it involves insulin; allowing for medication aid (as in assisted living) vs. a proxy; modify rules to enable LPNs to train proxies, create new legislation for HCBS facility based (vs. home based / PHC medication administration) medication administration, allowing for a medication tech/ medication aid. In other words, make this easier so that it doesn’t restrict choices for individuals needing residential care.
Personal Care Home Regulations	111-8-62-.07 Governing Body	#3 (e) house Rules; (h) Health and Hygiene issues; (i) wandering away from the community; (o) "safety and security...to protect residents from harm from other residents " may all need some additional verbiage to make them explicit to the new rules.
Personal Care Home Regulations	111-8-62-.09 Workforce Qualifications and Training	(4) Add training in person-centered care to the list.
Personal Care Home Regulations	111-8-62-.12 Home Design Requirements	(5)(a) regarding sleeping areas...needs person-centered language; (h) totally against person-centered care...resident must have a specified sleeping area with a bed but must be be given the option, under person-centered care, to sleep in the common areas on an intermittent basis so long as it doesn't infringe on the rights of other residents. This is a tough one to word.
Personal Care Home Regulations	111-8-62-.13 Physical Plant	(2)(c) The space heater rule needs to be revisited to incorporate person-centered care as well as safety (what if a resident wants to

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	Health and Safety Standards	bring his/her space heater from home or needs one in a desire to be warmer than the other residents?) We need to talk with the fire marshals about this so that we can make the language appropriate.
Personal Care Home Regulations	111-8-62-.14 Furnishings and Fixtures	(2) What do you do if client doesn't want his/her room clean?
Personal Care Home Regulations	11-8-62-.23 Infection Control, Sanitation and Supplies	(7) We have to have rules; so what do we do when a necessary rule could violate client-centered care? If a resident doesn't want his/her room cleaned, or doesn't want the staff in his/her room, how should that be handled with regards to client-centered-care?
Personal Care Home Regulations	111-8-62-.25 Supporting Residents' Rights	(1) This requirement specifically states that these rules may be averse to residents' rights. However, we recommend no changes because each level of care must have rules. (1)(e) Visitors not being censored by the home may be a safety concern. Recommended change: add "so long as the visitors do not interfere with the rights of the other residents."
Personal Care Home Regulations	111-8-62-.30 Reporting	(1) There is a need to define or redefine "elopement" due to the new person-centered-care implementation.